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

\+ ITA 826/2019

PR. COMISIONER OF INCOME TAX-5 ..... Appellant

Through: Mr. Gaurav Gupta, SSC with Mr. Shivendra Singh and Mr. Yojit Pareek, Advs.

versus

KRISHNAPATNAM RAILWAY CO.LTD ..... Respondent

Through: Mr. Somnath Shukla and Mr. Mrinal Agarwal, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **03.05.2024**

1. The Principal Commissioner assails the order of the Income Tax Appellate Tribunal ["**ITAT**"] dated 20 February 2019 and has framed the following questions for our consideration:

"A. Whether on the facts and in circumstances of the case, the ITAT has erred in allowing depreciation on assets classified as workin- progress?

B. Whether on the facts and in the circumstances of the cases, the ITAT has erred in allowing depreciation on assets without any block of assets as per the Balance Sheet?

C. Whether on the facts and in the circumstances of the case, the ITAT has erred in upholding the decision of the

Commissioner of Income Tax (Appeals) ["**CIT(A)**"] to allow the current year's depreciation on WDV of assets arrived at without reducing the depreciation for Assessment Years 2009-10 and 2010-11, when no claim of depreciation was made by the assessee in the ITRs (original as well as revised)?"

2. We take note of the following findings which have come to be recorded by the CIT(A) and which have subsequently been affirmed by the ITAT as would be evident from the following:

> "5.1.2. I have given careful consideration to the submissions of the appellant. The operation income of the appellant is earned from revenue generated from freight transportation. Revenue has been generated only when the assets in the form of station building, permanent way, plant and machinery and other assets have been put to use. Therefore, even though in the original return as well as revised return, the appellant has shown the entire fixed assets as capital work in progress, the depreciation thereon is still allowable under the provisions of Explanation 5 to section 32 wherein the legislature clarified by Finance Act, 2001 w.e.f. 01.04.2002, as a matter of abundant precaution, that depreciation is allowable, irrespective of the fact as to whether or not the assessee has claimed the deduction in the computation of total income. Moreover, as the appellant has rightly stated, the Supreme Court in the case of Kedarnath Jute Mills (82 ITR 363) has taken the view that whether or not assessee entitled to a particular deduction depends on the provision of law relating thereto and not the view the assessee might take of his rights nor can the existence or absence of entries in the books of accounts be decisive or conclusive in the matter. The Supreme Court in the latest decision of KM Sugar Mills Ltd. (373 ITR 42) has held that when the assessee had proved the ownership and user of gas cylinders for business purposes and the income from leasing of gas cylinders was treated as business income, the assessee was entitled to depreciation u/s 32 and the mere fact that the assessee's own manufacturing unit has not started functioning would not be material to issue. Prima facie, the AO is right in his contention that appellant should have classified amount spent on construction of its railway track under fixed assets and charged depreciation on the same in its accounts. But due to peculiar circumstances of the case, the same could not be done, as final quantification of liability incurred in this regard could not be finalized at the time of

> preparation of accounts for the year. This aspect of the matter has been clarified by the appellant in its accounts and reproduced by the AO in his order. Mere quantification and classification in accounts cannot deter appellant from claiming depreciation when factually the assets has been put to use since 2008, as per the account statement rendered by South Central Railways. In the present case, the appellant has earned certain income of Rs. 8,20,74,197/- during the year which has rightly been brought to tax by the AO, as income from business and hence, depreciation ought to be allowed for the current year. The AO is directed to do so, subject to the findings on the quantum of depreciation to be allowed, at Para 6.2.3 hereinafter."

3. It is in the aforesaid backdrop that the ITAT has come to conclude that the CIT(A) had correctly held that the law did not deter the assessee from claiming depreciation when undisputedly the assests have been put to use since 2008 and were duly verifiable from the statement maintained by the South Central Railways.

4. In view of the aforesaid, we are of the considered opinion that no substantial questions of law arises.

5. The appeal shall consequently stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MAY 03, 2024/p