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

\+ **ITA 10/2017**

VOITH HYDRO PRIVATE LIMITED (EARLIER KNOWN AS VOITH SIEMENS HYDRO PRIVATE LIMITED) ..... Appellant

Through: Mr. Salil Kapoor, Ms. Ananya Kapoor, Ms. Soumya Singh and Mr. Sanat Kapoor, Advocates.

versus

PR. COMMISSIONER OF INCOME TAX-9 ..... Respondent

Through: Mr. Rahul Chaudhary, Senior Standing Counsel with Mr. Sanjay Kumar, Junior Standing Counsel.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE PRATHIBA M. SINGH

O R D E R

% 25.09.2017

1. This is an appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') filed by the Assessee directed against the order dated 4th May 2016 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.5886/Del/2011 for the Assessment Year ('AY') 2007-08.

2. **Admit**.

3. Following question of law is framed for consideration:

Whether the ITAT erred in not deciding the issue before it instead of remanding it to the AO/TPO?

4. The Assessee develops, designs, procures, erects, installs and commissions all electrical and mechanical parts of hydro power projects. It executes Engineering, Procurement and Commissioning ('EPC') contracts. During the AY in question the Assessee held license for use of the Voith Trademarks and also the Technical Knowhow of Voith Siemens Hydro Power Generation Gmbh & Co. KG for its EPC operations. A question arose concerning the arm's length price ('ALP') of the international transaction of provision of intra-group services to the Appellant-Assessee by its Associated Enterprise ('AE').

5. In the earlier round of litigation, the only issue was of intra-group services. The Transfer Pricing Officer ('TPO') had made adjustments of Rs.2,48,50,136/- on the basis of which a draft assessment order was passed by the AO on 16th December, 2010. After the objections of the Assessee were decided by the Dispute Resolution Penal ('DRP'), the final assessment order was passed by the AO on 19th October, 2011 and he added the sum of Rs.1,89,53,444/- to the income of the Assessee on the ground that this was overlapping with the payment of Royalty.

6. On 12th April 2013, the ITAT dismissed the Assessee's appeal against which the Assessee came before this Court. Allowing the Assessee's further appeal, this Court by an order dated 11th February 2014 remanded the matter to the file of the ITAT to record the reasons afresh after considering the contentions of both the Assessee as well as the Revenue.

7. On remand, the ITAT passed the impugned order dated 4th May, 2016.

The issue that had to be decided by the ITAT by giving reasons was whether "the issue as to the payment on account of other group charges made by the Assessee to its AE for services rendered was to be determined by the TPO/DRP or it was to be determined by the AO under Section 37 (1) of the Act?" However, the ITAT has, instead of deciding the issue on merits, remanded the matter to the file of the AO for redetermination of the ALP for group services provided to the Assessee by its AE.

8. Having heard the learned counsel for the parties, the Court is of the view that remanding the matter to the AO again, when all the relevant material on record was available, was not warranted. Repeatedly remanding the matter results in delay in resolution of the issue arising in a particular AY. A remand would be necessary only where the relevant facts necessary for deciding the issue are not available.

9. In the circumstances, the impugned order of the ITAT is set aside and the Assessee's appeal ITA No.5886/Del/2011 for AY 2007-08 is restored to the file before the ITAT for a decision on merits, in accordance with law, on the above issue regarding the payment of group charges by the Assessee to its AE. The appeal will be decided on the basis of the documents already on record before the ITAT.

10. The aforementioned appeal of the Assessee be listed before the ITAT on 28th November, 2017 for directions.

11. The question of law framed in this appeal is answered in affirmative i.e. in favour of the Assessee and against the Revenue.

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

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

SEPTEMBER 25, 2017
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