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

% *Date of Decision : 12.09.2025*

\+ **ITA 414/2025**

PR. COMMISSIONER OF INCOME TAX -7, DELHI

.....Appellant

Through: Mr. Puneet Rai, SSC, Mr. Ashvini Kr., Mr. Rishabh Nangia, Mr. Gibran, JSC.

versus

SONY INDIA PRIVATE LIMITED

.....Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MS. JUSTICE RENU BHATNAGAR

V. KAMESWAR RAO, J. (*ORAL*)

CM APPL. 57846/2025 (condn of 121 days in re-filing)
CM APPL. 57845/2025 (condn of 63 days in filing)

1. For the reasons stated in the applications, the delay in re-filing and filing the captioned appeal stands condoned.

2. The applications are disposed of.

CM APPL. 57844/2025(Exemption)

3. Exemption is allowed, subject to all just exceptions.

4. The application stands disposed of.

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5. The challenge in this appeal under Section 260A of the Income Tax Act, 1961 (the Act) is to the order dated 30.08.2024 passed by the Income Tax Appellate Tribunal (Tribunal) in ITA No.1026/Del/2015 and ITA No.1166/Del/2015, in respect of the Assessment Year (AY) 2010-11, whereby the Tribunal has partially allowed the appeal filed by the respondent herein and dismissed the appeal filed by the Revenue / appellant herein.

6. The Revenue / appellant has proposed the following three substantial questions of law in this appeal:-

> *A) Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was correct in deleting the disallowance of depreciation on the Dharuhera unit amounting to Rs. 92,34,278/-, on assets that were discarded during the year and were no longer in the ownership of the Respondent?*
> *B) Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was justified in holding that a separate AMP adjustment was uncalled for given that the distribution business of the Respondent was already benchmarked separately, when the TPO had treated it as a separate class of transaction and benchmarked it correctly?*
> *C) Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was right in directing the AO/TPO to add 20% of the reimbursement of expenses and complete the benchmarking of the international transaction when the TPO had benchmarked the AMP expenses based on Bright Line Test ("BLT") method and the issue of AMP is still sub-judice, pending before the Hon'ble Apex Court in assessee's own case?*

7. Mr Puneet Rai, learned SSC submits that, in so far as the questions at B & C are concerned, the same are covered against the Revenue and in favour of the respondent in terms of the judgment of this Court in ***Pr Commissioner of Income Tax-8 v. M/s Sony India Pvt Limited : Neutral Citation:2023:DHC:8939:DB,*** wherein this Court in Paragraph no.15 has stated as under:

> *15. Having heard the learned counsel for the parties, and examined the record, the only issue, as noted at the outset, which arises for consideration, is whether the respondent/assessee was adequately compensated for expenses incurred for AMP activities carried out in India.*
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> *16. Before one answers the issue, one way or the other, one must bear in mind the following undisputed facts which obtain in the instant case:*
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> *(i) First, the respondent/assessee had shut down its manufacturing activity in India with effect from 01.07.2004.*
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> *(ii) Second, in the period in issue, i.e., FY 2006-07 (AY 2007-08), there was no advertising agreement obtaining between the respondent/assessee and its AE. The last agreement was entered into on 01.04.2005, which apparently, had come to an end.*
>
> *(iii) Third, the TPO had used comparables furnished by the respondent/assessee for employing the BLT tool, in ascertaining the ALP qua AMP activities.*
>
> *(iv) Fourth, concededly, the respondent's/assessee's net operating margin was 3.29%, whereas, the arithmetic mean of the net operating margin of comparables chosen by the TPO was 2.09%.*
>
> *(v) Fifth, the TPO had accepted other international transactions under the TNM*

method employed by the respondent/assessee, except for AMP activities.

17. Given the aforesaid facts, what emerges is that, in the period in issue, the respondent/assessee was only in the business of import and distribution of Sony products. The amount spent on AMP activities by the respondent/assessee in the relevant FY was Rs.119,54,43,600/-.

17.1 The compensation for this expense was, according to the Tribunal, received by the respondent/assessee in terms of higher profitability for the product sold.

17.2 Furthermore, even according to the TPO, the AMP expenditure incurred by the respondent/assessee resulted in increased sales in India for products, albeit developed by the AE but sold by the respondent/assessee.

18. The fact that the comparables chosen by the TPO had a net margin lower than that registered by the respondent/assessee would persuade us to hold that no upward adjustment concerning AMP expenses ought to have been made.

