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

\+ ITA 662/2016, CM Nos. 31740-31741/2016

GE MONEY FINANCIAL SERVICES PRIVATE LTD. (EARLIER KNOWN AS M/S. G.E. MONEY FINANCIAL SERVICES LTD.)

..... Appellant

Through: Mr. Sachit Jolly, Advocate along with Mr. Gautam Swarup and Mr. Siddhartha Singh, Advocate.

versus

PR COMMISSIONER OF INCOME TAX – 4 ..... Respondent

Through: Mr. Zoheb Hossain, Sr. Standing Counsel along with Mr. Deepak Anand, Jr. Standing Counsel, Advocate.

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

O R D E R

% **31.08.2016**

Issue notice. Mr. Deepak Anand, Jr. Standing Counsel appearing on behalf of the respondents accepts notice.

The question of law which the assessee/appellant argues in this appeal for AY-2009-2010 is regarding the appropriateness and correctness of treating the Foreign/Associated Enterprises (AEs) as a tested party. The assessee's transfer pricing analysis and determination of ALP led it to approach to ITAT which by impugned order has remitted the matter for consideration of the most appropriate method as well as question of the appropriate comparables applicable in the circumstances of the case. The assessee has approached this court against the observations and findings of the ITAT – in paras 10 to para 18 to the effect that the Foreign AE cannot be considered as a tested party. Reliance is placed upon Section 92B to contend that there is nothing in the provision inhibiting such consideration.

This court notices that for re-consideration and determination of the appropriate method as well as appropriate comparables and the tested party, it would be convenient and appropriate for the TPO to consider the question which the assessee urges in the present case. The TPO is therefore directed to overlook and not feel bound by the observations of the tribunal and render findings on the merit of the issue.

Having regard to the above observations, the court is of the opinion that no question of law arises since the matter stands remitted, to the TPO.

The appeal is therefore partly allowed in the above terms.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

AUGUST 31, 2016
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