$~
* IN THE HIGH COURT OF DELHI AT NEW DELHI
17.
\+ ITA 206/2016

PR. COMMISSIONER OF INCOME TAX DELHI-I .... Appellant
Through: Mr P. Roy Chaudhary, Senior Standing Counsel with Ms Lakshmi Gurung, Junior Standing Counsel.

versus

AMERIPRISE INDIA PVT.LTD. ..... Respondent
Through: Deepak Chopra and Mr Harpreet Singh Ajmani and Mr Rohan Khare, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R

% **23.03.2016**

CM No.10985/2016

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

ITA 206/2016

2. This appeal by the Revenue is directed against the order dated 14th August, 2015 passed by the Income Tax Appellate Tribunal (ITAT) in ITA No.2010/Del/2014 for the Assessment Year ('AY') 2009-10.

3. The question sought to be urged by the Revenue is whether the ITAT was correct in directing the foreign exchange gain/loss to be considered as an item of operating revenue/cost?

4. The ITAT has in the impugned order noted the fact that the foreign exchange gain earned by the Assessee is in relation to the trading items emanating from the international transactions. Since the foreign exchange loss directly resulted from trading items, it could not be considered as a non-operating loss. Further, it is noted by the Dispute Resolution Panel that the service agreement between the Associated Enterprise (AE) and the Assessee stated that for the specified products and services provided by the Assessee, it "shall raise invoices on Ameriprise USA on the basis of a cost plus pricing methodology." The ITAT was therefore right in holding that the AO was not justified in considering the foreign exchange loss as a non-operating cost.

5. Additionally, it is pointed out by Mr Deepak Chopra, learned counsel for the Assessee, that for the subsequent AYs an Advance Pricing Agreement has been entered into between the Assessee and the Central Board of Direct Taxes under Section 92CC of the Act on 22nd January 2016 whereunder the aforementioned 'cost plus pricing methodology' has been implicitly accepted. Therefore, in the facts of the present case, the Court is of the view that no substantial question of law arises.

6. The appeal is dismissed.

S.MURALIDHAR, J

VIBHU BAKHRU, J

MARCH 23, 2016/MK