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

\+ ITA 330/2023

PR. COMMISSIONER OF INCOME TAX -CENTRAL -1 .....Appellant

Through: Mr. Ruchir Bhatia, SSC.

versus

VE COMMERCIAL VEHICLES LTD. .....Respondent

Through: Mr. Ajay Vohra, Sr. Adv. with Mr. Himanshu Aggarwal, Advocate.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

O R D E R

% **24.09.2024**

1. The Principal Commissioner impugns the order of the Income Tax Appellate Tribunal [**"Tribunal"**] dated 30 April 2020 and posits the following questions of law for our consideration:

> "2.1 Whether Ld. ITAT has erred in law in deleting the disallowance made by the Assessing officer under section 35(2AB) of the Act of Rs.89,56,61,072/- as the specific approval in accordance of section 35(2AB) of the Act was not available to the assessee company prior to 09.03.2009?
> 2.2 Whether Ld. ITAT is right in holding that the approval granted to the predecessor company under section 35(2AB) will be applicable to the successor company?
> 2.3 Whether the Ld., ITAT has erred in law by deleting the disallowance of Rs.2,34,335/- made under section 14A of the Act wherein during the year under consideration the assessee has earned exempt income of Rs. 12, lacs?
> 2.4 Whether the Ld. ITAT is right in holding that the provision for bad debts are transferrable to the successor company when the business is transferred through slump sale?
> 2.5 Whether the Ld. ITAT is right in accepting the submission of the Assessee, when it had failed to show whether the slump sale agreement factored the provision of bad debts?

2.6 Whether the reliance of Ld. ITAT on the Judgment of Hon'ble Supreme Court in the case of CIT Vs TV Rao is applicable in case of transfer of business through slump sale?"

2. We note that insofar as Questions 2.4 to 2.6 are concerned, the same would merit being answered against the appellant bearing in mind the judgment rendered in **Pr. Commissioner of Income Tax-Central-1 Vs. VE Commercial Vehicles Ltd.** [ITA 329/2023 dated 15 September 2023]. While dealing with the disallowance concerning bad debts, the Court had *inter partes* held as follows:

> "3. The sole ground on which the impugned order is sought to be assailed before us is that the deduction qua bad debts acquired by the respondent/assessee from its predecessor-in-interest, i.e., Eicher Motors Ltd. [EML], on acquisition of its commercial vehicle division in a scheme of demerger, was not permissible as per the provisions of Sections 36(1)(vii) read with Section 36(2) of the Income Tax Act, 1961 [in short, "Act"].
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> 4. Mr Ruchir Bhatia, learned senior standing counsel, who appears on behalf of the appellant/revenue, does not dispute the fact that the subject debts have become bad.
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> 4.1 It is also not disputed that the predecessor-in-interest i.e., EML had offered for imposition of tax the subject debts at a relevant point in time.
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> 5. Therefore, the only issue which arose for consideration before the statutory authorities was as to whether the successor-in-interest i.e., the respondent/assessee, could have written off the debts which were already turned bad.
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> 6. The Commissioner of Income Tax [in short, "CIT(A)"] via his order dated 20.11.2015 has ruled in favour of the respondent/assessee.
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> 6.1 This view has been sustained by the Tribunal.
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> 7. According to us, this issue is no longer *res integra*, given the factual matrix arising in the instant matter and in view of the judgment rendered by the Supreme Court in ***Commissioner of Income Tax v. T. Veerabhadra Rao***, (1985) 155 ITR 152 (SC).
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> 7.1 This view has also found resonance with a judgment rendered

by the coordinate bench of this court in ***CIT v. Times Business Solution Ltd***., 2013:DHC:1783-DB.

8. Having regard to the factual position and the legal principles enunciated in the judgments referred to hereinabove, we are of the opinion that no interference is called for with the impugned order.

8.1 The disallowance concerning bad debts amounting to Rs.5,96,20,438/- was correctly deleted.

9 In sum, no substantial question of law arises for our consideration."

We thus find no merit in the aforenoted questions which are posed for our consideration.

