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

+ **ITA 320/2016**

ICC INDIA PVT. LTD. Appellant
Through: Mr. G.C. Srivastava, Mr. Daksh
Bhardwaj and Mr. Anubhav Jain,
Advocates.

Versus

ITO WARD 11(3), NEW DELHI Respondent
Through: Mrs. Bharati Raju, CGSC and Ms. C.
Rubavathi, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER
% **24.11.2016**

1. The assessee's limited grievance in this appeal is that the Income Tax Appellate Tribunal (ITAT) while considering its appeal with respect to the exclusion of two comparables on the ground that they were related parties, firstly made observations which would impact on the merits of the case and secondly, remitted the matter instead of examining the materials – all of which was before it.
2. In the Transfer Pricing (Exercise) [TP (Exercise)] of Assessment Year (AY) 2002-03, the assessee had relied upon – for the purpose of presentation of comparables - the transactions of related parties. Its grievance with respect to Assessing Officer's order for inclusion of two comparables was agitated in appeal. The ITAT after considering the submissions recorded as

below:-

“12. Thus, the law is fairly well settled to the extent that the companies having in related party transactions more than 15% cannot be considered as comparable. But in the present case, though the CIT(A) adopted the same parity of reasoning while deleting the two comparables chosen by TPO, he had not referred to any evidence on the record in support of the conclusion drawn that these comparables had related party transactions exceeding 15%, nor the Authorized Representative of the respondent assessee company could establish this fact conclusively before us. No relief can be granted based on mere reliance on the legal proposition without supporting evidence on record. Therefore, we are of the considered opinion that the interest of justice would be met, if the matter is restored to the file of the Assessing Officer for the verification of this issue, after affording reasonable opportunity of being heard to the assessee company. If it is found on verification that the ratio of related party transactions is more than 15%, these companies may be excluded as comparables.”

3. It is urged on behalf of the assessee that all materials based on which the findings could be rendered were before the ITAT and remitting the matter for fresh scrutiny/adjudication by the TPO, would be time consuming having regard to the fact that this pertains to AY 2002-03. Learned counsel for the Revenue submitted that assessee did not dispute the filter of 15% pertaining to relating parties' transactions and in the circumstances the remand was justified.

4. We have considered the submissions. The ITAT has no doubt indicated that according to it there was no evidence. The assessee, on the other hand, submits that there was sufficient evidence to establish its claim that the excluded transactions had to be considered in the TP (Exercise). So

in the circumstances given that this pertains to assessments concluded for a period of about 15 years or so, interest of justice lie in the ITAT exercising the jurisdiction itself in examining all the materials before it.

5. In the circumstances, the impugned order is modified; instead of remand to the AO/TPO, the matter shall be considered on the merits with respect to the related party transactions by the ITAT itself, which shall look into the materials and records as well as hear the submissions of the parties. It is also clarified that nothing stated in the impugned order shall prejudice either party and the ITAT shall approach the matter afresh.

6. The appeal is partly allowed in the above terms.

S. RAVINDRA BHAT, J.

NAJMI WAZIRI, J.

NOVEMBER 24, 2016

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