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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on 23rd March, 2015

+ ITA 103/2015
+ ITA 105/2015
+ ITA 106/2015
+ ITA 104/2015

COMMISSIONER OF INCOME TAX, LARGE TAX PAYER
UNIT, DELHI

..... Appellant

Through Ms. Suruchi Aggarwal, sr. standing
counsel

versus

INDIAN RAILWAY FINANCE CORPORATION LTD.

..... Respondent

Through Mr. S. Krishnan, Adv.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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CM Nos.2774/2015, 2776/2015 and 2777/2015

Exemption is allowed subject to all just exceptions.

The applications are disposed of.

ITA Nos.103/2015, 105/2015, 106/2015 and 104/2015

1. The revenue is aggrieved by common order of the Income Tax Appellate Tribunal dated 18.6.2014 in four assessment years i.e. 2006-7,

2007-08, 2008-09 and 2009-10.

2. Issue sought to be urged is with respect to capital recovery of leased assets termed as lease equalisation charges. These relate to the rolling stock of the Indian Railways, which is owned by the assessee and which is on lease finance basis.

3. The issue in respect of the assessee itself is covered for the previous assessment year 2001-02, in its favour. The ITAT had followed its previous order for assessment year 2001-02 in its impugned order. The ITAT's order for the previous year 2001-02 has been affirmed by a judgment of this Court in *Commissioner of Income, Large Taxpayers Unit V. Indian Railways Finance Corporation Ltd.* 362 ITR 548 (Del.). This position is in fact conceded by the revenue. Consequently, the appeals do not involve any substantial question of law. They are dismissed.

4. In ITA 104/2015, an additional issue arises relating to prior interest expenditure claim on account interest for a prior period. AO had made an addition of ₹1,10,10,874/-. The assessee had contended that on account of retrospective revision of rate of interest which occurred in the assessment year in question i.e. AY 2006-07, it was entitled to claim this as a legitimate expense. In respect of these, the ITAT's final order noticed its direction for assessment year 2002-03 which were in the following terms :

"5.3.2. From the facts available on record it is seen that the similar issue has been decided by the Hon'ble ITAT in ITA no. 1735/del/2006 for assessment year 2002-03 vide their order dated 28-08-2009 wherein the Hon 'ble ITAT has observed as under:

"We have considered the rival submissions. There is no dispute about the allowability of expenses. Only dispute is regarding the year of allowability. If the Assessing officer is of the view that the expenses are pertaining to the prior

period, the same are required to be considered for the prior and allowed in that year. If it is found that the expenses are allowable in this year on the basis of crystallization of liability, the same may be considered in the year under appeal. The assessee is therefore, directed to place necessary evidence in support of claim of expenses. The Assessing officer on appreciation of evidence may determine the year of allowability and allow the same in either of the year.”

Following the decision of the Hon'ble ITAT, the Assessing officer is directed to determine of allowability and allow in the year to which it pertains.”

5. The ITAT in its impugned order reiterated those directions :
“18. We have heard rival contentions and perusal the material available on record. Respectfully following ITAT's order for A.Y. 2002-03 herein also we restore the issue back to the file of assessing officer with same directions.”
6. In view of these directions, the Court is of the opinion that no substantial question of law arises on this aspect for AY 2006-07. All rights and contentions of the parties are reserved.
7. The appeals of the revenue are consequently dismissed.

S. RAVINDRA BHAT
(JUDGE)

R.K.GAUBA
(JUDGE)

MARCH 23, 2015

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