$~
* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
2.
\+ **ITA 36/2016**

PR.COMMISSIONER OF INCOME TAX -09 ..... Appellant
Through: Mr. Dileep Shivpuri, Senior Standing counsel.

versus

XCHANGING TECHNOLOGY SERVICES INDIA PVT. LTD. ..... Respondent
Through: Mr. Nageswar Rao and Mr. Shailesh Kumar, Advocates.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R
% **19.01.2016**

1. This appeal under Section 260A of the Income Tax Act, 1961 ('Act') is directed against an order dated 10th June 2015 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 5207/Del/2013 for the Assessment Year ('AY') 2008-09.

2. At the outset, Mr. Dileep Shivpuri, learned Senior Standing counsel for the Revenue, states that for the earlier AY, i.e., 2007-08, this Court has, by an order dated 20th October 2015 in ITA No. 813/2015, already dismissed the Revenue's appeal. He, however, seeks to distinguish the said case from the present one only on one aspect, i.e., the exclusion of M/s. Cosmic Global

Ltd. ('CGL') as a comparable by the Assessee before the ITAT, although the Assessee had itself included it at the stage of the proceedings before the Transfer Pricing Officer ('TPO') as well as the Dispute Resolution Panel ('DRP').

3. A perusal of the impugned order of the ITAT reveals that the ITAT was conscious of this fact and proceeded to assess on merits whether the Assessee was justified in seeking the exclusion of CGL as a comparable. The ITAT has set out detailed reasons why the said plea of the Assessee was justified. *Inter alia* it was noticed that CGL's functional profile did not match that of the Assessee and a substantial portion of its earnings was on account of translation charges whereas the Assessee was not in that line of business at all. This being a purely factual determination, the Court is not persuaded to hold that any substantial question of law arises from the impugned order of the ITAT.

4. The appeal is dismissed.

S. MURALIDHAR, J

VIBHU BAKHRU, J

JANUARY 19, 2016
dn