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

\+ ITA 475/2024

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

Through: Mr. Vipul Agrawal, Sr.St. Counsel.

versus

M/S BSBK ENGINEERS PVT. LTD. .....Respondent

Through: None

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

ORDER

% **03.09.2024**

CM APPL. 50766/2024 (71 Days Delay in filing) & CM APPL. 50767/2024 (210 Days Delay in Refiling)

Bearing in the mind the disclosures made, the delay of 71 days in filing and the delay of 210 days in re-filing the appeal is condoned.

The applications shall stand disposed of.

ITA 475/2024

1. The Principal Commissioner impugns the order of the **Income Tax Appellate Tribunal**[1] dated 23 May 2023 and posits the following questions of law for our consideration:

> A. Whether on facts & circumstances of the case and applicable law, the Hon'ble ITAT has erred in deleting the addition by way of disallowance of capital loss of Rs. 7,50,24,307/- without appreciating the fact that no real change in ownership has taken place because of amalgamation and real ownership remained with the assessee company?

[1] Tribunal

B. Whether on facts & circumstances of the case and applicable law, the Hon'ble ITAT has erred in interpreting that the effective date as 01/04/2015 instead of 01/04/2014 , as taken by the Ld. AO?

C. Whether on facts & circumstances of the case and applicable law, order, impugned orders passed by Hon'ble ITAT are perverse?

2. Undisputedly, and as the Tribunal itself records in paragraph 17 there were two effective dates in terms of which separate parts of the Scheme of Arrangement were to become operational and come into effect. Paragraph 17 is reproduced hereinbelow: -

> "17. It was only EPC business of the assessee and MBPL transferred to BESPL by way of slump sale effective from 01.04.2014 and MBPL and EIL amalgamated with the assessee effective from 01.04.2015 which is F.Y. 2015 -16 relevant to A.Y 2016-17, which is not the impugned A.Y. Since the Assessing Officer has proceeded on a wrong assumption of facts, his entire findings became erroneous and the ld. CIT(A) having correctly under stood the implication of Scheme of Arrangement and effective date relevant for the transaction for the year under consideration, we do not find any reason to interfere with the findings of the Ld. CIT(A)."

3. The Tribunal has essentially noted that once the Scheme of Arrangement came to be approved by the competent High Court, it would be impermissible for the Assessing Officer to impute principles of "lifting of corporate veil". It has also held that the effective date as stipulated and prescribed under the Scheme could not have been altered.

4. We take note of the position in law that would apply in this regard and had been explained by us in **The Pr. Commissioner of Income Tax-Central-1 vs. Aamby Valley Ltd.** [ITA 849/2019 decided on 19 July 2024].

5. We deem it apposite to extract the following passage from that decision:-

> "**9.** This leaves us to consider proposed questions 1 to 6. Mr.

Pardiwala, learned senior counsel contends that the entire premise of the appeal, and insofar as proposed questions 1 to 6 are concerned, is based on an attempt to revise the Appointed and Effective Date which were made part of the Scheme. It becomes pertinent to note that the appeal proceeds on the foundation that the transactions should be viewed as pertaining to **Assessment Year**[2] 2012-13 which is clearly misconceived. This, since when one keeps in mind the Appointed Date as being the close of business on 31 March 2011, the relevant AY would be 2011-12. Once we come to hold that the transactions clearly do not form part of AY 2012-13, the questions which are sought to be canvassed clearly disintegrate.

10. Undisputedly, in terms of the Scheme of Arrangement which came to be approved by the concerned High Court on 20 January 2012, the Appointed Date was defined in the following terms: -
"Appointed Date" means the closing hours of business on 31st day of March, 2011 or such other date as may be fixed by the High Court of Judicature at Bombay"

11. Of equal significance is Clause 9.2 of the Scheme which reads thus: -

> "9.2 With effect from the Appointed Dale and upon the Scheme becoming effective, any statutory licenses, permissions. approvals or consents forming the basis of or required to carry on the operations of the Demerged Company, In relation to the Demerged Undertakings as detailed in Annexure A to Annexure E shall stand vested in or transferred to respective Business SPVs without any further act or deed including any processes, applications, notifications, approvals or consents or permissions for the same of any government or statutory authority or local body and shall be appropriately mutated by the statutory authorities concerned in favour of respective Business SPVs upon the vesting and transfer of the Demerged Undertakings pursuant to this Scheme. In so far as they relate to the Demerged Undertakings, the benefit of all statutory and regulatory permissions, licenses, environmental approvals and consents, sales tax registrations or other licenses and consent shall vest in and become available to respective Business SPVs pursuant to this Scheme. In so far as the various incentives, subsidies, special status and other benefits or privileges enjoyed, granted by any Government body, local authority or by any other person are concerned, the same shall vest with and be available to respective Business SPVs. on the same terms and conditions. In particular and without prejudice

[2] AY

> to the generality of the foregoing, benefit of all balances relating to CENVAT or Service Tax or VAT being balances pertaining to the Demerged Undertakings, shall stand transferred to and vested in respective Business SPVs as if the transaction giving rise to the said balance or credit was a transaction carried out by respective Business SPVs. The assets and properties pertaining to the Demerged Undertakings shall not be required to be and shall not be physically transferred from any premises or location relating to the Demerged Undertakings and consequently or otherwise, there shall be no withdrawal of or obligation to pay or refund any CENVAT, VAT, Service Tax or other tax or duty pursuant to vesting of Demerged Undertakings in respective Business SPVs in accordance with the Scheme."

6. In view of the aforesaid, we find no ground for interfere with the view taken by the Tribunal. The appeal fails and shall stand dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

SEPTEMBER 3, 2024/ib