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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA 788/2016 & ITA 789/2016

PR. COMMISSIONER OF INCOME TAX-6, NEW DELHI

..... Appellant

Through: Mr. Asheesh Jain, Sr. Standing Counsel.

versus

M/S MITSUI & INDIA PVT.LTD. Respondent

Through: Mr. Piyush Kaushik, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

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O R D E R

28.02.2017

The two questions urged by the Revenue in these appeals relates firstly to the transfer pricing adjustment made by the TPO for AY 2009-10 and 2010-11. The ITAT relied upon its earlier orders which were based upon the ruling in *M/s Li & Fung India Pvt. Ltd. v. CIT*, (2014) 361 ITR 85 (Del). It is pointed out that in respect of an identical adjustment for AY 2007-08 and 2008-09, the ITAT's order was upheld by this Court in ITA 252-253/2016 - by an order dated 28.04.2016; a copy of the said order has been brought to the notice of the Court. Having considered the same, this Court is of the opinion that no substantial question of law arises on that count.

The second question of law urged is with respect to the

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disallowance made under Section 14A by the AO. The ITAT following the principle enunciated in *Cheminvest v. CIT*, 378 ITR 33 was of the opinion that where the investment does not yield tax exempt income, disallowance is *per se* inadmissible under Section 14A. Since the ITAT has followed the judgment of this Court, no question of law arises.

For the above reasons, the appeals are dismissed.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

FEBRUARY 28, 2017
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