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

Date of Decision: 13.11.2017

+ ITA 965/2017

PR. COMMISSIONER OF INCOME TAX-6 Appellant

Through: Mr. Rahul Chaudhary,
Sr. Standing Counsel for appellant.

versus

MCCAIN FOODS INDIA PVT. LTD. Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

S. RAVINDRA BHAT, J.(ORAL)

1. Two questions are urged by the Revenue in this appeal. The first pertains to the appropriateness of the Resale Price Method (RPM), which was accepted by the assessee. The TPO, however, rejected that and applied the Transactional Net Margin Method (TNMM) as the most appropriate and proximate test. The CIT(A), however, felt otherwise and reversed the findings of the AO. Those findings were endorsed and affirmed by the ITAT in the impugned order.

2. This Court is of the opinion that the mere circumstance that of a disagreement either between the assessee and the Revenue authorities or amongst the Revenue authorities in the application of one or other

methods for determining ALP *ipso facto* does not constitute question of law. This, however, not to say that if in a given case the aggrieved party is able to show that the rule applied has led to distortion or prejudice as the case may be, the question of law does not arise. In the present case, however, no such factors are present. This question of law therefore does not arise. Furthermore, the Court also takes note of the fact that in the subsequent year the RPM was endorsed by the TPO itself.

3. The second question relates to seed development/agronomy expenditure which was treated as capital in nature by the AO. The CIT(A) took a contrary position; that was endorsed by the ITAT being pure finding of fact. The Court is of the opinion that no substantial question of law arises.

4. The appeal is therefore dismissed.

S. RAVINDRA BHAT, J

SANJEEV SACHDEVA, J

NOVEMBER 13, 2017

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