



\$~45, 46 and 65

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
 + ITA 1294/2018  
 + ITA 1295/2018  
 + ITA 1305/2018

PR. COMMISSIONER OF INCOME TAX DELHI -8

..... Appellant  
 Through Mr.Zoheb Hossain, Sr. Standing  
 counsel with Mr.Deepak Anand,  
 Jr.Standing Counsel for Revenue.

versus

M/S SISTEMA SHYAM TELESERVICES LTD.

..... Respondent  
 Through Mr.PiyushKaushaik, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE SANJIV KHANNA**  
**HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI**

**ORDER**

% **20.11.2018**

**CM APPL. 48189/2018(delay in re-filing) in ITA 1294/2018**  
**CM APPL. 48190/2018(delay in re-filing) in ITA 1295/2018**  
**CM APPL. 48194/2018 (delay in re-filing) in ITA 1305/2018**

Application for condonation of delay of 61, 67 and 67 days in re-filing of the appeals is not opposed. Applications are allowed.

**ITA 1294/2018, ITA 1295/2018 and ITA 1305/2018**

These appeals by the Revenue under Section 260A of the Income Tax Act,1961(the Act, for short) in the case of M/s Sistema Shyam Teleservices Ltd. (formerly Shyam Telelink Ltd.) pertain to Assessment Years 2008-09, 2007-08 and 2005-06.

2. First issue raised <sup>which arises</sup> /relates to year of taxation of the purchase



value/price of pre-paid cards is covered against the Revenue vide decision dated 15.11.2018 in ITA No.73/2013, ITA No.70/2013 and ITA No.1069/2017 relating to Assessment Years 2003-04, 2004-05 and 2009-10. In view of the aforesaid position, no substantial question of law arises in these appeals on the first aspect.

3. Learned counsel for the Revenue has submitted that <sup>in</sup> accordance with <sup>in</sup> the order in ITA No.73/2013, ITA No.70/2013 and ITA No.1069/2017, <sup>in</sup> the Assessing Officer may be authorised to verify the question of revenue leakage as unutilized talk time on expired pre-paid card has to <sup>be</sup> ~~tax~~ <sup>ed</sup> as revenue earned in the year in which the card had expired.

4. Counsel for the respondent-assessee, who appears on advance notice, submits that they have no objection and the Assessing Officer can conduct the verification exercise while passing appeal effect order. He accepts that similar directions were issued by the Tribunal in their order for the Assessment Years 2003-04, 2004-05 and 2009-10.

5. We take the statement made by the counsel for the respondent-assessee on record. Accordingly, the Assessing Officer will be entitled to verify and ascertain that the respondent-assessee had accounted for the unutilized talk time on expired cards.

6. Another issue raised in the appeal pertaining to the Assessment Year 2008-09 relates to disallowance of penal interest paid to government financial institutions. Assessing Officer held that penal interest was in the nature of penalty and, therefore, not wholly and exclusively for purpose of business. The contention is fallacious and



wrong. Penal interest was paid as there was delay in payment of the principal or interest amount before the due date. Penal interest was not paid and imposed for violation of the statutory provisions or by way of penalty for breach of law or prohibited offence. Penal interest was paid as there was violation of the contractual term in view of non payment of principal interest within the stipulated time. There was no violation of law. Penal interest was not imposed as the respondent- assessee had committed an offence.

7. Recording the above, the appeals are dismissed. However the respondent- assessee would be bound by the concession recorded. There would be no order as to costs.

**SANJIV KHANNA, J**

**ANUP JAIRAM BHAMBHANI, J**

**NOVEMBER 20, 2018/ndn/2/3**



\$~23, 24 & 25

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+ ITA Nos. 1294/2018, 1295/2018 & 1305/2018

PR. COMMISSIONER OF INCOME TAX DELHI -8..... Appellant  
Through Mr. Zoheb Hossain, Sr. Standing  
Counsel.

versus

M/S SISTEMA SHYAM TELESERVICES LTD. .... Respondent  
Through Mr. Piyush Kaushik, Advocate.

**CORAM:**

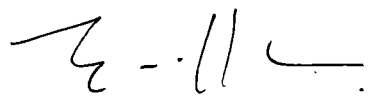
**HON'BLE MR. JUSTICE SANJIV KHANNA**

**HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI**

**ORDER**

% **07.01.2019**

Typographical errors have been noticed in the order 20<sup>th</sup> November, 2018 passed in the aforesaid ITAs. The same have been corrected and initialled in today's date. Corrected order will be uploaded.

  
**SANJIV KHANNA, J.**

  
**ANUP JAIRAM BHAMBHANI, J.**

**JANUARY 07, 2019**

**NA**