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

IT 689/2012 & ITA 690/2012

COMMISSIONER OF INCOME TAX DELHI-VIII Appellant

Through : Mr Kamal Sawhney

versus

SREI INFRASTRUCTURE FINANCE LTD Respondent

Through : Mr S. Ganesh, Sr Advocate with Mr U. A.
Rana, Ms Mrinal Mazumdar and
Mr Abhinav Ashok

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE R.V.EASWAR

ORDER

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21.02.2013

These appeals have been filed by the revenue under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the 'said Act') against the order dated 23.02.2012 in ITA 617-618/Del/2010 pertaining to the assessment years 2006-07 and 2007-08, respectively. In both these appeals, identical issues have been sought to be raised. One of the issues pertains to the claim of higher depreciation by the respondent/ assessee on account of vehicles leased out by it to its customers. The respondent/ assessee is essentially a non-banking financial company but part of its business is leasing of vehicles etc. This issue has been remanded by the Tribunal to the Assessing Officer. We may point out that the assessee has also filed cross-appeals against the impugned order dated 23.02.2012 in respect of both the assessment years 2006-07 and 2007-08 and the appeals are numbered as ITA 371/2012 and ITA 372/2012 which are also pending before us. The respondent / assessee has raised the issue that the Tribunal ought not to have remanded the question of higher depreciation



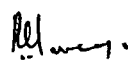
to the Assessing Officer. Therefore, we feel that it would be appropriate that the issue of higher depreciation be dealt with by us in the assessee's said appeals.

The second issue that has been raised by the revenue in this appeal pertains to the interest free loans given to the 100% subsidiaries of the respondent/ assessee. The Assessing Officer had added notional interest on those loans. It was the case of the respondent/ assessee that it had reserves and surplus far exceeding the extent of the loans given to its 100% subsidiaries and that the same was done only for its commercial expediency. This matter has been remitted by the Tribunal to the Assessing Officer to decide as to whether there was commercial expediency in advancing those loans to the 100% subsidiaries. We do not see as to why we should interfere with this direction of the Tribunal inasmuch as the Assessing Officer will go into all the details and will return a finding with regard to the commercial expediency etc.

The third issue pertains to Rule 8D of the Income Tax Rules, 1962 read with Section 14A of the said Act. This issue has, however, been covered by the decision of this Court in Maxopp Investment Limited v. CIT: (2012) 347 ITR 272 (Del). The Tribunal has remanded the matter to the Assessing Officer to decide this issue in terms of the decision of this Court in Maxopp Investment Limited (supra). Therefore, on this aspect also, no interference is called for.

In these circumstances, we do not find any substantial question of law surviving in these appeals. The appeals are dismissed.


BADAR DURREZ AHMED, J


R.V.EASWAR, J

FEBRUARY 21, 2013
SR