19. Lastly, the application of the BLT tool, by the TPO, in determining ALP, injected the order issued by him, which was incidentally approved by the DRP, with a legal error. [See Sony Ericsson Mobile Communications India case].

Conclusion:

20. Thus, for the foregoing reasons, we are not inclined to interfere with the impugned order passed by the Tribunal, as no substantial question of law arises for our consideration.

21. The appeal is disposed of in the aforesaid terms.

22. The application for condonation of delay in re-filing is rendered infructuous.

22.1 The application is, accordingly, closed."

8. In view of the submission made by Mr Rai, based on the judgment in

the case of the assessee itself, substantial questions of law B & C as proposed do not arise for consideration in this appeal, and the same are rejected.

9. As far as the substantial question of law at A is concerned, the learned Tribunal in paragraph No.27 of the impugned order has relied upon the judgment of this Court in the case of the assessee itself in ***Sony India (P) Ltd. v. Commissioner of Income Tax, (2017) 88 taxmann.com 580 (Delhi)***, and by referring to the paragraphs 11 to 16 of the judgment allowed the claim of the assessee. Paragraph no.27 of the impugned order is reproduced as under:-

> *"27. With regard to ground nos.22-24 on Depreciation on Dharuhera Unit, at the time of hearing both the parties agreed that this issue is covered issue and brought to our notice page 214 of the paper book wherein the Hon'ble High court considered the relevant issue and decided the issue as under:*
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> > *"11. In Ansal Properties (supra), the facts indicated – in para 4 are that the assessee had sold the entire plant and machinery of its paper division and stopped and seized to carry on its business. Likewise, in Oswal (supra) too, the assessee had claimed depreciation of its various assets, including a claim in respect of closed unit at Bhopal. It is thus clear that in both the judgments, the Court had occasion to deal with certain fact situations – in Ansal Properties (supra), the facts were closely proximate to the circumstances of this case. After discussing the relevant provisions in Ansal Properties (supra), the Court stated that Section 50 would apply where any block of assets ceases to exist and stated inter alia as follows:*
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> > > *"18. Section 50(2) applies where any block of assets ceases to exist. The term —block of assets therein will mean the assets carrying same rate of depreciation fixed in the schedule. In case the block*

of assets, i.e., all assets exigible to same rate of 2017:DHC:443-DB ITA 13 /2012 & 14/2012 Page 12 depreciation in the schedule ceases to exist because of transfer/sale, sub-section (2) to Section 50 gets initiated and is accordingly applied. The requirement and pre-condition stipulated is that the block of asset should cease to exist. The block of asset should stand completely depleted and no asset should remain in the block.

19. In the present case, there is no finding of the Assessing Officer or the appellate authorities that the block of assets carrying the same rate of depreciation ceased to exist or that after adding the three elements mentioned in Section 50, there was surplus on the full value of consideration received or accruing as a result of transfer of plant and machinery or the building. It is not the finding of the Assessing Officer that the block of assets entitled to the same percentage of depreciation ceased to exist or there was a surplus in the block of assets carrying the same rate of depreciation. The Assessing Officer has proceeded on the basis that the division itself constitutes a separate and an independent block of assets. Appendix to the Rules as noticed above, is not a unit/division specific but is rate of depreciation specific, as all assets prescribed the same rate of depreciation are clubbed and are a part of the same block of assets. The view we have taken finds resonance and acceptance in two decisions of the Delhi High Court in Commissioner of Income Tax versus Eastman Industries Limited, 174 Taxman 344 and Commissioner of Income Tax versus Oswal Agro Mills Limited, (2012) 341 ITR 467 (Del.).”

12. The Court thereafter took into consideration the Direct Taxes Circular no. 469 issued on 23.09.1986. The same reads as follows:

“6.3 As mentioned by the Economic Administration

Reforms Commission (Report No. 12, para 20), the existing system in this regard requires the calculation of depreciation in respect of each capital asset separately and not in respect of block of assets. This requires elaborate bookkeeping and the process of checking by the Assessing Officer is time consuming. The greater differentiation in rates, according to the date of purchase, the type of asset, the intensity of use, etc., the more disaggregated has to be the record-keeping. Moreover, the practice of granting the terminal allowance as per section 32(1)(iii) or taxing the balancing charge as per section 41(2) of the Income-tax Act necessitate the keeping of records of depreciation already availed of by each asset eligible for depreciation. In order to simplify the existing cumbersome provisions, the Amending Act has introduced a system of allowing depreciation on block of assets. This will mean the calculation lump sum amount of depreciation for the entire block of depreciable assets in each of the four classes of assets, namely, buildings, machinery, plant and furniture."

