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

+ ITA 55/2025 & CM APPL. 13573/2025

THE COMMISSIONER OF INCOME TAX - INTERNATIONAL
TAXATION -3

.....Appellant

Through: Mr. Ruchir Bhatia, SSC with Mr. Anant Mann, JSC and Ms. Aditi Sabharwal, Mr. Abhishek Anand, Advocates.

versus

UMW SHER (L) LTD.Respondent

Through: Mr. Ved Jain and Mr. Nischav Kantoor, Ms. Soniya Dodeja, Advocates.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

% **06.03.2025**

1. The present appeal has been filed under Section 260A of the Income Tax Act, 1961 assailing the order dated 28.08.2024 passed by the Income Tax Appellate Tribunal (ITAT) in respect of the respondent/Assessee for the Assessment Year (AY) 2015-16.

2. At the outset, Mr. Ruchir Bhatia, learned senior standing counsel appearing for the Revenue brings attention of this Court to para 2 of the appeal wherein substantial questions of law have been framed by the appellant, which reads thus:-

“2.1 Whether the Ld. ITAT has erred in law and on facts by categorizing the receipts from the leasing of all rigs as 'active business income' and allowing



the benefits of taxation under section 44BB of the Income tax Act, 1961, instead of treating them as "Royalty" under section 9 (1)(vi) read with the India -Malaysia DTAA?

2.2 Whether the Ld. ITAT has erred in law in disregarding the contractual terms and material evidence indicating that he control, maintenance and operational responsibility of the rigs were entirely transferred to JEPL, thereby rendering the income as passive in nature?

2.3 Whether the Ld. ITAT has erred in law in failing to appreciating the distinction between 'business in India' and business with India' in light of judicial precedents, leading to an incorrect characterization of income as 'active business' income?

2.4 Whether the Ld. ITAT has erred in law in misinterpreting the application of clause (iva) of Explanation 2 to section 9 (1)(vi) of the Income tax Act,1961 which explicitly excludes amounts falling under section 44BB , despite the Assessee earning passive income akin to royalty?"

3. Mr. Ruchir Bhatia, learned senior standing counsel fairly states that the substantial questions of law raised in this appeal are no more *res integra* and has been decided against the appellant/Revenue by the judgement passed by a Co-ordinate Bench of this Court in ***Commissioner of Income-Tax, International Taxation vs.UMW Sher (L) Ltd.; (2024) 160 taxmann.com 695 (Delhi)***.

4. In view of the aforesaid, no substantial question of law arises in the present appeal.

5. Accordingly, the appeal is dismissed alongwith pending application.

DEVENDRA KUMAR UPADHYAYA, CJ

TUSHAR RAO GEDELA, J

MARCH 6, 2025/rl