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

\+ ITA 200/2025

\+ ITA 203/2025

PR. COMMISSIONER OF INCOME TAX, DELHI - 1

.....Appellant

Through: Mr. Vipul Agrawal, SSC, Mr. Gaoraang Ranjan and Ms. Harshita Kotru, Advs.

versus

M/S CLEAN WIND POWER (MANVI) PVT. LTD.

.....Respondent

Through: Dr. Rakesh Gupta, Mr. Somil Agarwal and Mr. Dushyant Agrawal, Advs.

CORAM:
HON'BLE MR. JUSTICE DINESH MEHTA
HON'BLE MR. JUSTICE VINOD KUMAR

<u>O R D E R</u>

% 28.01.2026

1. These appeals filed by the Revenue lay a challenge to the order dated 24.10.2024 passed by the Income Tax Appellate Tribunal (*hereinafter referred to as 'the Tribunal'*) for the assessment year 2015-16 and 2016-17.

2. While allowing appeal, the Tribunal has found that as the assessee's appeals have been allowed on merit, hence, the appeal *qua* the penalty also merits acceptance.

3. Mr. Vipul Agrawal, learned counsel for the appellant argued that since the Income Tax Department's appeal against the merit of the addititious has been admitted by this Court, these appeals *qua* the penalty

also deserve to be admitted.

4. Mr. Rakesh Gupta, learned counsel for the respondent, on the other hand, submitted that the Tribunal has not only given its own finding on merit of the case but has also relied upon three-four judgments of different High Courts.

5. Upon hearing learned counsel for the parties, we are of the view that the Department may or may not succeeds in the appeal on merit, but the fact that four different High Courts have already held in favour of the stand which the assessee had taken, the issue is definitely a debatable one.

6. Hence, even on ultimate analysis if the view of the Department is affirmed, no penalty can be imposed, more particularly when the basic issue is in relation to the rate of depreciation, which in the instant case the assessee had claimed to be 80%. It is in a way revenue neutral proportion, because if the depreciation in this year is allowed at higher rate then in the subsequent year it is going to be lower.

7. Accordingly, we dismiss the appeal.

DINESH MEHTA, J

VINOD KUMAR, J

JANUARY 28, 2026/*ss*