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

\+ **ITA No. 419/2017**

PR. COMMISSIONER OF INCOME TAX- 8 ..... Appellant
Through: Mr. Zoheb Hossain, Sr. Standing Counsel.

versus

SWAROVSKI INDIA PVT. LTD. ..... Respondent
Through: Mr. Kamal Sawhney with Mr. Shikhar Garg & Mr. Prashant Meharchandani, Advocates.

CORAM: JUSTICE S. MURALIDHAR
JUSTICE PRATHIBA M. SINGH

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

% **04.09.2017**

1. This appeal by the Revenue is directed against the order dated 26th August 2016 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 100/Del/2011/ for the Assessment Year 2003-04 ('AY').

2. The following two questions are urged for consideration by the Revenue:

> "A. Whether on the facts and in the circumstances of the case, the tribunal erred in not treating expenses such as repair and maintenance, electricity, insurance and Depreciation on assets as a part of the cost base and thus rejecting revenue's contention that these costs should be included in the PLI (Profit level indicator) despite not providing any cogent reasons for the same?

> B. Whether the Hon'ble ITAT was justified in not appreciating that Rule 10B specifically includes both the direct and indirect costs of production incurred by the enterprise in respect of property transferred or services provided to an associated enterprise?”

3. Learned counsel for the Assessee has produced before the Court an order dated 28th August 2017 passed by the Transfer Pricing Officer (‘TPO’) giving appeal effect to the impugned order dated 26th August 2016 passed by the ITAT. The net result is that there is no transfer pricing adjustment to be made in the case of the Assessee even after taking into account the cost base as computed by the TPO rather than the cost base as calculated by the Assessee.

4. In view of the above development, learned counsel for the Revenue states that the questions urged may be left open for consideration on an appropriate occasion.

5. The court leaves question ‘B’ urged by the Revenue open for consideration in an appropriate case.

6. The appeal is dismissed.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

SEPTEMBER 04, 2017/srb