



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

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+ **ITA 516/2005**

THE COMMISSIONER OF INCOME TAX Appellant
Through Mr. Sanjeev Sabharwal, Advocate

versus

**TEDCO INVESTMENT & FINANCIAL
SERVICES P. LTD** Respondent
Through Mr. Manmohan, Senior Advocate with
Mr. Rajat Navet, Advocate

**CORAM:
HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE DR. JUSTICE S. MURALIDHAR**

ORDER
12.12.2006

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ITA No 516/2005

On a perusal of the impugned order dated 18.10.2004 of the Income Tax Appellate Tribunal ('Tribunal'), we find that on the question whether the plant and machinery was delivered by the assessee to the lessee on 31.3.1996, the Tribunal has concluded that there is a deemed delivery to the lessee on 31.3.1996, which in their view was sufficient to claim depreciation under Section 32 of the Income Tax Act, 1961 ('Act'). The contention of the assessee is that the plant and machinery was actually erected and commissioned at the lessee's site on



31.3.1996. Our attention has been drawn to the documents filed by the assessee during assessment proceedings including certificates issued by M/s. Prakash Industries Limited, the lessee, that the plant and machinery has been installed and commissioned on 31.3.1996. However, the Tribunal has neither adverted to these documents nor returned a finding whether the plant and machinery in question could, in the circumstances be said to have been "used" in the relevant previous year.

Accordingly, the impugned order is set aside and the matter is remanded to the Tribunal for a fresh determination. The appeal stands disposed of accordingly.

A handwritten signature in black ink, appearing to read 'Vikramajit Sen'.

VIKRAMAJIT SEN, J

A handwritten signature in black ink, appearing to read 'S. Muralidhar'.

S. MURALIDHAR, J

DECEMBER 12, 2006

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