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

**ITA 391/2016**

PRINCIPAL COMMISSIONER OF INCOME  
TAX -02

..... Appellant

Through: Mr. Dileep Shivpuri with Mr. Sanjay  
Kumar, Advocates.

versus

BOMBARDIER TRANSPORTATION INDIA  
PVT. LTD

..... Respondent

Through: Mr. Neeraj Jain with Mr. Aniket D.  
Agrawal, Advocates.

**CORAM:**  
**JUSTICE S. MURALIDHAR**  
**JUSTICE NAJMI WAZIRI**

**ORDER**  
**27.07.2016**

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**CM APPL No. 25180/2016 (for condonation of delay)**

1. For the reasons stated therein, the delay of two days in filing the appeal is condoned.
2. The application is disposed of.

**ITA No. 391/2016**

3. This appeal by the Revenue under Section 260A of the Income Tax Act, 1961 ('Act') is directed against the impugned order dated 4<sup>th</sup> November 2015 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 1626/Del/2015 for the Assessment Year 2010-11.

4. The short question that is sought to be urged in this appeal by the Revenue is whether the ITAT erred in law in directing that benefit of 30% may be given to the Assessee in the profit margin of Titagarh Wagons Ltd. (TWL) for the "free of cost supplies" received by TWL from the Railways. It is submitted that since the Assessee could not quantify the exact amount involved in the "free of cost supplies", then there was no basis for allowing the benefit of the 30% deduction.

5. The Court notes that the Assessee had before the Dispute Resolution Panel submitted that though TWL received wheel sets, cartridge tapered roller bearing and steel etc. free of cost from Indian Railways, the Managing Director of TWL "in an interview available publicly estimated the provision of free of cost wheel sets to be 30% of sales value following most conservative basis." In light of the above submission, the DRP ordered as under:

"The TPO is therefore instructed to call for the information under section 133(6) about the value of "free of cost supplies" from Titagarh Wagons Ltd. and if the same is not received within a reasonable period from time barring date, then in that event, subject to the said information being available, the benefit of 30% of the cost should be given on account of "free of cost supplies" while calculating the margin of Titagarh Wagons Ltd., as has been done in the case of Texmaco by the TPO himself in the TP order."

6. The ITAT has in the impugned order *inter alia* observed as under:

"It can be seen that while deciding the comparables Ld. TPO has not taken into consideration the proper information related to the free of cost. material provided by the Railways to Titagarh Wagons Ltd. as well as to Texmaco Ltd. and thus the said information is necessary to take into account the functions performed, assets employed and risks assumed ("FAR"). Ld. DRP in his finding also has directed Ld. TPO to take these aspects while allowing the said comparables. There is no doubt that these two companies are having the major role in supplying coaches to the Indian Railway

and these are proper comparables if all the aspects are taken into consideration including the free of cost material value. Therefore, Ld. TPO is directed to take into account 30% additional cost base to account "free of cost" material and revised the OP/TC margin of 13.65% for determining the arm's length margin as claimed by the Assessee."

7. Having heard the submissions of learned counsel for the Revenue, and having perused the impugned order of the ITAT and the DRP, the Court is unable to discern any legal infirmity in either order that gives rise to any substantial question of law for determination.

8. The appeal is dismissed.

**S. MURALIDHAR, J**

**NAJMI WAZIRI, J**

**JULY 27, 2016**

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