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

+ **ITA 584/2017**  
 + **ITA 585/2017**  
 + **ITA 587/2017**  
 + **ITA 588/2017**  
 + **ITA 589/2017**

**PR. COMMISSIONER OF INCOME  
 TAX DELHI-2, NEW DELHI**

..... Appellant

Through: Mr. P. Roychaudhuri, Sr. Standing  
 Counsel.

versus

**CENTRAL WAREHOUSING CORPORATION** ..... Respondent

Through: Mr. Mayank Nagi, Advocate with  
 Mr. Tarun Singh, Advocate.

**CORAM: JUSTICE S. MURALIDHAR  
 JUSTICE PRATHIBA M. SINGH**

**ORDER**  
**01.08.2017**

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**Dr. S. Muralidhar, J.:**

1. These five appeals have been filed by the Revenue under Section 260A of the Income Tax Act, 1961 ('Act') against the common order dated 29<sup>th</sup> July, 2016 passed by the Income Tax Appellate Authority ('ITAT') in ITA Nos.1455-1459/Del/2014 for the Assessment Years ('AYs') 1989-90, 1993-94, 1997-98, 1999-2000, 2000-01.

2. The issue sought to be urged by the Revenue in these appeals is whether



the ITAT erred in confirming the order of the Commissioner of Income Tax (Appeals) [‘CIT (A)’] whereby it was held that the deductible income under Section 10 (29) of the Act is to be computed after excluding depreciation as part of the expenditure and taking gross receipts from warehousing and Inland Container Depot/ Container Freight Station (‘ICD/CFS’).

3. According to the Revenue, depreciation is like any other business expense which is debited to the profit and loss account and, which, goes to reduce the tax liability of an Assessee. Therefore, according to the Revenue, for the purpose of Section 10 (29) of the Act, depreciation should be considered as an expense and not an allowance, as sought to be claimed by the Assessee.

4. Both the CIT (A) as well as the ITAT have, while accepting the contention of the Assessee, relied on the decision of the Supreme Court in *Nectar Beverages Pvt. Ltd. v. DCIT (2009) 314 ITR 314*.

5. Mr. P. Roychaudhuri, learned counsel appearing for the Revenue, sought to distinguish the aforementioned judgment of the Supreme Court in *Nectar Beverages Pvt. Ltd. (supra)* pointing out that it was in the context of Section 41(1) of the Act which dealt with concept of ‘balancing charge’. He submitted that the Supreme Court in the above decision was not examining whether depreciation should be treated as an expense or as an allowance for the purpose of Section 10 (29) of the Act.

6. The Court has examined the decision in *Nectar Beverages Pvt. Ltd. (supra)*. Para 11 of the said decision, relevant for the present case, reads as under:

“11. The entire controversy, therefore, stands resolved if one



understands the meaning of “balancing charge”. Where any allowance or deduction had earlier been made in respect of any loss, expenditure or trading liability and subsequently the assessee has obtained or realized any amount towards such loss, expenditure or trading liability, Section 41(1) deems such realization/recouplement as assessee’s income for the year in which it is realized. Section 41(2) as it stood at the material time stated that if in respect of any plant and machinery, any depreciation had been allowed and subsequently such plant and machinery was sold, discarded or destroyed, the assessee might get some value either as a result of sale or insurance or from salvage or compensation thereabout. The necessity to keep Section 41(2) as a provision in addition to Section 41(1) arose from the fact that, in its very nature, *depreciation is neither a loss, nor an expenditure, nor a trading liability, referred to in Section 41(1)*. The depreciation recovered on sale of the capital asset was includible in the total income as balancing charge only under Section 41(2). That concept was foreign to the scheme of Section 41(1). The balancing charge under Section 41(2) arose only where any depreciable asset (building, machinery, plant or furniture) was sold. In fact, when the concept of “block of assets” stood introduced w.e.f. 1.4.1988, Section 41(2) stood deleted. However, even after 1.4.1988, the proviso to Section 32(1)(ii) continued till 1.4.1996 when by the Finance (No. 2) Act, 1995 the bottles and crates even below Rs. 5,000/- came within the “block of assets” as defined under Section 2(11) of the 1961 Act. As stated, this judgment is confined to depreciable assets costing less than Rs. 5,000/- which did not enter the block of assets during the assessment years in question (when Section 41(2) stood deleted).” (emphasis in original)

7. It is evident from the above that the Supreme Court has, while explaining the rationale behind insertion of Section 41(2) of the Act, delved into the aspect as to what was the nature of ‘depreciation’. It has been emphasized by the Supreme Court that ‘depreciation’, by its very nature and as used in Section



41(1) of the Act, is neither loss, nor expenditure, nor trading liability'. In other words, irrespective of the provision in which the word 'depreciation' is used, owing to the very nature of the word, it is not a loss or an expenditure or a trading liability.

8. The Court's attention has been drawn by Mr. Mayank Nagi, the learned counsel for the Assessee, to another decision of the Supreme Court in *CIT v. Anand Theatres (2000) 244 ITR 192* where the Supreme Court has, while explaining the scheme of Section 32 of the Act in the context of whether depreciation is allowable vis-a-vis a building, observed that "the depreciation as a general principle represents the diminution in value of capital asset when applied to the purpose of making profit or gain. The object is to get true picture of real income of the business."

9. The Court is satisfied that neither the CIT (A) nor the ITAT has committed any legal error in concluding that for the purposes of Section 10(29) of the Act 'depreciation' is not an expense but allowance.

10. No substantial question of law arises for consideration from the order of the ITAT. The appeals are, accordingly, dismissed but in the circumstances, without any order as to costs.

**C.M.No.27321/2017 (Exemptions) in ITA No.584/2017**

**C.M.No.27323/2017 (Exemptions) in ITA No.585/2017**

**C.M.No.27327/2017 (Exemptions) in ITA No.587/2017**

**C.M.No.27331/2017 (Exemptions) in ITA No.588/2017**

**C.M.No.27339/2017 (Exemptions) in ITA No.589/2017**

11. Applications are allowed, subject to all just exceptions.



**C.M.No. 27322/2017 (delay in refiling) in ITA No.584/2017**  
**C.M.No. 27324/2017 (delay in refiling) in ITA No.585/2017**  
**C.M.No. 27328/2017 (delay in refiling) in ITA No.587/2017**  
**C.M.No. 27332/2017 (delay in refiling) in ITA No.588/2017**  
**C.M.No. 27340/2017 (delay in refiling) in ITA No.589/2017**

12. For the reasons stated in the applications, the delay in re-filing is condoned. The applications are disposed of.

**S. MURALIDHAR, J.**

**PRATHIBA M. SINGH, J.**

**AUGUST 01, 2017**  
*'anb'*

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