$~R91, 92

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

\+ **ITA Nos.444/2005**

COMMISSIONER OF INCOME TAX DEL ..... Appellant

Through: Mr. Rahul Chaudhary, Senior Standing Counsel with Mr.Sanjay Kumar Mishra, Junior Standing Counsel for Revenue.

Versus

M/S BHUSHAN STEELS & STRIPS LTD. ..... Respondent

Through: Ms. Kavita Jha, Ms. Roopali Gupta, Advocates.

WITH

ITA Nos.458/2005

COMMISSIONER OF INCOME TAX DEL ..... Appellant

Through: Mr. Rahul Chaudhary, Senior Standing Counsel with Mr.Sanjay Kumar Mishra, Junior Standing Counsel for Revenue.

Versus

M/S BHUSHAN STEELS & STRIPS LTD. ..... Respondent

Through: Ms. Kavita Jha, Ms. Roopali Gupta, Advocates.

CORAM: JUSTICE S.MURALIDHAR
JUSTICE PRATHIBA M. SINGH

O R D E R

% 04.08.2017

1. These appeals by the Revenue are against the common order dated 5th January, 2005 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA Nos. 3501 & 2981/Del/2003 for Assessment Years ('AY's) 2000-2001 and ITA Nos. 3502 & 2982/Del/2003 for AY's 2001-02.

2. By the order dated 25th May, 2006, this Court framed the following question of law in these appeals:

> *"(i) Whether the ITAT was correct in law in holding that the respondent-assessee is entitled to depreciation under Section 32 of the Income Tax Act even when the assessee was not the owner of the property in question and was in possession thereof as a lessee during the year under consideration?*
>
> *(ii) Whether the ITAT was correct in law in holding that the amount received by the assessee by way of exemption of sales tax payments was not a trading receipt but was a capital receipt, hence not liable to tax?*
>
> *(ill) Whether the ITAT was correct in law and on the facts and circumstances of the case in holding that the income from captive power plant is to be reduced from the calculation of taxable profits u/s 115JA'?"*

3. As far as Question (i) is concerned, it is covered in favour of the Assessee and against the Revenue by the decision of this Court in ***CIT v. Bhushan Steels & Strips Limited (2017) SCC OnLine Del 9061.***

4. As far as Question (ii) is concerned, it is covered in favour of the Revenue and against the Assessee by the same decision of this Court in ***CIT v. Bhushan Steels & Strips Limited*** (*supra*).

5. As far as Question (iii)3 is concerned, it stands covered in favour of the Assessee and against the Revenue by the decision of this Court in ***CIT v. DCM Shriram Consolidated Ltd. (2009) 322 ITR 486 (Del)*** which was further affirmed by the Supreme Court in ***CIT v. DCM Shriram Consolidated Ltd. (2014) 368 ITR 720 (SC)***.

6. The appeals are disposed of in the above terms.

S.MURALIDHAR, J

PRATHIBA M. SINGH, J

AUGUST 04, 2017

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