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

+ ITA No. 499/2018
+ ITA No. 535/2018
+ ITA No. 872/2018
+ ITA No. 883/2018
+ ITA No. 903/2018

COMMISSIONER OF INCOME TAX Appellant
Through: Mr. Ashok Manchanda, Senior
Standing Counsel with Mr. Amar
Paswan, Advocate

versus

SELECT INFRASTRUCTURE PVT. LTD. Respondent
Through: Mr. Ajay Vohra, Senior Advocate
with Mr. Gaurav Jain, Adv.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **05.12.2018**
CM No. 18586/2018 in ITA No. 535/2018

Delay of 35 days in filing the appeal is condoned as it is not opposed by the counsel for the respondent.

Application is allowed.

CM Nos. 33593/2018 & 33595/2018 in ITA No. 903/2018

Delay of 40 days in filing the appeal and delay of 100 days in re-filing the appeal is condoned as it is not opposed by the counsel for the respondent.



Applications are allowed.

ITA No. 499/2018, ITA No. 535/2018 & ITA No. 883/2018

Having heard counsel for the parties, we are inclined to frame the following substantial question of law:

- (1) Whether Income Tax Appellate Tribunal was right in bifurcating and dividing the income into two heads – ‘income from business’ and ‘income from house property’?

Learned counsel for respondent has stated that they are not claiming any depreciation for building. The depreciation is being claimed on the plant and equipment installed in the common area for which the assessee charges common area maintenance charges.

We are not inclined to frame any substantial question of law on whether the amount paid on account of debentures issued should be treated as amount paid by the holding company for acquisition of share capital.

Filing of paper book is dispensed with. However, liberty is granted to the parties to file papers which were part of the assessment proceedings or the appellate proceedings within ten weeks from today.

It appears that by mistake Revenue has not preferred any appeal for the assessment year 2009-10 and ITA Nos. 535/2018, 872/2018 and 903/2018 have been filed for the assessment years 2008-09. ITA No. 535/2018 would be treated as the appeal for the assessment year 2008-09 including appeal arising out of cross-objections.

Learned Senior Standing Counsel for the Revenue states that he would be taking steps to file appeal for the assessment year 2009-10. Appeal when filed would be examined.



To be shown in 'Regulars' as per its own turn.

ITA No. 872/2018 & & ITA No. 903/2018

ITA No. 872/2018 and 903/2018 would be treated as disposed of without prejudice to the rights and contentions of the parties in ITA No. 535/2018.

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

SANJIV KHANNA, J.

A handwritten signature in black ink, appearing to read 'Anup Bhambhani'.

ANUP JAIRAM BHAMBHANI, J.

DECEMBER 05, 2018
SR