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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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+ **ITA 346/2016**

XL INDIA BUSINESS SERVICES PVT. LTD. ..... Appellant

Through: Mr. Deepak Chopra, Mr. Rohan Khare Mr. Sheel Vardhan, Advocates.

versus

INCOME-TAX OFFICER ..... Respondent

Through: Mr. Asheesh Jain, Senior Standing counsel & Mr. Arun Khatri, Advocate.

**CORAM:**
**JUSTICE S.MURALIDHAR**
**JUSTICE VIBHU BAKHRU**

**O R D E R**

% **27.05.2016**

1. The grievance of the Assessee in this appeal against the order dated 2nd December 2015 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 1427/Del/2014 for the Assessment Year ('AY') 2009-10 is in respect of comparables and working capital adjustment. While following its order dated 18th February 2015 for the AY 2008-09, the ITAT has remitted the matter to the Assessing Officer ('AO)/ Transfer Pricing Officer ('TPO') for a fresh determination of the issue.

2. Mr. Deepak Chopra, learned counsel for the Appellant Assessee states that ITAT ought to have referred to a chart submitted by the Assessee listing out the comparables that were required to be included and those that were required to be excluded. Mr. Asheesh Jain, learned Senior Standing counsel for the Revenue points out that all issues have been left open by the ITAT

for consideration afresh by the AO/TPO and the chart submitted by the Assessee will also be considered.

3. The impugned order of the ITAT requires two issues to be considered afresh by the AO/TPO. One relates to the comparables and the other to the working capital adjustment. The Appellant is seeking greater clarity only as regards the issue concerning comparables. The Court finds that in para 14 of the impugned order, specific reference has been made by the ITAT to paras 10 and 11 of the previous order dated 18th February 2015. Mr. Chopra states that it should be clarified that the AO/TPO will act in accordance with the directions issued in para 11 of the previous order dated 18th February 2015, which reads thus:

> "11. As. Regards the questions of comparables, we have noted that the benefit of detailed analysis by the coordinate benches, which has been relied upon by the assessee, was not before the authorities below. The detailed factual contentions, as made before us, are necessarily required to be dealt with by way of a speaking order, rather than on the basis of vague generalities, in accordance with the law and after giving yet another opportunity of hearing to the assessee. On this issue also, we consider it fit and proper to remit the matter to the assessment stage for fresh adjudication as above. We also make it clear that the assessee is at liberty to take such other arguments and pleas as he may deem appropriate and the AO/TPO shall deal with the same by way of a speaking order in accordance with the law. All other issues raised by the assessee, in the light of the above directions, are academic."

4. It is accordingly directed that the AO/TPO will proceed, as far as the AY in question is concerned, i.e. 2009-2010 in accordance with para 11 of the aforementioned order dated 18th February 2015 of the ITAT.

5. As regards treating interest earned on short-term fixed deposit as 'income from other sources' and not business income as has been contended by the Assessee, the Court finds that Dispute Resolution Panel ('DRP') in para 15.3 of its order dated 20th December 2013, observed that "It is also not the case of assessee that fixed deposits are to be maintained with bank for the requirement of LC". The case of the Assessee is that it has placed its unutilized funds in short term fixed deposits with banks which is yielding interest income.

6. In the grounds of appeal before the ITAT no specific challenge was raised by the Assessee to the above factual finding that the FDs were not being maintained to meet any requirement of the Bank for opening LC or for any other business purpose. In that view of the matter, the Court is unable to find any infirmity in the above treatment of interest income as income from other sources. No substantial question arises for consideration on this issue.

7. The appeal is disposed of in the above terms.

**S.MURALIDHAR, J**

**VIBHU BAKHRU, J**

**MAY 27, 2016**
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