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

\+ **ITA No. 713/2017**

PR. COMMISSIONER OF INCOME TAX- 2 ..... Appellant

Through: Mr. Zoheb Hossain, Senior Standing Counsel.

versus

SCHNEIDER ELECTRIC INDIA PVT. LTD. ..... Respondent

Through: Mr. Prakash Kumar, Advocate.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE PRATHIBA M. SINGH

O R D E R

% 07.09.2017

C.M. APPL. 31646/2017 (delay in filing)

1. For the reasons stated in the application, the delay in filing the appeal is condoned. The application stands disposed of.

C.M. APPL. 31647/2017 (delay in re-filing)

2. For the reasons stated in the application, the delay in re-filing the appeal is condoned. The application stands disposed of.

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3. This is an appeal under Section 260A of the Income Tax Act, 1961 (‘Act’) by the Revenue against the order dated 29th September 2016 passed by the Income Tax Appellate Tribunal (‘ITAT’) in ITA No. 937/Del/2014 for the Assessment Year (‘AY’) 2009-10.

4. The following two questions have been urged by the Revenue in this appeal:

> "A. Whether on the facts and circumstances of the case, the Ld. IT A was justified in directing the TPO to take Forex gain/loss as operating in nature without discussing the FAR of the comparables and assessee as well?
>
> B. Whether the Ld. ITAT has erred in law by setting aside the disallowance made by the AO on not allowing the expenditure on license and permits to be deducted as Revenue expenditure in the previous year?"

5. As far as Question A is concerned, the Court finds that the ITAT has discussed in detail the factual position regarding the sharp depreciation of the Indian Rupee ('INR') against the Euro ('EUR') by about 16% in a short span of 6 months, i.e. from February, 2008 to July, 2008. This called for adjustments to be carried out in accordance with the Transfer Pricing regulations so as to eliminate differences between international transactions involving comparable companies and that entered into by the Assessee.

6. Having perused the impugned order of the ITAT, this Court is of the view that, in the facts and circumstances of the case, the view taken by the ITAT is a plausible one and does not call for any interference. However, question A is left open for consideration in an appropriate case.

7. As far as Question B is concerned, the ITAT notes that the Assessing Officer ('AO') disallowed 3/4th of the 'Licenses and Permits' expenditure, amounting to Rs. 1,69,93,222/-, on the ground that the same would lead to

an enduring benefit accruing to the Assessee Company and thus, is in the nature of deferred revenue expenditure. This appears to be based on the *ipse dixit* of the AO and not on the basis of facts. The ITAT took the view that the expenditure incurred on account of ‘Licenses and Permits’ was in the nature of revenue expenditure and therefore, cannot be deferred. This too is a plausible view to take in the facts and circumstances of the case.

8. Question B too is left open for consideration in an appropriate case.

9. The appeal is accordingly dismissed.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

SEPTEMBER 07, 2017
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