IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.447 OF 2017

Commissioner of Income Tax-LTU … Appellant
V/s.
SI Group-India Limited … Respondent

Mr.Tejveer Singh Mastan Singh for the Appellant.
Mr.Madhur Agarwal i/by Mr.Atul Jasani for the Respondent.

CORAM : AKIL KURESHI AND
S.J.KATHAWALLA, JJ.
DATE : JUNE 03, 2019.

P.C.:-

1. This appeal is filed by the revenue to challenge the judgment of the Income Tax Appellate Tribunal ("Tribunal" for short). Following questions are presented for our consideration:-

> "(a) Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in deleting the addition, relating to payment of royalty u/s 92CA(3) of the Income Tax Act, 1961, amounting to Rs.3,80,99,599/- regarding the Arm's Length Price arrived at by the TPO on International Transaction?
> (b) Whether on the facts and circumstances of the case and in law, the Tribunal was right in allowing the assessee's contention that as the payments of Royalty were approved by the Reserve Bank of India ('RBI'), the same was at Arm's Length without appreciating the fact that the RBI approves only for

> payment toward technology transfer from FEMA angle and it should not be construed as approval under the provisions of any other law in force as per the Condition 7 of Press Note No.9 issued by Ministry of Commerce and Industry?”

2. Issues relate to the assessment year 2007-08. The assessee had made purchase of raw material from associated enterprise, agreeing to pay 2% of the net sale amount by way of royalty. This transaction came up for consideration before the Transfer Pricing Officer who made adjustments primarily on the ground that the assessee had not derived any specific benefits out of such technology nor the assessee had received any incremental benefits on account of payment of such royalty amount. The TPO also recorded that the assessee had not used any technology which was purchased and for which royalty payment for the same.

3. CIT (Appeals) in a detailed order held that the Transfer Pricing Officer could not have judged the justification for purchase of the know-how. In the appellate proceedings the assessee had established that such purchase was at Arm's

Length Price by producing instances of similar purchases by unrelated parties. CIT (Appeals) accepted the same after calling for remand report and deleted the addition.

4. The Tribunal confirmed the view of the CIT (Appeals) relying upon its own decision in case of the assessee for the assessment year 2006-07.

5. We have heard learned counsel for the parties and perused the documents on record. We do not find any error in view of the Tribunal confirming the decision of the CIT (Appeals). The Transfer Pricing Officer could have applied any of the specified methods for determining Arm's Length Price of the transaction, in case he was of the opinion that the purchase of know-how made by the assessee from the associated enterprise was not at Arm's Length. Instead of carrying out any such scientific exercise, the Transfer Pricing Officer went on to the justification of the purchase made in the context of the incremental benefit earned by the assessee out of such know-how. This was clearly not within the purview of the Transfer Pricing Officer. The Transfer

Pricing Officer could not replace the assessee and question its business decision. In the context of the purchase being at Arm's Length, the CIT(Appeals) had permitted the assessee to produce additional evidence which was taken on record after remand report and such evidence proved that the price paid by the assessee was at Arm's Length. No question of law arises. Income Tax Appeal is dismissed.

(S.J.KATHAWALLA, J.) **(AKIL KURESHI, J.)**

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