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

\+ **ITA 176/2019**

PR. COMMISSIONER OF INCOME TAX-05 ..... Appellant
Through Mr. Ajit Sharma with Ms. Adeeba Mujahid, Advocates

versus

M/S LI AND FUNG (INDIA) PVT. LTD. ..... Respondent
Through Mr. Neeraj Jain & Mr. Aniket D. Agrawal, Advocates

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% **08.07.2019**

CM Appl. No. 8033/2019 (delay)

1. For the reasons stated in the application, the delay of 109 days in re-filing the appeal is condoned and the application is disposed of.

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2. The Revenue has preferred this appeal against an order dated 14th May, 2018 passed by the Income Tax Applate Tribunal (ITAT) in ITA No.7549/Del/2017 for the Assessment Year (AY) 2013-14.

3. The question sought to be urged by the Revenue is whether the ITAT was justified in excluding Axis Integrated System Ltd. (Axis) as a comparable in the Transfer Pricing Analysis for fixing the Arm's Length Price (ALP) of the international transaction involving the Respondent Assessee during the

AY in consideration.

4. The Assessee is engaged in the business of providing sourcing support services. It is a subsidiary of Li & Fung (South Asia Limited), a Company incorporated in Mauritius and is part of the Li & Fung Group. The Assessee provides captive services to the group companies for supply of high volume, time sensitive consumer goods and is paid service charges for the buying services at cost plus mark-up of 8%.

5. The return filed by the Assessee for the AY in question was picked up for scrutiny. The matter was referred to the Transfer Pricing Officer (TPO) under Section 92(C) of the Act for determining the ALP of the international transactions. The TPO made an upward adjustment of Rs. 5,75,92,477/-. The matter was then taken, at the instance of the Assessee, before the Dispute Resolution Panel (DRP). Under the direction of the DRP the three comparables which had been picked up by the TPO were examined again. The DRP noted that ICRA Management Services which had been retained by the TPO as a comparable should be excluded since it had totally different Functionality Assets and Risks (FAR) when compared with the Assessee. BVG India Limited was also excluded as a comparable in the final set of comparables. Axis and other comparables were retained as such. Aggrieved by the order of the DRP, the Assessee approached the ITAT, which, while agreeing with the Assessee, directed that Axis be excluded as a comparable.

6. Learned counsel for the Revenue urged that the ITAT had given no reasons whatsoever for excluding Axis as a comparable other than simply

concluding that being a captive service provider the Assessee could not be considered functionally similar to Axis which was providing liaisoning services.

7. Learned counsel for the Assessee on the other hand drew the attention of the Court to the detailed reasons in the impugned order of the ITAT for its conclusion regarding exclusion of Axis.

8. Before the TPO there were two points urged by the Assessee for exclusion of Axis. One was that the audited financial statement of Axis was not available. The second was that the Assessee and Axis were functionally dissimilar. The TPO rejected both objections by observing that the annual report of Axis was available online. The TPO proceeded to extract from the annual report which showed that there was income received under the Head of 'liaisoning charges'. On this basis, the TPO concluded that Axis was also providing business support services and "exactly resembles the functional profile of the Assessee."

9. As rightly pointed out by the ITAT no comparison can be drawn between an entity that is a captive service provider to its group entities and an entity like Axis, which is providing liaisoning services to a large number of entities. More importantly, Axis was found engaged in the business of issuing digital certification. On the other hand, the Assessee was a routine captive sourcing service provider for consumer goods. As pointed out by this Court in ***Rampgreen Solutions Pvt. Ltd. v. CIT 377 ITR 533 (Del)*** "comparability analysis by the transactional net margin method may be less

sensitive to certain dissimilarities between the tested party and the comparables. However, that cannot be the consideration for diluting the standards of selecting comparable transactions/ entities. A higher product and functional similarity would strengthen the efficacy of the method in ascertaining a reliable arm's length price. Therefore, as far as possible, the comparables must be selected keeping in view the comparability factors as specified. Wide deviations in profit level indicator must trigger further investigations/ analysis."

10. In the present case the reasons given by the ITAT for excluding Axis as a comparable appear to be plausible and based on a detailed analysis of the different profiles of the Assessee and Axis. Consequently, the Court is not persuaded that the ITAT has erred in excluding Axis as a comparable. No substantial question of law arises.

11. The appeal is dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 08, 2019
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