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IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **ITA 737/2015**

COMMISSIONER OF INCOME TAX ..... Appellant
Through Mr Rahul Chaudhary, Advocate.

versus

YAMAHA MOTOR INDIA (P) LTD. ..... Respondent
Through Mr Ved Jain and Mr Pranjal Srivastava, Advocates.

AND

17.

\+ **ITA 754/2015**

COMMISSIONER OF INCOME TAX ..... Appellant
Through Mr Rahul Chaudhary, Advocate.

versus

M/S YAMAHA MOTOR INDIA (P) LTD. ..... Respondent
Through Mr Ved Jain and Mr Pranjal Srivastava, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R

% **14.03.2016**

1. This is an appeal by the Revenue against an order dated 29th October, 2014 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 6434/Del/2012 for the Assessment Year ('AY') 2008-09.

2. The question sought to be urged by the Revenue is whether the ITAT was correct in accepting the Assessee's contention regarding the application of

the resale price method ('RPM') for determining the arm's length price ('ALP') of the international transaction entered into by the Assessee with its associated enterprise ('AE').

3. The contention is that in terms of Rule 10 B (1)(b)(i) of the Income Tax Rules 1962, the RPM can be applied if property purchased or services obtained by the Assessee from AE is resold or are provided to an unrelated enterprise. It is contended that, in much as the Assessee sought to apply the RPM to determine the ALP the ITAT erred in accepting the said plea.

4. The Court finds that the ITAT has, in the impugned order, held that even if the ALP is determined by applying the Transactional Net Margin Method ('TNMM'), the gross profit margin earned by the Assessee in respect of export of motorcycles to its AE is 15.83% as compared to 10.75% in respect of export of motorcycles to unrelated parties. It was also seen that the export price realised per motor bike in the case of Assessee was much better when compared to that realised by other companies in the same line of business. These findings of fact have not been specifically assailed by the Revenue. Consequently, the Court declines to frame a question on this issue.

5. The appeal is dismissed.

S.MURALIDHAR, J

VIBHU BAKHRU, J

MARCH 14, 2016/pkv