$~
* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
3
\+ **ITA 335/2019**

PR. COMMISSIONER OF INCOME TAX- 4 ..... Appellant
Through: Mr Zoheb Hossain, Senior Standing Counsel for Revenue.

versus

M/S GIESECKE & DEVRIENT (INDIA) PVT. LIMITED ..... Respondent
Through: Mr Deepak Chopra, Mr Harpreet Singh Ajmani and Mr Rohan Khare, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R
% **06.08.2019**

CM 15154/2019 (delay)

1. For the reasons explained in the application, the delay in re-filing the appeal is condoned and the application is allowed.

ITA 335/2019

2.The Revenue is in appeal against the order dated 26th June, 2018 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.1458/Del/2017 for the Assessment Year ('AY') 2005-06.

3. The present appeal is on the issue of penalty levied upon the Respondent / Assessee by the Assessing Officer ('AO') under Section 271 (1) (c) of the Income Tax Act, 1961 ('Act') read with Explanation-7 thereto.

4. The transfer pricing (TP) adjustment made to the income of the Assessee for the AY in question was challenged by the Assessee up to the stage of the Commissioner of Income Tax (Appeals) ['CIT (A)'] and thereafter not pursued further. As far as the penalty issue is concerned, when the Assessee went in appeal before the CIT (A), a finding was returned by the CIT (A) in the order dated 20th January, 2017 to the effect that "the Appellant has tried to wriggle out of the penal provision by arguing that in its opinion it followed all due care and diligence while computing the arms length price ('ALP'). The mere fact that there was an adjustment to the very substantial amount negates the due diligence theory of the Appellant. The same is, therefore, rejected." Therefore, the CIT (A) principally went by the fact that the Appellant tried to pass on an international transaction by undervaluing it by Rs.3,41,12,260/-.

5. In the further appeal by the Assessee before the ITAT, it was urged that the only point of dispute was the usage of 'multiple year data' by the Assessee in determining ALP of the international transaction using TNMM whereas the Transfer Pricing Officer ('TPO') had adopted a 'single year data'. The ITAT agreed with the Assessee that this was a debatable issue. Particularly during the AY under consideration "this debate was very much alive". On that ground, the penalty levied was held to be unsustainable and set aside.

6. Mr Zoheb Hossain, learned Senior Standing Counsel for the Revenue points out that under Rule 10-B (4) of the Income Tax Rules, 1962 ('Rules'), it was made abundantly clear even from the beginning that the data to be

used in analyzing the comparability of an uncontrolled transaction with an international transaction or a specified domestic transaction "shall be the data related to the financial year" in which the international transaction has been entered into. Therefore, he submits that during the AY in question there could not have been any doubt that the data could not have been 'multiple year data', but had to be the 'current data' relevant to the financial year in question.

7. The Court notes that after the words "data relating to the financial year" occurring in Rule 10 B (4) of the Rules , there is an insertion made in the Rules with effect from 19th October 2015, which reads "hereafter in this Rule and in Rule 10 (C) (a) referred to as the 'current year'.

8. While it could be argued that this was a clarificatory amendment, the fact remains that the legislature thought it necessary to clarify that the data that was required to be used had to necessarily relate to the financial year in question and not to multiple year data.

9. The view taken by the ITAT that during the AY in question, the issue was debatable cannot, in the circumstances, said to be an implausible view.

10. The second ground on which penalty was levied related to the claim of standard deduction by the Assessee at 5%. The ITAT noted that even this was a debatable issue and a clarification was finally issued in Finance Bill, 2012, which clarification has been reproduced in paragraph 11 of the impugned order.

11. The Court concurs with above view of the ITAT that this issue is also a debatable one.

12. No substantial question of law arises for consideration. The appeal is accordingly dismissed. No costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

AUGUST 06, 2019
rd