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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ ITA 460/2016, C.M. APPL.26591/2016

PR. COMMISSIONER OF INCOME TAX Appellant
Through : Sh. Rahul Chaudhary, Sr. Standing
Counsel with Sh. Raghvendra Singh, Jr. Standing
Counsel and Sh. Anup Kumar Kesari, Advocate.
versus

VERIZON INDIA PVT. LTD. Respondent
Through : Sh. N. Venkataraman, Sr. Advocate
with Sh. R. Satish Kumar, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER
% **22.08.2016**

The present appeal against the order dated 08.08.2016 of Income Tax Appellate Tribunal is barred because the revenue has refiled it with a delay of 550 days. On this ground alone, the appeal is liable to be rejected.

This Court has considered the merits of the appeal as well. The brief facts are that during the relevant period, i.e. AY 2007-08, the assessee had, in the course of its return, relied upon a transfer pricing report. The report *inter alia* sought benefit of six comparables, by applying the Transactional Net Margin Method (TNMM) under Section 92C of the Income Tax Act, 1961. The report had relied upon twelve comparables; the Transfer Pricing Officer (TPO) rejected nine of them and based upon the surviving data, determined the Arms Length Pricing (ALP) and made adjustments in the final return. The Assessing Officer (AO), while accepting TPO's determination, was of

the opinion that as per Explanation 7 to Section 271(1)(c), the addition was to be deemed to represent income and was, therefore, liable, and consequently penalty was leviable. The AO's order was set-aside by the ITAT.

We have considered the circumstances. The assessee in this case could not, in the opinion of this Court, visualize that out of the twelve comparables furnished, nine would be rejected and the matrix of calculations, as it worked, would radically undergo change. Pertinently, for the previous year 2006-07, the assessee's comparables – including some of those which were rejected in the present order, were in fact accepted when the matter reached finality. In these circumstances, the interpretation adopted by the AO was plainly erroneous. The Court is also of the opinion that in the absence of any overt act, which disclosed conscious and material suppression, invocation of Explanation 7 in a blanket manner could not only be injurious to the assessee but ultimately would be contrary to the purpose for which it was engrafted in the statute. It might lead to a rather peculiar situation where the assessees who might otherwise accept such determination may be forced to litigate further to escape the clutches of Explanation 7. For the above reasons, we are also satisfied that no substantial question of law arises. The appeal is accordingly dismissed along with the pending application.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

AUGUST 22, 2016/ajk