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

+   ITA 1290/2018

PR. COMMISSIONER OF INCOME-TAX-6, NEW DELHI

..... Appellant

Through: Mr. Asheesh Jain, Senior Standing Counsel with Mr. Dushyant Sarna, Adv.

versus

NTPC SAIL POWER CO. PVT. LTD. ..... Respondent

Through: Mr. M.P. Rastogi, Mr. K.N. Ahuja and Mr. Manu K. Giri, Advs.

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

O R D E R

%   26.11.2018

This appeal was listed on 20.11.2018 when the following order was dictated:-

"CM APPL. 48185/2018 (exemption)

Allowed subject to all just exceptions.

The application is disposed of.

ITA 1290/2018 & CM APPL. 48184/2018 (condonation of delay)

This appeal by the revenue under Section 260A of the Income Tax Act, 1961 (in short 'Act') relating to assessment year 2011-

2012 in the case of NTPC Sail Power Co. Pvt. Ltd. impugns the order dated 27.04.2018 passed by the Income Tax Appellate Tribunal. As the appeal is belated by nine days, an application seeking condonation of delay has been filed.

However, before issuing notice, we deemed it appropriate and proper to examine the appeal on merits.

The first issue in the present appeal relates to provision of other retirement benefits. This issue is covered against the Revenue by earlier decisions of this Court in the case of respondent-assessee, including the decision dated 15.05.2018 in ITA No. 570/2018 titled ***Pr. Commissioner of Income Tax-6, New Delhi vs. NTPC Sail Power Co. Pvt. Ltd*** *relating to the assessment year 2009-2010.*

On the second issue relating to additional depreciation, Revenue submits that the assessee was not engaged in manufacture of articles or goods as it was generating electricity.

We do not find any merit on the said aspect, since generation of electricity amounts to manufacture of goods. This principle is too well-settled to have a scope for any consideration or examination as a question of law.

Recording the above, we hold that no substantial question of law arises and the appeal is dismissed.

Re-list on 26th November, 2018."

Before we could sign the order, we noticed that the provision relating to additional depreciation as applicable uses the expression/terms articles or things and not goods.

In view of the aforesaid position, we are inclined to issue notice on the second aspect i.e. payment for additional depreciation.

Issue notice on this aspect returnable on 18th February, 2019.

Mr. M.P. Rastogi, Advocate accepts notice on behalf of the respondent-assessee.

SANJIV KHANNA, J.

ANUP JAIRAM BHAMBHANI, J.

NOVEMBER 26, 2018/*uj*