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\* **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,  
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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](#)

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