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

+ ITA 236/2022 and CM APPL. Nos. 33148-49/2022

KRISHAK BHARTI COOPERATIVE LTD Appellant

Through : Ms. Surekha Raman and
Mr. Purushottam Kumar Jha,
Advocates.

versus

**ASSISTANT COMMISSIONER
OF INCOME TAX**

..... Respondent

Through : Mr. Abhishek Maratha, Senior
Standing Counsel for the Revenue.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

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29.07.2022

CM APPL. 33148-49/2022 (for exemption)

Exemptions allowed, subject to all just exceptions.

Accordingly, these applications stand disposed of.

ITA 236/2022

Present Income Tax Appeal has been filed challenging the Order dated 29th December, 2021 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA 2342/Del./2017 for Assessment Year 2011-12.

Learned Counsel for the Appellant states that the ITAT erred in rejecting the claim for amortization of lease premium paid to the Noida Authority, Vishakhapatnam and Tuticorin Authority, on the ground that such



payment amounts to a Capital expenditure rather than a Revenue Expenditure.

She states that the ITAT has failed to appreciate the true meaning and effect in law of the terms of the lease deed executed between the Appellant and Lease hold Authorities namely Noida, Vishakhapatnam and Tuticorin.

She submits that the ITAT was not justified in holding that the lease amount paid would amount to a Capital Expenditure rather than a Revenue Expenditure especially when no ownership was created by payment of lump sum premium. She also states that ITAT has erred in not appreciating that there is no addition to the capital structure but only enables the Appellant to carry on its business after paying nominal rent and hence lease premium paid is revenue expenditure.

Issue notice.

Mr. Abhishek Maratha, learned Senior Standing Counsel for Revenue accepts notice. He states that in a similar case, where the appellant had paid lease premium to the Noida Authority, the learned Predecessor Division Bench in *ITA No. 205/2010 Krishak Bharati Cooperative Ltd. vs. Deputy CIT* and connected appeals has held that the said expenditure is capital expenditure.

In rejoinder, learned counsel for the appellant states that the judgment and order passed in *ITA No.205/2010* is pending challenge in SLP (Civil) No. 35813/2012 and other connected appeals before the Supreme Court.

Admittedly, the issues of law and fact in the lease deeds executed between the appellant as well as the Noida Authority, Vishakhapatnam and Tuticorin Authorities are similar to the case decided by the learned Predecessor Division Bench in *ITA No. 205/2010*.



Consequently, the present appeal is disposed of in terms of the judgment of the learned Coordinate Bench in *ITA No. 205/2010*. However, it is made clear that the final result qua the disputes between parties will abide by the judgment of the Supreme Court in SLP (Civil) No. 35813/2012 and other connected appeals.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

JULY 29, 2022

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