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

\+ **<u>ITA 413/2018 & CM APPL. 13875/2018</u>**

WITH

\+ **<u>ITA 414/2018</u>**

PR. COMMISSIONER OF INCOME TAX-4, NEW DELHI ..... Appellant

Through: Mr. Asheesh Jain, Sr. Standing Counsel with Mr. Ajit Sharma, Jr. Standing Counsel for the Revenue.

versus

SYMPHONY MARKETING SOLUTIONS INDIA PVT. LTD. (NOW MERGED WITH GENPACT INDIA) ..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

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

% **11.04.2018**

Admit.

The Revenue urges three questions of law in ITA No.414/2018; the first is with respect to the deduction under Section 10A of the Income Tax Act, 1961, which is the only question urged in ITA No.413/2018. The assessee had deducted certain expenditure from its export turnover. The Assessing Officer (hereafter 'AO') held that it ought to have been deducted from the total turnover and not from the export turnover. The Income Tax Appellate Tribunal ('ITAT') reversed the AO's determination based upon a decision in the case of *'CIT vs. Genpact India'*, (2011) 203 Taxmann 632. In these circumstances, we are of the opinion that no question of law arises on this aspect. Therefore, ITA No.413/2018 is dismissed along with the pending application.

The second question urged in ITA No.414/2018 is with regard to the quantum of the risk adjustment which the Dispute Resolution Panel (DRP) had modified from the initial 1% determined by the Transfer Pricing Officer (TPO). The ITAT upheld the DRP's determination holding that the AO had to amend the draft assessment order after the DRP's adjustment.

This Court is of the opinion that there is no infirmity in the order of the ITAT. The DRP's mechanism is an administrative and corrective process entitling the assessee to insist upon a second look in regard to the issues decided in the TPO's report. Therefore, its decisions are binding and a part of the decision making process of the AO. Prior to the amendment in 2012, no appeal was made against the determinations of the TRP. In these circumstances, the impugned order cannot be faulted with.

So far as the third question urged in ITA No.414/2018, i.e. the exclusion of one comparable i.e. Infosys BPO, is concerned, the Court is of the opinion that there is some merits in the Revenue's submissions.

The appeal ITA No.414/2018 is consequently admitted.

The following question of law arises in this appeal:-

> *"Whether the ITAT acted in error in excluding the Infosys BPO from the list of comparables having regard to the circumstances of the case?"*

Issue notice of the appeal ITA No.414/2018 to the assessee, returnable on 28th August, 2018.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

APRIL 11, 2018

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