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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ITA 279/2015

PR. CIT-2

..... Appellant

Through: Mr N. P. Sahni, Senior Standing Counsel
with Mr Nitin Gulati, Junior Standing Counsel.

versus

CEMENT CORPORATION OF INDIA LTD

..... Respondent

Through: Ms Meenakshi Sood, Advocate.

WITH

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ITA 301/2015

PR. CIT-2

..... Appellant

Through: Mr N. P. Sahni, Senior Standing Counsel
with Mr Nitin Gulati, Junior Standing Counsel.

versus

CEMENT CORPORATION OF INDIA LTD

..... Respondent

Through: Ms Meenakshi Sood, Advocate.

AND

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ITA 288/2015

PR. CIT

..... Appellant

Through: Mr N. P. Sahni, Senior Standing Counsel
with Mr Nitin Gulati, Junior Standing Counsel.

versus



CEMENT CORPORATION OF INDIA LTD Respondent
Through: Ms Meenakshi Sood, Advocate.

CORAM:
HON'BLE DR. JUSTICE S.MURALIDHAR
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **22.09.2015**
CM No.7593/2015 in ITA 279/2015
CM No.8021/2015 in ITA 301/2015

1. Allowed, subject to all just exceptions.
2. The applications stand disposed.

ITA 279/2015
ITA 301/2015
ITA 288/2015

3. These appeals by the Revenue under Section 260A of the Income Tax Act, 1961 are directed against the order dated 30th September, 2014 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA Nos.1985, 2946 & 5399/Del/2013 for Assessment Years ('AY') 2007-08, 2008-09 and 2009-10 respectively.

4. Two issues have been projected by the Revenue. The first concerns the deletion of additions made by the AO pertaining to the depreciation claimed



by the Assessee on its block of assets. A perusal of the impugned order of the ITAT reveals that the ITAT has gone by the decision of the CIT(A) for AYs 2003-04 to 2006-07 in which it was stated that in those years the assets were kept “as a stand by for the whole year”. The Committee on Disputes (COD) did not permit the Revenue to file an appeal against the said decision of the CIT (A) for the said years. It is essentially on this ground that the ITAT declined to interfere with the order of the CIT (A) deleting the addition made by the AO.

5. The learned counsel for the Assessee drew the attention of this Court to the observation in para 6 of the impugned order where the ITAT has noted the submission of the learned counsel for the Assessee that “even if some of the units of the assessee are closed, other units are certainly working ...”

6. In the considered view of the Court, there has been no occasion for the ITAT to seriously consider whether, for the AYs in question, there were any working units of the Assessee and if, in fact, the entire block of assets in respect of which depreciation was claimed was actually put to use. The ITAT also did not consider that there is no longer a requirement for the COD to grant permission to the Revenue to file an appeal.



7. The Court accordingly sets aside the impugned order of the ITAT on the issue of depreciation and remands the appeals to this extent to the ITAT for a fresh decision in accordance with law.

8. The other issue concerns the claim by the Assessee of the Quarry Development Expenditure as revenue expenditure. On this aspect, the Court has heard the learned counsel for the parties and examined the order of the AO, CIT(A) as well as the ITAT. It is seen that even before the AO, the Assessee offered an explanation for treating one part of the Quarry Development Expenditure pertaining to the removal of the over burden etc. at the mines which was utilized for capital works like laying of roads, stock yards crushed ramp etc. as capital expenditure whereas the rest of the expenditure was claimed as revenue expenditure.

9. The concurrent order of the CIT (A) as well as the ITAT on this aspect accepting the explanation of the Assessee does not appear to be suffering from any legal infirmity. The Court accordingly declines to frame a question on this issue.

10. Consequently, the appeals are disposed of by setting aside the portion of



the impugned order dated 30th September 2014 of the ITAT on the issue of depreciation and remanding the appeals to the ITAT for a fresh decision only on the aspect of depreciation claimed by the Assessee.

S.MURALIDHAR, J

VIBHU BAKHRU, J

SEPTEMBER 22, 2015
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