$~5

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

\+ ITA 996/2018

THE PR COMMISSIONER OF INCOME TAX -4..... Appellant

Through: Mr.Ruchir Bhatia, Adv.

versus

GEMSCAB INDUSTRIES LTD. ..... Respondent

Through: Ms.Umang Luthra, Adv.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

O R D E R

% 07.12.2018

Learned counsel for the Revenue has filed and produced before us a copy of the order of the Income Tax Appellate Tribunal ('Tribunal' for short), which is taken on record. Soft copy of the same would be uploaded and attached with the appeal paper book.

This appeal by the Revenue in the case of M/s. Gemscab Industries Ltd. relates to the assessment year 2010-11 and arises from the order of the Tribunal made on 06.04.2018.

The Revenue has raised two separate issues. First issue relates to admission of additional evidence by the Commissioner of Income Tax (Appeals) under Rule 46A (3) of the Income Tax Rules, 1962. The second issue relates to deduction under Section 43B of the Income Tax Act, 1961 (‘Act’ for short).

On the first issue, impugned order by the Tribunal confirms factual finding of the Commissioner of Income-Tax (Appeals) that the respondent-assessee had filed documents before the Assessing Officer to show that production in the second unit had commenced on or before 30.09.2009, but the same were ignored. The Commissioner of Income-Tax (Appeals) had verified this fact and the order passed by him specifically states that the documents filed by the respondent-assessee were available in the file of the Assessing Officer. Referring to the documents, the Commissioner of Income-Tax (Appeals) had observed that the respondent-assessee had produced evidence of payment of excise duty, sales tax and issue of statutory sales tax forms to the suppliers to show and establish that production in the second unit had commenced on 24.08.2009. Hence, the respondent-assessee was entitled to depreciation for the entire year.

These findings are factual. There is no ground or reason to hold that the said findings were wrong or incorrect. Accordingly, we are not inclined to issue notice on the first issue as no substantial question of law arises for consideration.

The second issue does not arise from the order of the Tribunal as this issue was not raised by the Revenue in the appeal preferred by them before the Tribunal against the order of the Commissioner of Income-Tax (Appeals).

The appeal is dismissed.

SANJIV KHANNA, J.

ANUP JAIRAM BHAMBHANI, J.

DECEMBER 07, 2018/neelam