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

+ **ITA 173/2018 & CM APPL. 5359/2018 (for stay)**

TOSHIBA INDIA PVT LTD Appellant

Through: Mr. Nageswar Rao, Advocate with
Mr. Sandeep S. Karhail and Mr.
Purushottam Anand, Advocate.

versus

DEPUTY COMMISSIONER OF INCOME TAX Respondent

Through: Mr. Ruchir Bhatia, Senior Standing
Counsel for Revenue.

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ITA 591/2018

TOSHIBA INDIA PVT LTD Appellant

Through: Mr. Nageswar Rao, Advocate with
Mr. Sandeep S. Karhail and Mr.
Purushottam Anand, Advocate.

versus

ASSISTANT COMMISSIONER OF INCOME TAX

..... Respondent

Through: Mr. Ruchir Bhatia, Senior Standing
Counsel for Revenue.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE I.S.MEHTA

ORDER
% **15.05.2019**

1. Admit.



2. These are two appeals by the same Assessee. Appeal No. 173/2018 is directed against an order dated 1st September 2017 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 1357/Del/2017 for the Assessment Year (AY) 2012-13. Appeal No. 591/2018 is directed against an order dated 30th November 2017 passed by the ITAT in ITA No. 6531/Del/2017 for the Assessment Year 2013-14.

3. A common question of law that arises in both appeals is as under:

“Did the ITAT err in not allowing the deduction for interest paid on customs duty?”

4. Relevant to the above question, are the admitted facts are that the Appellant imports completely built units as well as parts of LCD/LED TVs from Toshiba Singapore Pvt. Ltd. A search was conducted by the Directorate of Revenue Intelligence ('DRI') on 23rd July 2014 and following which a show cause notice was issued to the Assessee regarding wrongfully availing higher concession of import duty. The Assessee filed an application before the Settlement Commission for Customs and Central Excise. By an order dated 24th June 2016, total demand of customs duty and penalty an interest was settled. These amounts were paid by the Assessee in March 2016 and they were accordingly booked in the financial statements of the financial year 2015-16 relevant to AY 2016-17.

5. The disallowance of the above interest component is the subject matter of the orders of the ITAT for the two AYs under consideration.

6. Mr. Ruchir Bhatia, learned senior standing counsel for Revenue has



produced a letter dated 13th November 2018 written to him by the Deputy Commissioner of Income Tax with written instructions on the stand to be taken by the Revenue in respect of the above issue. The stand taken is that the above interest component would be allowed as a deduction under Section 43B of the Act, in the year in which it was actually paid, which is financial year 2015-16 relevant to AY 2016-17 subject to the provisions of Section 37 of the Act.

7. In that view of the matter, the question is answered of by holding that the Assessee would be allowed the above interest payment as deduction in AY 2016-17. ITA 591 of 2018 is accordingly disposed of.

Order in ITA 173 of 2018

8. Admit.

9. The following questions are framed for consideration:

- (i) Is there any international transaction involving the Assessee and its Associated Enterprises for the year in question i.e. AY 2012-13?
- (ii) Was the ITAT justified in remanding to the TPO the issue concerning determination of the ALP of the AMP expenses.

10. ITA 173/2018 is set down for hearing on 27th September 2019.


S.MURALIDHAR, J.


I.S.MEHTA, J.

MAY 15, 2019/nd