13. In Oswal (supra) and Ansal Properties (supra), it was noticed that the Parliament had deleted the provision for terminal depreciation in respect of each asset that was previously allowed under Section 32(1)(c) and the taxation of balancing charge under Section 41(2) in the year when the sale was concluded. The Court noticed in Oswal (supra) as follows:

"Instead of these two provisions, now whatever is the sale proceed of sale of any depreciable asset, it has to be reduced from the block of assets. This amendment was made because now the assessees are not required to

maintain particulars of each asset separately and in the absence of such particular, it cannot be ascertained whether on sale of any asset, there was

any profit liable to be taxed under section 41(2) or terminal loss allowable under section 32(1)(iii). This amendment also strengthen the claim that now only detail for "block of assets" has to be maintained and not separately for each asset.

33. Having regard to this legislative intent contained in the aforesaid amendment, it is difficult to accept the submission of the learned counsel for the Revenue that for allowing the depreciation, user of each and every asset is essential even when a particular asset forms part of "block of assets". Acceptance of this contention would mean that the assessee is to be directed to maintain the details of each asset separately and that would frustrate the very purpose for which the amendment was brought about. It is also essential to point out that the Revenue is not put to any loss by adopting such method and allowing depreciation on a particular asset, forming part of the "block of assets" even when that particular asset is not used in the relevant assessment year. Whenever such an asset is sold, it would result in short term capital gain, which would be exigible to tax and for this reason, we say that there is no loss to Revenue either.

34. The upshot of the aforesaid discussion is that though we are not entirely agreeing with the reasoning of the Tribunal contained in the impugned judgment, we are upholding the conclusion of the Tribunal based on the "block of assets" as discussed above. The consequence would be to dismiss these appeals. However, there will be no order as to costs."

14. Rejecting the contention similar to the one advanced with respect to interpretation of Section 32, the Division Bench in Ansal Properties (supra)
observed as follows:

"26. Learned counsel for the Revenue has relied upon Section 32 of the Act and has submitted that

the effect of the said Section should be examined while computing short term capital gains and interpreting Section 50. It is not possible to accept the said contention. Capital gains is chargeable to tax under Chapter IV-E. The provisions of the said Chapter are independent and separate. The provisions of the said chapter relating to capital gains have to be examined and interpreted. Only if there is a contradiction or conflict, we have to harmoniously interpret the two provisions. Section 50 incorporates a deeming fiction and has to be given and interpreted accordingly. Section 32 forms part of Chapter IV-D and relates to computation of income from profession and business. It is not the case of the Revenue that the gain on transfer of the block of assets is taxable as business income. The two sections operate in their own field and there is no conflict. In these circumstances, we do not think we should refer and rely upon Section 32 and accordingly compute and decide whether short term capital gains is payable under Chapter IV-E."

15. In view of the above discussion, this Court is of the opinion that the reliance placed upon Allied Electronics (supra) cannot be of assistance to the

Revenue. That did not take into account the changes brought about through the amendment and appears to have been on an appreciation of Maharashtra Minerals Corporation Ltd. v. CIT 1995 (216) ITR 575. That decision was in the context of law prevailing in 1972-73 – obviously before the amendments were made to the Act prior to the introduction of the concept of block assets.

16. For the foregoing reasons, both the questions of law are answered in favour of the assessee and against the Revenue."

Respectfully, following the above decision and we direct the AO to follow the same ratio and allow the claim of the assessee.

Accordingly, the grounds raised by the assessee are allowed."

10. Mr Rai, does not contest the fact that the question of law at A is covered by the judgment of this Court in ***CIT v. Ansal Properties & Infrastructure Limited 2012:DHC:2611:DB,*** which has been relied upon by this Court in ***Sony India (P) Limited (supra).***

11. If that be so, we are of the view that the substantial question of law proposed at A does not arise for consideration in this appeal.

12. The appeal is dismissed.

V. KAMESWAR RAO, J

RENU BHATNAGAR, J

SEPTEMBER 12, 2025
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