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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **ITA 10/2016**

PR. COMMISSIONER OF INCOME TAX-6 ..... Appellant
Through: Mr Rahul Chaudhary, Senior Standing Counsel.

versus

M.L. OUTSOURCING P. LTD. ..... Respondent
Through: Ms Kavita Jha and Ms Mehak Gupta, Advocates.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% **13.01.2016**

1. There are two issues sought to be projected by the Revenue in this appeal under Section 260A of the Act against the decision dated 17th June, 2015 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.6292/Del/2013 for the Assessment Year ('AY') 2010-11. The said issues read as under:

> "a. Whether on the facts and circumstances of the case, the ITAT is justified in law in deleting disallowance of Rs.63,75,900/- under section 10B of the Income Tax Act, 1961 without considering a fact that receipts from international recruitment services were covered within the meaning of export of article or things or computer software and were not eligible for deduction under Section 10B of the Act?

b. Whether on the facts and circumstances of the case, the ITAT is justified in law in holding that the employees contribution to the Employees Provident Fund (EPF) and the Employees State Insurance Scheme (ESI) which is deemed as the employer's income u/s 2(24)(x) of the Act and which is subject to deduction u/s 36(1)(va) of the Act is also governed by section 43B of the Act?"

2. Admittedly, question (a) above stands answered in the Assessee's own case in its favour by the decision of this Court in ***Commissioner of Income Tax-II v. M. L. Outsourcing Services (P) Ltd. (2014) 271 CTR 553 (Del)*** for AY 2007-08. The ITAT has, in fact, followed the said decision while deciding the question in favour of the Assessee. It is stated that the Revenue has gone in an appeal against the said decision to the Supreme Court and the said appeal is pending. Consequently, the Court declines to frame a question on this issue.

3. As far as Question (b) is concerned, learned counsel for the Revenue seeks to place reliance on the decision of the Gujarat High Court in ***CIT v. Gujarat State Road Transport Corporation (2014) 366 ITR 170*** which according to him decides the issue in favour of the Revenue. However, there are numerous decisions of this Court that have answered the very question in

favour of the Assessee. These include ***CIT v. AIMIL Ltd. (2010) 321 ITR 508 (Del), CIT v. P.M. Electronics Ltd. (2008) X AD (Delhi) 677, CIT v. Vinay Cement Ltd. (2007) 213 CTR 268*** and ***CIT v. Dharmendra Sharma 297 ITR 320.*** Consequently, the Court declines to frame the question.

4. The appeal is, accordingly, dismissed.

S. MURALIDHAR, J

VIBHU BAKHRU, J

JANUARY 13, 2016
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