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

+ **ITA 1022/2019**

THE PR. COMMISSIONER OF INCOME TAX -3, New Delhi

..... Appellant

Through: Mr. Aseem Chawla, Sr.SC with
Mr. Aditya Gupta and Mr.
Naveen Rohila, Advts.

versus

DELHI TRANSPORT CORPORATION Respondent

Through: Ms.Avnish Ahlawat, SC with
Mr.Nitesh Kumar Singh,
Ms.Laavanya Kaushik and
Ms.Aliza Alam, Advts.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR

KAURAV

ORDER

19.01.2024

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1. Having heard Mr. Chawla and Ms. Ahlawat, learned counsels representing parties, we find that the Principal Commissioner seeks admission of the instant appeal on the following two questions of law:-

“(a) Whether on the facts and in the circumstances of the case and in law, Income Tax Appellate Tribunal [“**ITAT**”]/ Commissioner of Income Tax (Appeals) [“**CIT(A)**”] has erred in addition of Rs.3,83,57,247/- made by the Assessing officer [“**AO**”] on account of free of cost basis for replacement of cylinder heads ?

(b) Whether on the facts and in the circumstance of the case and in law, the ITAT/CIT(A) has erred in deletion the addition of Rs.18,01,76,741/- made by the AO on account of excess depreciation on buses?”

2. In so far as question (a) is concerned, we find that the same clearly stands concluded by findings of fact and would thus give rise to no substantial questions of law for our consideration.



3. That then takes us to the second question which has been framed for our consideration. As the ITAT has recorded in paragraphs 5, 6 and 7 of the impugned order, the total order value was of Rs.654,62,81,543/-. In terms of the contract entered into between the supplier and the respondent-assessee, in case of delayed delivery of vehicles, the respondent-assessee was liable to impose penalties and claim liquidated damages. It was on that score that the respondent-assessee received a sum of Rs.120,11,78,279/-.

4. The AO however for the purposes of computing depreciation, subtracted the liquidated damages amount from the purchase order. It was on the culmination of the aforesaid exercise, that depreciation to the tune of Rs.18,01,76,741/- as claimed was disallowed by the AO.

5. The ITAT has in our considered opinion, rightly come to the conclusion that the sum of Rs.120,11,78,279/- which was received in the hands of the respondent-assessee was clearly not aimed at reducing the cost of the buses but essentially for compensating loss caused by delays.

6. In view of the aforesaid, we find no ground to interfere with the impugned order. Consequently, no substantial question of law arises in the instant appeal.

7. The appeal fails and shall stand dismissed on the aforesaid terms.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

JANUARY 19, 2024/MJ