$~39

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

\+ **ITA 816/2017**

PR. COMMISSIONER OF INCOME TAX- 9 ..... Appellant
Through: Mr. Zoheb Hossain, Senior Standing Counsel.

versus

TEVAPHARM INDIA PVT. LTD. ..... Respondent
Through: None.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE PRATHIBA M. SINGH

O R D E R

% 19.09.2017

CM APPL. 34347/2017 (delay in filing) and CM APPL. 34348/2017 (delay in re-filing) in ITA 816/2017

1. For the reasons as stated in the applications, the delay in filing and re-filing the appeal is condoned. The applications stand disposed of.

ITA 816/2017

2. This is an appeal under Section 260A of the Income Tax Act, 1961 ('the Act') by the Revenue against the order dated 25th August, 2016 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.7584/Mum/2012 for the Assessment Year ('AY') 2008-09.

3. Two issues have been urged by the Revenue for consideration. The first concerns the omission by the ITAT of Celestial Labs Ltd. from the list of comparables. As far as this issue is concerned, the Court finds that the ITAT

has itself undertaken a detailed analysis of the functional profile of the tested company vis-a-vis that of the comparable and has given cogent reasons for excluding the said comparable. The Court is not persuaded to hold that this factual finding is perverse. It accordingly declines to frame a question on this issue.

4. The second issue concerns treating the expenditure incurred on software licenses as revenue expenditure. The decision of this Court in ***CIT v. Asahi India Safety Glass Ltd. [2011] 245 CTR 529 (Del)*** answers this very issue against the Revenue. The Supreme Court dismissed the Special Leave Petition filed by the Revenue against the said decision on 5th July, 2012. In view of that matter, the Court declines to frame a question on this issue as well.

5. The appeal is dismissed.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

SEPTEMBER 19, 2017
dk