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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **ITA No. 407/2009**

COMMISSIONER OF INCOME TAX DELHI IV ..... Appellant
Through: Mr. Sanjay Kumar & Mr. Rahul, Chaudhary, Stnading Counsel for the Revenue

versus

DLF UNIVERSAL LTD. ..... Respondent
Through: Mr. Ajay Vohra, Senior Advocate with Ms. Kavita Jha & Ms. Roopali Gupta, Advocates.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE PRATHIBA M. SINGH

<u>O R D E R</u>
% **05.09.2017**

1. This is an appeal by the Revenue against the order dated 6th June 2008 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 3339/Del/2001 for the Assessment Year ('AY') 1997-98.

2. This order has to be read in continuation of the earlier order dated 18th May 2017 where Questions (i) to (iii) and (v) framed by the order dated 31st October 2013 stood answered. As far as Question No. (iv) is concerned it reads thus:

> "(iv) Whether the CIT (A) erred in law in allowing the depreciation on DLF Centre amounting to Rs.43,17,018/- in respect of its self-occupied portion?"

3. In regard to Question (iv) this Court on 18th May 2017, observed as

follows:

> "4. Issue No.4 is about the Assessing Officer not allowing depreciation on 'DLF Centre' which is partly self occupied by the Assessee. The question is whether the said asset can be said to be stock in trade and depreciation be allowed thereon?
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> 5. During the course of submissions, it was clarified by Mr Ajay Vohra, learned Senior counsel appearing for the Assessee, that for the purpose of income tax when an audit report is presented by the Petitioner, the said asset is shown as part of a block of assets on which depreciation is claimed. According to him, therefore the treatment of the said asset for the purpose of accounts and for the purpose of calculating the fax is different and this is an accepted practice under the income-tax law.
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> 6. The Respondent will file an affidavit clarifying the above position within two weeks with an advance copy to the counsel for the Revenue who is permitted to respond thereto before the next date of hearing."

4. Pursuant to the above order, an affidavit has been filed on behalf of the Assessee, DLF Universal Ltd., clarifying as under:

> "4. That the Respondent is the legal registered owner of 'DLF Centre' Building. The total area of the building is 1,66,491 sq. ft., out of which only 35,961 sq. ft. area is used by the Respondent for its self use and balance, 1,30,530 sq. ft. area has been let out. The Respondent is not claiming any depreciation on the area which is let out and is claiming depreciation as per Income Tax Rules in respect of the area which is self occupied.
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> 5. That the building DLF Centre has been shown as stock in trade in the books of account and depreciation provided thereon. The depreciation debited to the profit and loss account is added back in the return of income and depreciation pertaining to self occupied portion only is claimed in the return of income. The above fact is evident from the charts of depreciation attached with the return of income.

> Copy of the said computation along with the details of depreciation claimed by the Respondent as per Income Tax Rules for assessment years 1996-1997 to 1999-2000 is annexed hereto and marked as Annexure-A to D (Colly).
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> 6. That the claim of depreciation in respect of self occupied portion has been allowed by the department upto assessment year 1995-96. The issue of disallowance arises only in 4 assessment years i.e. Assessment Years 1996-1997 to 1999-2000. It is pertinent to mention that from assessment year 2000-2001, no disallowance on account of depreciation on self occupied portion of the building has been made by the assessing officer.
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> Copy of the chart showing status of depreciation (year wise) is annexed hereto and marked as Annexure-B."

5. Despite an opportunity, the Revenue has not filed a reply to the above affidavit. The above assertions of the Assessee, therefore, remain uncontroverted.

6. Considering the fact that the claim for depreciation of the Assessee has been allowed up to the AYs 1995-96 and has again been allowed from AY 2000-01 onwards, there appears to be no valid justification for denying the depreciation for AYs 1996-97 to 1999-2000.

7. Question (iv) is, therefore, answered in the negative, i.e. in favour of the Assessee and against the Revenue. The appeal is disposed of.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

SEPTEMBER 05, 2017/*rd*