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

\+ **ITA 356/2017**

THE PR. COMMISSIONER OF INCOME TAX -4..... Appellant
Through: Mr. Puneet Rai & Mr. Ruchir Bhatia, Advocates

versus

HARSORIA HEALTHCARE PVT. LTD ..... Respondent
Through

WITH

\+ **ITA 357/2017**

THE PR. COMMISSIONER OF INCOME TAX -4..... Appellant
Through: Mr. Puneet Rai & Mr. Ruchir Bhatia, Advocates

versus

HARSORIA HEALTHCARE PVT. LTD. ..... Respondent
Through

CORAM: JUSTICE S.MURALIDHAR
JUSTICE CHANDER SHEKHAR

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

% **31.05.2017**

<u>CM No. 16902/2017 in ITA No. 357/2017</u>

1. Allowed, subject to all just exceptions.

CM No. 16901/2017 in ITA No. 356/2017 & CM No. 16903/2017 in ITA No. 357/2017

2. For the reasons stated therein, the applications are allowed. Delay of 103 days in refiling the appeals is condoned.

ITA Nos. 356/2017 & 357/2017

3. These appeals are filed by the Revenue against the common order dated 27th June, 2016 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 3158/Del/2013 and ITA No. 225/Del/2013 for the Assessment Year ('AY') 2008-09 and 2009-10 respectively.

4. As far as appeal concerning AY 2008-09 is concerned, two questions have been urged by the Revenue:

> "2.1 Whether on the facts and circumstances of the case and in law, Id. ITAT/CIT(A) erred in allowing additional depreciation under section 32(l)(iia) of the Act on electrical items, tools and dies and moulds?
>
> 2.2 Whether on the facts and circumstances of the case and in law, Id. ITAT/CIT(A) erred in allowing deduction u/s IOB on account of proceeding charges, insurance claim and discount received from suppliers?"

5. As rightly pointed out by the ITAT, since the depreciation has been allowed on the same electrical goods, the question of not disallowing additional depreciation does not stand proved. Consequently, no question of law is framed on this issue.

6. As regards the second question, it is rightly pointed out by the ITAT that such expenditure is clearly allowable. The ITAT has relied upon decided cases. Consequently, no question of law arises on this issue.

7. As far as appeal for AY 2009-10 is concerned, the additional question relates to the ITAT holding the swap charges and loan processing charges as revenue expenditure by admitting additional evidence, without providing any opportunity to the Assessing Officer.

8. The ITAT has found that this is not the case of the Revenue that the assets for which the loan was taken were not put to use. In the circumstances, there was no error committed by the Commissioner of Income Tax [CIT(A)] in allowing the swap charges as revenue expenditure.

9. The Court finds no infirmity in the concurrent views of the CIT(A) and the ITAT on this issue. No question of law arises therefrom.

10. The appeals are dismissed.

S.MURALIDHAR, J

CHANDER SHEKHAR, J

MAY 31, 2017
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