$~11

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

\+ ITA 380/2016

FRITIDSRESOR TOURS&TRAVELS INDIA PVT LTD... Appellant
Through: Mr. Neeraj Jain with Mr. Aniket D. Agrawal, Advocates.

versus

THE DEPUTY COMMISSIONER OF INCOME TAX.... Respondent
Through: Mr. Ruchir Bhatia, Advocate.

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

O R D E R

% **07.12.2016**

The question of law urged by the appellant is "whether the expenditure incurred by the appellant towards payment to third parties in the circumstances was liable to be excluded in the ALP determination under the Cost Plus Method".

At the outset, counsel for the revenue points out that pursuant to the remand by the Income Tax Appellate Tribunal (ITAT), which led to the determination of the issue that the transactions between the appellant and the AE were on principal to principal basis and that based on this conclusion and the facts presented before him, the TPO and later the AO finalized the assessment. This apparently led to non-adjustment for the year under consideration, i.e., AY 2006-07.

Counsel for the appellant submits that the conclusions drawn by the ITAT in the impugned order with respect to the nature of expenses incurred and their inclusion would in all likelihood have a long term adverse impact for later years. He relied upon paragraph 7.36 of the OECD Guidelines and the decision of this Court in *M/s Li & Fung India Pvt. Ltd. v. CIT* (2014) 361 ITR 85 (Del.) to say that the ITAT had applied the wrong principle in this regard.

This Court is of the opinion that since the ultimate outcome of the remand has resulted in no addition, the examination of the issued urged would be an academic exercise. At the same time, the Court is conscious of the fact that left undisturbed, the ITAT's observations may constitute a barrier and work adversely against the assessee in later years. In the circumstances, it is clarified that the observations of the ITAT shall not be binding and taken as conclusive for later years and that the TPO/AO shall consider the matter independently.

The appeal is disposed of in the above terms.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

DECEMBER 07, 2016
/vikas/