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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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+ **ITA 343/2017**

TECHBOOKS ELECTRONICS SERVICES
PVT. LTD. ..... Appellant
Through: Mr. Saurav Sood, Mr. Shashank Sharma and Mr. Subhashree R., Advocates

versus

PRINCIPAL COMMISSIONER OF INCOME
TAX-6 NEW DELHI ..... Respondent
Through: Mr. Asheesh Jain, Sr. Standing Counsel

CORAM: JUSTICE S.MURALIDHAR
JUSTICE CHANDER SHEKHAR

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

% **29.05.2017**

<u>CM APPL. 16663/2017</u> (for exemption)

1. Allowed subject to just exceptions.

<u>CM APPL. 16664/2017 (for condonation of 40 days' delay in re-filing)</u>

2. For the reasons stated therein, the application is allowed. The delay in re-filing is condoned.

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3. This appeal by the Assessee under Section 260 A of the Income Tax Act 1961 ('Act') is directed against an order dated 28th September 2016 passed by the Income Tax Appellate Tribunal (ITAT) in ITA No. 2375/Del/2011 for Assessment Year (AY) 2005-06.

4. Notice. Mr. Asheesh Jain, learned counsel for the Revenue accepts notice.

5. **Admit**.

6. The following question of law is framed for consideration:

> "Was the ITAT correct in remanding the matter to the Assessing Officer (AO)/Transfer Pricing Officer (TPO) for checking the veracity of Operating Profit (OP)/Total Costs (TC) of the comparable Datamatics Limited with the direction that only if the Assessee succeeds in providing the relevant data of the said company for the concerned financial year on the basis of the information available from their annual reports, without making any calculations at its own, should the TPO should include the said company in the list of comparables?"

7. Learned counsel for the parties have been heard.

8. In Para 5 of the impugned order the ITAT observed that Datamatics Limited drew up its accounts on the basis of the calendar year, whereas the Assessee prepared its accounts on the basis of the financial year. The ITAT observed that a valid comparison can be made only if the comparable company has also the same financial year. The ITAT further held that for making a valid comparison, "it is *sine qu*a *non* that the data of the comparables must be for the same period as that of the assessee company."

9. The above observation appears to be based on Rule 10 B (4) of the Income Tax Rules 1962 ('Rules') which reads as under:-

> (4) The data to be used in analysing the comparability of an uncontrolled transaction with an international transaction shall be the data relating to the financial year in which the international transaction has been entered into:

10. However, the ITAT appears to have overlooked the first proviso thereto which reads thus:

> **Provided** that data relating to a period not being more than two years prior to such financial year may also be considered if such data reveals facts which could have an influence on the determination of transfer prices in relation to the transactions being compared.

11. The Court is in the view that the ITAT could not possibly have placed a restriction on the Assessee to the effect that it had to place before the AO/TPO only "the relevant data of the said company for the concerned financial year on the basis of the information available from their annual reports, without making any calculations at its own." Such a restriction was contrary to what is envisaged in the proviso to Rule 10 B (4) of the Rules.

12. Consequently, the question framed is answered in the negative i.e. in favour of the Assessee and against the Revenue. It is clarified, for checking the veracity of the OP/TC of Datamatics Ltd. as a comparable, the AO/TPO will consider the relevant data consistent under Rule 10 B(4) of the Rules read with first proviso thereto.

13. The appeal is disposed of in the above terms.

S.MURALIDHAR, J

CHANDER SHEKHAR, J

MAY 29, 2017

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