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

\+ **ITA 250/2017**

THE PR. COMMISSIONER OF INCOME TAX-4 ..... Appellant
Through: Mr.Ruchir Bhatia, Sr. Standing Counsel.

Versus

INTERRA INFOTECH (INDIA) PVT. LTD. ..... Respondent
Through: Mr.Ajay Vohra, Sr.Advocate with Mr.Neeraj Jain, Advocate.

CORAM: JUSTICE S.MURALIDHAR
JUSTICE PRATHIBA M. SINGH

O R D E R

% **25.08.2017**

1. This is an appeal by the Revenue against the order dated 23rd August, 2016 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.1632/Del/2013 for the Assessment Year ('AY') 2009-10. The question urged before the Court by the Revenue is whether the ITAT was justified in rejecting the Arm's Length Price ('ALP') as determined by the Assessing Officer ('AO') on the basis of the comparables adopted by the Transfer Pricing Officer ('TPO') for the AY 2008-09, particularly, since there was no change in the circumstances from AY 2008-09.

2. The facts in brief are that the Assessee is engaged in the business of development of computer software. The return filed by the Assessee for the

AY in question was picked up for scrutiny. The AO noticed that the Assessee had entered into international transactions with M/s Interra Information Technologies Inc., USA for a sum of Rs.11,34,95,073/-.

3. The AO rejected the Transfer Pricing ('TP') study of the Assessee and observed that there were no abnormal changes in the facts and circumstances of the case for AY 2009-10. The AO adopted the same comparables that had been adopted by the TPO for AY 2008-09. In other words, the AO, without making any reference to the TPO straightaway proceeded to apply those very comparables and reworked the ALP under Section 92CA(1) of the Act. The AO proceeded to make an addition of Rs.4,17,59,187/-.

4. In the appeal filed by the Assessee, the Commissioner of Income Tax (Appeals) ['CIT(A)'] noticed that the profit level indicator ('PLI') earned by the Assessee from the transaction with uncontrolled entities was within 5% range of the operating margins of 8.03% earned from the transaction with AEs. On a comparison of internal as well as the external comparables, the CIT (A) found that the PLI was within the margin and did not warrant any TP adjustment. In any event, as regards the external comparables, the CIT (A) found that the PLI of the Assessee by applying the TNMM was 5.40% against the average PLI of -1.07%.

5. The Revenue then went in appeal before the ITAT which concurred with the CIT (A) and held that the AO was not justified in adopting the comparables selected from AY 2008-09 without undertaking proper analysis. The ITAT found that the CIT (A) had, in fact, elaborately considered both the internal as well as the external benchmarking analysis

and come to definitive conclusions regarding there being no occasion to make any TP adjustment.

6. Mr. Ruchir Bhatia, the learned Senior Standing Counsel for the Revenue has urged that since the ITAT had itself remanded to the TPO the issue concerning the TP adjustment for AY 2008-09, it ought to have passed a similar order for the present AY as well. According to him, in the present AY, the AO ought to have made a reference to the TPO and there was no occasion for the CIT (A), in exercise of its appellate jurisdiction, to undertake a TP analysis.

7. The Court is unable to agree with the above submission. The Court has perused the ground of appeal urged by the Revenue before the ITAT. While there is a general ground about the CIT (A) having been in error in deleting the TP adjustment made by the AO, no specific ground was urged that the CIT (A) ought not to have itself undertaken the TP analysis and that it was a mandatory requirement in law for the AO to have made a reference to the TPO for the AY in question. Consequently, the Court is not persuaded to permit the Revenue to raise such a ground at this stage.

8. The Court finds that the CIT (A) has given cogent reasons for not accepting the approach of the AO in simply following the TPO's order for the earlier AY 2008-09 without undertaking a detailed analysis where the Assessee was able to show that the facts and circumstances of the case in the AY in question were different from the earlier AY. The Court is unable to be persuaded that the concurrent orders of the CIT (A) and the ITAT suffer from any legal infirmity or perversity warranting framing of any substantial

question of law.

9. The appeal is accordingly dismissed but in the circumstances without any order as to costs.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

AUGUST 25, 2017
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