



\$~21

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ITA 164/2023 & CM Nos.12930-31/2023**

PR. COMMISSIONER OF INCOME TAX-7 Appellant

Through: Mr Puneet Rai, Sr Standing Counsel
with Mr Ashvini Kumar and Ms
Madhavi Shukla, Jr Standng
Counsels.

versus

SMR AUTOMOTIVE SYSTEMS INDIA LTD. Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

% **20.03.2023**

[Physical Hearing/Hybrid Hearing (as per request)]

CM No.12930/2023

1. Allowed, subject to just exceptions.

ITA 164/2023 & CM No.12931/2023 *[Application filed on behalf of the appellant seeking condonation of delay of 54 days in filing the appeal]*

2. This appeal concerns Assessment Year (AY) 2014-15.

3. Broadly, the only issue which arises for consideration is as to whether the Income Tax Appellate Tribunal [in short, "Tribunal"] was correct in holding that the Specified Domestic Transactions (SDTs) did not attract the regime of transfer pricing, in view of the amendment made to Section 92BA(1) *via* Finance Act, 2017, with effect from 01.04.2017.

4. To be noted, the Transfer Pricing Officer [in short, "TPO"] passed the order on 31.10.2017, when the said provision stood already omitted from the statute. Prior to its omission, the said provision read as follows:

"92BA. *For the purposes of this section and sections 92, 92C,*
ITA 164/2023 page 1 of 2



92D and 92E, “specified domestic transaction” in case of an assessee means any of the following transactions, not being an international transaction, namely:-

- (i) any expenditure in respect of which payment has been made or is to be made to a person referred to in clause (b) of sub-section (2) of section 40A;
- (ii) any transaction referred to in section 80A;
- (iii) any transfer of goods or services referred to in sub-section (8) of section 80-IA;
- (iv) any business transacted between the assessee and other person as referred to in sub-section (10) of section 80-IA.”

5. The Tribunal appears to have taken the position that since sub-clause (1) of Section 92BA had been omitted, transfer pricing regime *qua* SDTs would not be applicable, insofar as the respondent/assessee is concerned.

5.1 However, the Tribunal *via* the impugned order has directed the Assessing Officer (AO) to examine the transaction in issue, in the context of Section 40A (2) of the Income Tax Act, 1961 [in short, “Act”].

6. We may also note that the Tribunal has concluded, based on the decision cited before it, that the appellant/revenue cannot take recourse to Section 6 of the General Clauses Act.

7. The Tribunal seems to have drawn a distinction between the repeal and omission of the provision.

8. Issue notice to the respondent *via* all modes including e-mail.

9. List the matter on 17.08.2023.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

MARCH 20, 2023/aj

[Click here to check corrigendum, if any](#)

ITA 164/2023

page 2 of 2