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

\+ **ITA 393/2016**

PR.COMMISSIONER OF INCOME TAX -09 ..... Appellant

Through: Mr. Dileep Shivpuri, Sr. Standing Counsel with Mr. Sanjay Kumar, Advocate.

versus

TOLUNA INDIA PVT.LTD . ..... Respondent

Through: Dr. Rakesh Gupta, Mr. Somil Agarwal, Mr. Rohit Kumar Gupta and Ms. Monika Ghai, Advocates.

\+ **ITA 394/2016**

PR. COMMISSIONER OF INCOME TAX-09 ..... Appellant

Through: Mr. Dileep Shivpuri, Sr. Standing Counsel with Mr. Sanjay Kumar, Advocate.

versus

TOLUNA INDIA PVT.LTD . ..... Respondent

Through: Dr. Rakesh Gupta, Mr. Somil Agarwal, Mr. Rohit Kumar Gupta and Ms. Monika Ghai, Advocates.:

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE NAJMI WAZIRI

O R D E R

% **29.07.2016**

CM No. 25181/2016 (Exemption) in ITA 393/2016

1. Allowed subject to all just exceptions.

CM No. 25182/2016 (condonation of delay in re-filing) in ITA 393/2016
CM No. 25183/2016 (condonation of delay in re-filing) in ITA 394/2016

2. For the reasons stated in the applications, the delay in re-filing the appeals is condoned.

3. The applications are allowed.

ITA Nos. 393/2016 & 394/2016

4. These are two appeals filed by the Revenue against a common order dated 2nd June, 2015 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 6407/Del/2012 for the Assessment Year ('AY') 2008-09, and ITA No. 989/Del/2014 for the AY 2009-10. The Revenue is aggrieved by the ITAT directing the Assessing Officer ('AO') to exclude following four comparables from the list of comparables for the purpose of determination of the Arm's Length Price (ALP) of the international transactions involving the Assessee and its Associated Enterprise:

(i) Infosys Technologies Ltd;

(ii) KALS Information Systems Ltd. (Segmental);

(iii) Tata Elxsi Ltd. (Software Development and Services Segment); and

(iv) Wipro Ltd. (IT Services Segment).

5. The ITAT, in giving the above direction, has followed the order passed for the earlier AY i.e. 2007-08, which does not appear to have been challenged by the Revenue. On the question of exclusion of the above comparables, the Court finds that given the scale of operations of the above

entities, their exclusion from the list of comparables for the purposes of determination of ALP appears justified.

6. No substantial question of law arises from the impugned order of the ITAT. The appeals are, accordingly, dismissed.

S. MURALIDHAR, J

NAJMI WAZIRI, J

JULY 29, 2016
kk