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ITEM NO.5 COURT NO.1 SECTION IIIA

S U P R E M E   C O U R T   O F   I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO.2093 OF 2006

M/S. ESCORTS TRACTORS LTD. Appellant (s)

VERSUS

COMMNR. OF INCOME TAX, NEW DELHI Respondent(s)

(With office report)

With Civil Appeal No.2095 of 2006
(With office report)

Civil Appeal No.2096 of 2006
(With office report)

Civil Appeal No.2094 of 2006
(With office report)

Date: 18/09/2012 These Matters were called on for hearing today.

CORAM :
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MADAN B. LOKUR

For Appellant(s) Mr. R.M. Mehta,Adv.
Mr. Simran Mehta,Adv.
Ms. Yogita Sunaria,Adv.
Ms. Geetanjali Mohan,Adv.

For Respondent(s) Mr. Rupesh Kumar,Adv.
Mr. Arijit Prasad,Adv.
Mr. Yatinder Chaudhary,Adv.
Mr. Surpreet S. Parwanda,Adv.
Ms. Monika Tyagi,Adv.
Ms. Anil Katiyar,Adv.
for Mr. B.V. Balaram Das,Adv.

UPON hearing counsel the Court made the following

O R D E R

When these appeals were called for hearing in the first round, learned advocate sought pass-over. We had proposed to dismiss these appeals for

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default as it is well-settled practice of this Court that pass-over is not permissible in final hearing matters. Mr. R.M. Mehta, learned counsel for the assessee, has now appeared and requested to restore the appeals. We accept his request.

The civil appeals filed by the assessee are dismissed with no order as to costs.

[Alka Dudeja]   [Indu Satija]
A.R.-cum-P.S.   Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2093 OF 2006

M/s. Escorts Tractors Ltd. ...Appellant(s)

Versus

Commissioner of Income Tax, New Delhi ...Respondent(s)

With Civil Appeal Nos.2095/2006, 2096/2006 and 2094/2006

O R D E R

Civil Appeal Nos.2095/2006, 2096/2006 and 2094/2006:

These civil appeals filed by the assessee pertain to Assessment Years 1978-1979, 1979-1980 and 1985-1986.

The assessee manufactures Tractors. It has a Canteen in its Factory where Refrigerator, Cooking Range and Fans have been installed. The assessee claims investment allowance under Section 32A of the Income Tax Act, 1961, [for short, ‘the Act’] in respect of Refrigerator, Cooking Range and Fans installed in its Canteen. In our view, the assessee does not satisfy its claim for investment allowance under Section 32A(2)(b)(iii), which reads as under:

> "in any other industrial undertaking for the purposes of business of construction, manufacture or production of any article or thing, not being an article or thing specified in the List in the Eleventh Schedule."

The Canteen may be a part of production Unit or Factory, however, it cannot fall under sub-clause (iii) quoted above, which refers to any other industrial undertaking for the

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purposes of business of construction, manufacture or production of any article or thing, not being an article specified in the Eleventh Schedule. The Canteen cannot be said to be an ‘industrial undertaking’ for the simple reason that it does not manufacture or produce any article or thing, as required under clause (iii). It is given to the assessee who fulfills the conditions stipulated in Section 32A. The canteen does not satisfy the conditions enumerated in clause (iii).

In the circumstances, the civil appeals stand dismissed.

No order as to costs.

Civil Appeal No.2093 of 2006:

This civil appeal filed by the assessee pertains to Assessment Year 1981-1982.

Two questions arise for consideration in this civil appeal. Question No.1 concerns the claim of the assessee for investment allowance with regard to equipment installed by the assessee in its Canteen. This question has been answered by us in favour of the Revenue today vide Civil Appeal No.2095 of 2006 and allied matters.

The second question is with regard to working out the disallowance under Rule 6D of the Income Tax Rules, 1962. which is formulated at Page No.2 of the Paper Book, and reads as under:

> "Whether on the facts and in the circumstances of the case, the Tribunal was right in law to hold that in working out the dis-allowance under Rule 6D the total visits of an employee outside the headquarter during the year are to be taken into account as against each visit of the employee?"

Learned counsel for the appellant states that the amount involved is meagre. In the circumstances, he does not wish to press this issue. Hence, we see no reason to answer the second question, as quoted above.

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Accordingly, the civil appeal is dismissed.

No order as to costs.

.......................CJI.
[S.H. KAPADIA]

.........................J.
[MADAN B. LOKUR]

New Delhi,
September 18, 2012.
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