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

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\+ **ITA No. 595/2017**

PR.COMMISSIONER OF INCOME TAX-07 ..... Appellant

Through: Mr. Sanjay Kumar, Mr. Rahul Chaudhary, Standing Counsels for Revenue.

versus

POWER GRID CORPORATION OF INDIA LTD. ..... Respondent

Through: Mr. Ved Jain, Ms. Ranu Jain, Mr.Pranjal Srivastava, Advocates.

AND

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\+ **ITA No. 725/2017**

PR.COMMISSIONER OF INCOME TAX-07 ..... Appellant

Through: Mr. Sanjay Kumar, Mr. Rahul Chaudhary, Standing Counsels for Revenue.

versus

POWER GRID CORPORATION OF INDIA LTD. ..... Respondent

Through: Mr. Ved Jain, Ms. Ranu Jain, Mr.Pranjal Srivastava, Advocates.

CORAM: JUSTICE S. MURALIDHAR
JUSTICE PRATHIBA M. SINGH

ORDER

% **08.09.2017**

C.M. APPL. 31668/2017 (Exemption) in ITA No. 725/2017

1. Allowed, subject to all just exceptions.

C.M. APPL. 27378/2017 (Delay in filing) in ITA No. 595/2017
C.M. APPL. 31669/2017 (Delay in filing) in ITA No. 725/2017

2. For the reasons stated in these applications, the delay in filing these appeals is condoned. These applications stand disposed of accordingly.

ITA No. 595/2017 & ITA No. 725/2017

3. The Revenue is in appeal against a common order dated 9th January 2017 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 191/Del/2013 for Assessment Year ('AY') 2005-06 and ITA No. 189/Del/2013 for AY 2006-07.

4. The appeals concern the setting aside of the penalty under Section 271 (1) (c) of the Income Tax Act, 1961 ('Act'). In the quantum proceedings, two issues arose. The first was the addition made by the Assessing Officer ('AO') on account of disallowance of advance against depreciation ('AAD') for AY 2006-07. The second issue was regarding the recovery of transmission charges for AY 2005-06.

5. The ITAT, in the impugned order, noted that, on the issue of whether AAD can be taxed under Section 28 (1) of the Act, the Assessee did not press its appeal before the ITAT. The issue was in fact decided in favour of a similarly placed party by the Supreme Court in its decision in ***National Hydroelectric Power Corpn. Ltd. v. Commissioner of Income Tax [2010] 320 ITR 374 (SC)***. This was obviously a debatable issue that did not warrant

penalty.

6. As regards the second issue of recovery of transmission charges, the ITAT noticed adequate disclosure had been made by the Assessee in Note Nos. 14(D) and 17 of the audited accounts of the Assessee. Therefore, there was no failure on the part of the Assessee to make a complete disclosure. In the facts and circumstances, the impugned order of the ITAT deleting the penalty under Section 271 (1) (c) of the Act, cannot be said to be erroneous. No substantial question of law arises.

7. The appeals are accordingly, dismissed.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

SEPTEMBER 08, 2017
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