$~7

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

\+ **ITA 393/2017**

COMMISSIONER OF INCOME TAX-(EXEMPTIONS) ..... Appellant

Through: Mr.Zoheb Hossain, Senior Standing Counsel for Revenue.

Versus

LAKSHMIPAT SINGHANIA EDUCATION FOUNDATION ..... Respondent

Through: Mr. V.P. Gupta, Advocate.

CORAM: JUSTICE S.MURALIDHAR
JUSTICE PRATHIBA M. SINGH

O R D E R

% 24.07.2017

1. Pursuant to the order passed by this Court on 12th May, 2017, learned Senior Standing Counsel has produced a letter dated 17th May, 2017 written to him by the Assistant Commissioner of Income Tax (Exemptions) stating that the present appeal should be pursued in view of para 4 of the Circular No.21/2015 dated 10th December, 2015 which *inter alia* states ".....In case where returned loss is reduced or assessed as income, the tax effect would include notional tax on disputed additions." It is pointed out that even though the assessment for Assessment Year (AY) 2012-13 was completed at 'nil', the notional tax effect was calculated as Rs. 20,74,973 on the disputed addition of Rs.67,15,352/- on account of depreciation.

2. A perusal of the assessment order dated 29th December, 2014 passed by

the Assessing Officer in the present case reveals that the application of income of the Respondent –Assessee in the AY in question was far in excess of its income. The application of income was Rs.28,26,29,138 whereas his income was Rs.18,67,77,966. This was even after disallowing the depreciation of Rs.67,15,352. Consequently, even if the Revenue were to succeed on issue of disallowance of depreciation, the net effect would still remain the same i.e. the application of income of the Assessee would be far in excess of its actual income and therefore, it would not be required to pay any tax whatsoever.

3. Consequently, the tax effect being nil, the question of entertaining this appeal does not arise.

4. Accordingly, this appeal is dismissed as withdrawn in terms of the aforementioned Circular No.21/2015 dated 10th December, 2015.

S.MURALIDHAR, J

PRATHIBA M. SINGH, J

JULY 24, 2017

j