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

\+ **ITA 1096/2017**

PRINIPAL COMMISSIONER OF INCOME TAX-5..... Appellant

Through : Mr Sanjay Kumar and Mr Rahul Chaudhary, Advocates.

versus

M/S KOBELCO CONSTRUCTION EQUIPMENT INDIA LIMITED ..... Respondent

Through : Mr Mayank Nagi, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

O R D E R

% **04.12.2017**

ITA 1096/2017 & CM No.43768/2017(delay in filing appeal for 20 days)

1. The Revenue urges that the application of the Resale Price Method (RPM) was not justified and instead the Transactional Net Margin Method (TNMM) was appropriate.

2. The Assessee had declared five broad heads of International Transactions - Assessment Year 2008-2009; it selected RPM for two of them, i.e. purchase of finished goods and purchase of spare parts.

For the other three activities, the Comparable Uncontrolled Price (CUP) applies.

3. The T.P.O. - and later the Assessing Officer - applied the TNMM for the transaction, which is the subject-matter of this Appeal, i.e. purchase of finished goods. The Assessee appealed successfully.

4. The CIT(Appeals) upheld its plea that the RPM was the appropriate method. Since no value addition was involved in the further sale of the products, so purchased, the Assessee has entered into transactions with its dealers for the onward sale of the product/goods imported or were purchased by it from Overseas Suppliers.

5. The Income Tax Appellate Tribunal (ITAT) confirmed the finding of the CIT (Appeals). This Court has pronounced judgments (notably – *Principal Commissioner of Income Tax-6 versus Makemy Trip India Private Limited* : ITA No.881/2017 dated 07.11.2017), held that mere disagreement on the application of the RPM by itself – *per se* does not translate into question of law.

6. Unless the Revenue or the party concerned establishes to the Court that the application of one method or the other results in distorted outcomes, the dispute could not be characterised as a substantial question of law.

7. Applying the ratio in *Makemy Trip (supra)*, this Court holds that no substantial question of law arises.

8. The other question of law urged with respect to the exclusion of comparables (i.e.T&I Global Limited). The Assessing Officer

included that entity as a comparable. The CIT(Appeal) and ITAT granted relief holding that the T&I Global Limited was not purely involving its procurement of purchase and distribution so as to make it a comparable with the Assessee but rather was also engaged in manufacturing activity. This Court finds no substantial question of law on this aspect.

9. As a consequence, in view of the foregoing discussion, there is no merit in the Appeal. No substantial question of law arises.

10. The Appeal is, therefore, dismissed.

S. RAVINDRA BHAT, J

SANJEEV SACHDEVA, J

DECEMBER 04, 2017

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