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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
4.
\+ **ITA 11/2016**

PR. CIT-06 ..... Appellant
Through: Mr Rahul Chaudhary, Senior Standing Counsel.

versus

MORADABAD TOLL ROAD CO. LTD. ..... Respondent
Through:

AND

5.
\+ **ITA 12/2016**

PR. CIT-06 ..... Appellant
Through: Mr Rahul Chaudhary, Senior Standing Counsel.

versus

MORADABAD TOLL ROAD CO. LTD. ..... Respondent
Through:

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R

% **13.01.2016**

CM No.323/2016 (for exemption)

1. Allowed, subject to all just exceptions.

2. The application stands disposed of.

ITA Nos.11/2016 & 12/2016

3. These are two appeals by the Revenue under Section 260A of the Act directed against the common order dated 2nd June, 2015 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA Nos.158 and 67/Del/2009 for the Assessment Years ('AYs') 2003-04 and 2004-05 respectively.

4. The common question urged is whether the ITAT was justified in upholding the order of the Commissioner of Income Tax (Appeals) ['CIT(A)'] for AY 2003-04 and reversing the order of the CIT(A) for AY 2004-05 thereby deleting the penalty levied on the Assessee for both AYs under Section 271(1)(c) of the Act?

5. The penalty was sought to be levied for both AYs on the Assessee consequent upon the Assessee having claimed depreciation @ 25% by treating the toll road as 'plant and machinery' whereas it was to be treated as 'building' on which depreciation @ 10% only was allowable.

6. In the impugned order, the ITAT has noted that an amendment was introduced in Section 32 of the Act, was applicable from AY 2004-05 onwards, which clarified that depreciation on road was allowable at 10% as in the case of building. Till then, however, the issue was a debatable one.

7. In the facts and circumstances of the case, the Court is not persuaded to hold that the impugned order of the ITAT suffers from any perversity or legal infirmity which wants any interference. No substantial question of law arises. The appeals are dismissed.

S. MURALIDHAR, J

VIBHU BAKHRU, J

JANUARY 13, 2016
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