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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **ITA 33/2016**

PR. CIT-06 ..... Appellant
Through: Mr Rahul Chaudhary, Senior Standing Counsel with Mr Raghvendra Singh, Junior Standing Counsel.

versus

MICROSOFT CORPORATION INDIA P. LTD. .... Respondent
Through: Mr Nageswar Rao and Mr Sandeep S. Karhail, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% **18.01.2016**

1. This is an appeal by the Revenue against the order dated 30th June, 2015 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.5766/Del/2011 for the Assessment Year ('AY') 2007-08. The questions sought to be urged by the Revenue are as under:

> "2.1 Whether the Tribunal erred in law and on facts in deleting disallowances of depreciation of Rs.1,85,45,102/- under section 32(1) of the Income Tax Act, 1961?
>
> 2.2 Whether the Tribunal erred in law and on facts in granting depreciation of Rs.1,85,45,102/- under section 32(1) of the Act on the amounts of car loan advanced to employees for the purchase of vehicle under terms and

conditions as laid down in "Car Policy" of the Assessee company while ignoring the fact that employee of the Assessee is to be considered as owner of the vehicle for the granting deprecation as per the provisions of the Act?

2.3 Whether the Tribunal erred in law and on facts in deleting disallowance of Rs. 1,28,88,973/- out of car running expenses under section 37(1) of the Act while ignoring that Assessee had not discharged its onus under section 37(1) of the Act that the expenditure was actually laid out or expended wholly and exclusively for the purposes of the business?

2.4 Whether the Tribunal erred in law in invoking principle of Res Judicata on the facts and circumstances of the case?"

2. At the outset it is pointed that for the earlier AY 2006-07 a similar question sought to be urged by the Revenue and has been declined by this Court by an order dated 12th October, 2015 in ITA No.504/2015 ***(Pr. Commissioner of Income Tax-6 v. Microsoft Corporation Pvt. Ltd.).***

3. However, Mr Rahul Chaudhary, Senior Standing Counsel for the Revenue states that it is not certain if the car policy of the Assessee was examined in the earlier AY 2006-07. According to him, in terms of the car policy a loan was advanced to the employee and, therefore, the depreciation on the vehicles could not have been claimed by the Assessee. He refers to the draft assessment order dated 28th December, 2010 where in para 5.4 an

observation to that effect has been made by the AO, The Court finds that the AO has only proceeded on surmises. In fact the AO acknowledges that the asset is in fact in the name of the Assessee but "that mere fact" does not make the Assessee eligible for the claim of depreciation. In the considered view of the Court, this amounts to re-characterization of a factual aspect which cannot be permitted. Admittedly, the vehicles are in the name of the Assessee and merely because the employee may be given an option of buying the vehicle from the Assessee at a subsequent point in time at the depreciated value, would not disentitle the Assessee to claim depreciation on the vehicle as long as they continued to be in the ownership of the Assessee. Consequently, the Court declines to frame question nos.1 and 2 as urged by the Revenue.

4. As regards the question relating to car running expenses, the Court again finds that the ITAT has not agreed with the contention of the Revenue that the running and maintenance expenses of the vehicles used by the employees of the Assessee were not for the business purposes of the Assessee. This is consistent with the view that has been adopted by the ITAT in the Assessee's own case for the earlier AY 2006-07. This Court is not persuaded to hold that only because the vehicles were used by the

employees for their personal use, the car maintenance expenses would not be for the business purposes of the Assessee. The Court, accordingly, declines to frame the question on this issue.

5. No substantial question of law arises. The appeal is dismissed.

S.MURALIDHAR, J

VIBHU BAKHRU, J

JANUARY 18, 2016
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