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

\+ **CM APPL.24435/2016 IN ITA 443/2013**

DENSO INDIA LIMITED ..... Appellant

versus

COMMISSIONER OF INCOME TAX ..... Respondent

CM APPL.24436/2016 IN ITA 451/2013

DENSO INDIA LIMITED ..... Appellant

versus

COMMISSIONER OF INCOME TAX ..... Respondent

Appearance: Mr. Himanshu Sinha with Ms. Vrinda Tulshan, Advocates for applicant in CM APPL.24435 & 24436/2016, in both matters.

Mr. P. Roy Choudhury, Sr. Standing Counsel for the Revenue in both matters.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.K. GAUBA

O R D E R

% 05.08.2016

CM APPL.24435/2016 IN ITA 443/2013 & CM APPL.24436/2016 IN ITA 451/2013

We have heard the counsel for the parties.

The applicant urges that this Court's directions that the CUP method is appropriate under the circumstances should be modified. It is pointed out that the relative data for comparables for the concerned years is no longer available; counsel also highlights that the imported components which were of very special nature were localized. Consequently, the assessee would not be in a position to present any comparables' data to the TPO to carry out the exercise of determining the pricing.

This Court is of the opinion that the main question put in issue by the applicant in its appeal under Section 260A was whether the TNMM was the most appropriate method as compared with CUP - the latter having been favoured by the ITAT. On this question, this Court ruled adversely against the appellant. In the circumstances, granting clarification would virtually be re-writing the order. Therefore, the clarification sought for cannot be granted. The net result, however, would be that TPO would firstly apply the CUP and in the event of any difficulty, apply whatever is the most appropriate method having regard to the nature of the transaction.

Both the applications stand disposed of in the above terms.

S. RAVINDRA BHAT, J

R.K. GAUBA, J

AUGUST 05, 2016
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