3. That takes us then to the question pertaining to Section 14A of the Income Tax Act, 1961 ["**Act**"]. We note that while dealing with this aspect, the Tribunal has come to record a categorical finding that since no interest-bearing funds had been utilized for the purpose of investment and the appellant had failed to prove any expenses having been incurred, the addition under Section 14A of the Act would not sustain.

4. We find that the aforesaid view is clearly unexceptionable.

5. That only leaves us to examine a challenge which is based on Section 35(2AB) of the Act. For the purposes of evaluating the challenge which stands raised, we firstly take note of the chronology of events which had come to be noted by the Tribunal in paragraph 9 of its order and which is extracted below:

"9. To determine the issue, the sequence of events that followed the recognition granted to EML from the year 2005 needs to be examined.

The events are as under:

Date	Event
22.03.2005	Order for renewal of general recognition granted to Eicher Motors Ltd. ('EML') for R

	& D Centre at Pithampur by Department of Scientific and Industrial Research, Ministry of Science and Technology ('DSIR') upto 31.03.2008.
10.08.2005	Approval granted by DSIR to EML in Form 3CM under section 35(2AB) of the Act from 21.09.2004 to 31.03.2007.
03.09.2007	Application in Form 3CK filed by EML before DSIR for renewal of approval under section 35(2AB) from 01.04.2007 to 31.3.2012.
05.06.2008	EML was granted general recognition for R & D Centre a Pithampur by DSIR upto 31.03.2011.
01.07.2008	EML divested the commercial vehicle undertaking including the R&D facility at Pithampur, to the assessee (VECV) by way of slump sale.
13.10.2008	Letter filed by EML before DSIR, to consider the following amendments: i) To grant approval under section 35(2AB) in respect of R&D facility at Pithampur for the period 1.4.2007 to 30.6.2008 in the name of EML; ii) To change the recognition letter 5.6.2008 for the in house R&D facility at Pithampur in the name of the assessee (VECV) instead of EML w.e.f. 1.7.2008, and ii) To treat the application dated 3.9.2007 requesting for renewal of approval under section. 35(2AB) of the Act in respect of R & D facility at Pithampur in the name of the assessee (VECV), for the period commencing from 1.7.2008 and grant approval from that date upto 31.3.2012 in the name of the assessee only.
18.11.2008	Application filed by assessee before the DSIR seeking general recognition of the in-house R&D ~ facility at Pithampur under section 35 of the Act in name of the assessee (VECV) for the period beginning from 01.07.2008.
25.11.2008	Application filed by the assessee before the DSIR in Form 3CK requesting for approval under section 35(2AB) of the Act in respect of R&D facility at Pithampur in the name of the assessee.
18.12.2008	Approval under section 35(2AB) of the Act granted to EML in respect of R&D facility at Pithampur upto 30.6.2008 in Form 3CM.
09.03.2009	DSIR renewed the General recognition already granted to the R&D centre at Pithampura upto 31.03.2012 in name of the assessee.

18.02.2010	Approval granted by DSIR to assessee under section 35(2AB) of the Act in Form 3CM from 9.3.2009 to 31.3.2012

6. It has thus taken into consideration an existing permission which was held by Eicher Motors Ltd. [**'EML'**] and ultimately on the basis thereof come to observe as follows:

> "13. Having gone through the complete correspondence between EML and DSIR, we come to the conclusion that the letter dated 09.03.2009 granting recognition for in house R&D unit is not from 09.03.2009 but it only denotes that the extension upto 31.03.2012 against the period given upto 31.03.2011 to the EML vide letter dated 05.06.2008 of the DSIR. This proves that the assessee is eligible to be recognized from 01.07.2008 to 31.03.2012 but not from 09.03.2009 to 31.03.2012 as opined by the Assessing Officer. Hence, the deduction has been rightly allowed to the assessee by the Id. CIT (A)."

7. In view of the concurrent view that was expressed in this respect by the Commissioner of Income Tax (Appeals) as well as by the Tribunal, we find no ground to entertain the appeal on the aforesaid score**.**

8. No substantial question of law arises. The appeal consequently fails, and shall stand dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

SEPTEMBER 24, 2024/*ib*