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

+ ITA 33/2019

THE PR. COMMISSIONER OF INCOME TAX -3 Appellant

Through: Mr.Ruchir Bhatia & Mr.Puneet Rai,
Advocates

versus

ELTEK SGS PVT. LTD. Respondent

Through: Mr.Piyush Kaushik, Advocate

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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18.01.2019

CM APPL. 2109/2019

For the reasons stated in the application, delay of 325 days in refilling the appeal is condoned.

The application is disposed of.

ITA 33/2019

1. The Revenue's grievance in this appeal under Section 260A of the Income Tax Act, 1961, is that the lower Appellate Authorities fell into error in holding that the respondent/assessee was entitled – for the given Assessment Year [2005-2006], to the benefit under Section 80IB.
2. The assessee company is a private company, engaged in manufacture and trade of electronic and electrical equipments and goods. It filed its return of income on 31.10.2005, which was processed under Section 143(1) of the Income Tax Act and its claim under Section 80IB was allowed.

Subsequently, its case was re-opened; the AO noted that the assessee – an industrial undertaking, commenced production on 15.03.1997. This was after the sunset date i.e. 31.03.1995. The AO also felt, in addition, that apart from this disqualifying factor, the assessee was not a small scale undertaking, within the meaning of that expression, in terms of the Ministry of Industry's DIPP order dated 10.12.1997, having regard to the Audit Report. The CIT(A), on the appeal by the assessee, accepted its plea and held that the turnover stipulations in terms of the investments in the fixed assets by Note 1 of the DIPP circular had been complied with. The ITAT affirmed the decision of the CIT(A).

3. The Revenue highlights the report of the Auditor and submits that since this was the material on record, which the AO gave importance to, CIT(A) as well as ITAT were in error in choosing to ignore it. This Court is of the opinion that no substantial question of law arises, as it is far too well settled that the duty of the Assessing Officer is to apply the law in the given facts regardless of the position of the Revenue or the assessee in the course of the proceedings [refer to *Kedarnath Jute Mfg. Co. Ltd. vs. Commissioner of Income Tax, Central Calcutta* (1971) 82 ITR 363 (SC)].

4. As a result, the appeal lacks merit. The same is accordingly dismissed.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

JANUARY 18, 2019/ 'hkaur'