

\$~11

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

+ ITA 25/2017

PR. COMMISSIONER OF INCOME TAX DELHI III

..... Appellant

Through: Ms. Vibhooti Malhotra, Adv.

versus

E.I.DUPONT INDIA PVT. LTD.

..... Respondent

Through: Mr. Ajay Vohra, Sr. Adv. with

Ms. Kavita Jha & Mr. Udit Naresh, Adv.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

%

13.02.2018

The lone question of law that survives for the determination of this Court is as follows:

“(i) Whether having regard to the express provision of Rule 10A of the Income Tax Rules – can a foreign Associated Enterprise be treated as a deciding party for the purposes of transfer pricing adjustment.”

The assessee for its ALP determination had in the Transfer Pricing Report used two tested parties (Dupont Asia Pacific and Dupont USA); in respect of each one of them, 7 and 20 comparables were used in the TP Report. The contention urged was that no private shifting occurred if these two tested parties' transactions were to be taken into account. The TPO rejected this and also proceeded to substitute the most appropriate method – instead of the TNMM offered in the report, the TPO substituted the CUP as the most appropriate method. The assessee's appeal to the

CIT(A) met with limited success; some amounts were directed to be deleted and the adjustments ultimately worked out to ₹13,03,63,208/-. In these circumstances, the Revenue urges that the use of AE's transactions as tested party comparables, is impermissible in terms of the transfer pricing provisions of the Income Tax Rules.

This Court has considered the submissions and the materials on record. Neither the order of the CIT(A) nor that of the ITAT, engaged in any discussion with respect to the applicability or the relevance or otherwise of AE's transactions as tested parties. Even the assessee met with only limited success in its transfer pricing exercise – as is evident from the rejection of many of its claimed transactions and adjustments made; furthermore, even the most appropriate method offered by it was rejected.

In these circumstances, the Court is of the opinion that the question of law framed does not arise for consideration. The second question of law that had been framed on 01.03.2017 had been restored to the ITAT for fresh consideration.

For the above reasons, the Court is of the opinion that the occasion to answer the question of law framed does not arise.

The appeal is, therefore, dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

FEBRUARY 13, 2018/kks

ITA No.25/2017

Page 2 of 2