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

+ ITA 465/2024

THE FERTILIZER CORPORATION OF INDIAAppellant

Through: Mr. S. Krishnan, Mr. K. Sampath & Mr. Harshit Chauhan, Advs.

versus

PRINCIPAL COMMISSIONER OF
INCOME TAX

.....Respondent

Through: Mr. Puneet Rai, SSC with Mr. Ashvini Kumar & Mr. Rishabh Nangia, JSCs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% **29.08.2024**

CM APPL. 49375/2024 (Ex.)

Allowed subject to all just exceptions.

Application stands disposed of.

CM APPL. 49376/2024 (20 Days Delay in Refiling)

Bearing in mind the disclosures made, the day of 20 days in refiling the appeal is condoned.

Application stands disposed of.

ITA 465/2024

1. Notice. Since the respondent is duly represented by Mr. Rai, learned counsel, no further steps need be taken.

2. We take note of the following findings which have come to be rendered by the Income Tax Appellate Tribunal [**“Tribunal”**]:

“12. It is an admitted fact that the assessee has given right of lease of 99 years of the property of the Assessee to RFCL vide concession agreement dated 23/03/2016. In view of the said lease,



RFCL has issued 11% of the total capital expenditure of the said property as equity shares to the Assessee valuing to Rs. 144.49 crores. The assessee charged the said amount to P & L account claiming as exceptional item, thus, the Assessee claimed as Revenue expenditure while computing the income of the Assessee. The said claim of the assessee was not based on any prudent accounting principles. In other words, the same is an income earned by the Assessee on giving the right to use the land at a concession rate. In any normal circumstances, if any third party would be required to pay Rs. 144.49 crores to acquire those shares. The shares were acquired in lieu of right to use the Assessee's capital assets by RFCL. Thus, we find no merit in the grounds of Appeal of the Assessee."

3. Prima facie and on hearing Mr. Krishnan, learned counsel appearing for the appellant, we find ourselves unable to sustain the view as expressed bearing in mind the fact that the expenditure of INR 144.49 crores was principally towards the equity interest which was to be created in favour of the appellant. If that were the position, it would clearly not be a revenue expenditure.

4. We also find ourselves prima facie unable to sustain the reasoning of the Tribunal which rests on the prudent accounting principles which would apply. Matter requires consideration.

5. We, accordingly, admit this appeal on the following question of law:

A. On the facts and in circumstances of the case and in law, whether the Tribunal was correct in law in confirming the addition of INR 144.49 crores for 'exceptional items' shown below the line of Profit & Loss account?

6. Let the appeal be called again on 04.12.2024.

YASHWANT VARMA, J

RAVINDER DUDEJA, J

AUGUST 29, 2024/kk