

(2006) 12 DEL CK 0028

Delhi High Court

Case No: IT Appeal No. 516 of 2005

Commissioner of Income Tax

APPELLANT

Vs

Tedco Investment and Financial
Services (P.) Ltd.

RESPONDENT

Date of Decision: Dec. 12, 2006

Acts Referred:

- Income Tax Act, 1961 - Section 32

Hon'ble Judges: Vikramajit Sen, J; Dr. S. Muralidhar, J

Bench: Division Bench

Advocate: Sanjeev Sabharwal, for the Appellant; Manmohan and Rajat Navet, for the Respondent

Final Decision: Disposed Off

Judgement

@JUDGMENTTAG-ORDER

1. On a perusal of the impugned order dated 18-10-2004 of the income tax Appellate Tribunal ("Tribunal"), we find that on the question whether the plant and machinery was delivered by the assessee to the lessee on 31-3-1996, the Tribunal has concluded that there is a deemed delivery to the lessee on 31-3-1996, which in their view was sufficient to claim depreciation u/s 32 of the income tax Act, 1961 ("Act"). The contention of the assessee is that the plant and machinery was actually erected and commissioned at the lessee's site on IT Appeal No. 516 of 2005 31-3-1996. Our attention has been drawn to the documents filed by the assessee during assessment proceedings including certificates issued by M/s. Prakash Industries Ltd., the lessee, that the plant and machinery had been installed and commissioned on 31-3-1996. However, the Tribunal has neither adverted to these documents nor returned a finding whether the plant and machinery in question could, in the circumstances be said to have been "used" in the relevant previous year. Accordingly, the impugned order is set aside and the matter is remanded to the

Tribunal for a fresh determination. The appeal stands disposed of accordingly.