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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ITA 339/2016

PR. COMMISSIONER OF INCOME TAX-06

..... Appellant

Through: Mr. Raghvendra Kishore Singh, Adv.

Versus

M/S NALWA STEEL & POWER LIMITED(EARLIER KNOWN
AS NALWA SPONGE IRON LTD.)

..... Respondent

Through: Mr. Ajay Vohra, Sr. Adv. with Ms.
Kavita Jha and Ms. Roopali Gupta, Advs.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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14.12.2016

This matter is taken up today as 12.12.2016, when it was originally listed, was declared a holiday on account of Id-E-Milad.

Issue notice of the appeal. Ms. Kavita Jha accepts notice.

The Revenue's grievance is with respect to the order of the ITAT allowing the assessee's appeal.

During the relevant year, the assessee claimed the benefit of depreciation under Section 32(1)(iia) of the Income Tax Act ('the Act'). It claimed that a new industrial plan for the purpose of generation of power was set up and that ultimately led to augment installed capacity for production of sponge iron billets. The AO disallowed the claim for additional depreciation on the ground that the assessee did not produce any article or thing by the new installation,

i.e., the power turbines employed for generation electricity. The CIT(A) after a discussion on the merits, upheld the order, but on entirely different reasons.

In appeal, the assessee contended that it was entitled to the relief by virtue of Section 32(1)(iia). It urges two grounds, i.e., firstly that the installation of the power plant constituted a new undertaking eligible for the benefit under Section 31(1) (iia) and that in any event, there was an augment of the installed capacity for production within the contemplation of law.

The Revenue urges that the ITAT without entering into the merits or discussing the assessee's eligibility for the claim for additional depreciation *vis-a-vis* the electricity installation, assumes it and has granted relief. It also points out that the question of granting additional depreciation for electricity installation is covered by another provision, i.e., Section 32(1)(i) and that in the circumstances having not claimed, the assessee cannot claim the benefit of additional depreciation.

This Court has carefully considered the submissions of the parties. There is no doubt that the ITAT went by the discussion and merits as to whether the production of electricity amounted to production of goods or articles and did not impress itself with the question of assessee's eligibility for the claim of depreciation towards installation of the electricity generation unit nor even with respect to the enhancement of the installed capacity of the existing plant for production of sponge iron billets having regarding to the conditions appended to the proviso of Section 32(1) (iia). In the circumstances,

the matter is remanded back to the ITAT with the direction to adjudicate upon the two specific questions urged, i.e., sub para (1) & (2) of para 4 of the impugned order, which are extracted below:

“1. That the Learned Commissioner of Income Tax (Appeals)-XVI, New Delhi has grossly erred on facts and in the circumstances of the case and in law in rejecting statutory claim for deduction of additional depreciation u/s 32(1)(iia) of Rs.5,64,30,426/- on power turbines employed for generation of power captive consumption in the business of manufacturing of steel and iron products.”

2. That the Learned Commissioner of Income Tax (Appeals)-XVI, New Delhi has grossly erred on facts and in the circumstances of the case and in law in not appreciating the fact of increase in installed capacity of sponge iron and billets by 676121 MT during the previous year as per statement of installed capacity of turbine generator”

The appeal is allowed in the above terms.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

DECEMBER 14, 2016/acm