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

\+ ITA 440/2018 & CM APPL. 14353-14354/2018

PRINCIPAL COMMISSIONER OF INCOME TAX - 7 ..... Appellant
Through: Mr. Sanjay Kumar and Mr. Rahul Chaudhary, Standing Counsel for the Revenue.

versus

M/S QNS FACILITY MANAGEMENT PVT. LTD. ..... Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

% **13.04.2018**

The lone question of law urged by the Revenue in this appeal to the ITAT's order is with respect to the addition of ₹2,15,93,478/- on account of assets replacement. Both the lower Appellate Authorities held that there was no income element in the assets replacement fund collected by the assessee, which maintains properties and provides allied services. The ITAT relied upon a decision of this Court in the case of *'Commissioner of Income Tax vs. Delhi Tourism and Transportation Development Corporation*', 350 ITR 01 (Del.).

This Court is of the opinion that no question of law arises in this appeal. In the case of *'Delhi Tourism and Transportation Development Corporation'* (supra) it was observed as follows:-

> *"36. Mere fact that the amount was retained in the bank account of the assessee under the head 'OGES', does not show or prove that it was the income of the*

> *assessee. Mere realization of an amount in course of trading was not determinative whether the mount received was income. The court/authorities must determine the nature and character of the receipts before the amount can be taxed as income. This part of the sale consideration i.e. OGES was kept in a deposit unrelated to the business of the respondent assessee. The assessee did not exercise dominion over the said fund/deposit and deal with the said fund/deposit. Keeping in view the aforesaid elucidation of law and applying the same to the factual matrix, noting the nature and character of the OGES, it has to be held that the same was not taxable income of the assessee. The same has to be excluded from the profit. The aforesaid receipts were not income earned and do not have character of income earned by the assessee over which it had dominion or right.* "

In the present case too, the maintenance/service fund charged does not entirely vest with the assessee; in certain contingencies it has to be refunded in entirety. For these reasons, the Court is of the opinion that the rule enunciated in the case of *'Delhi Tourism and Transportation Development Corporation'* (supra) squarely applies.

No question of law arises. The appeal is dismissed along with the pending applications.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

APRIL 13, 2018

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