$~31

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

\+ **ITA 692/2019**

THE PR. COMMISSIONER OF INCOME TAX -6 ..... Appellant
Through: Mr. Ruchir Bhatia, Advocate

versus

NOKIA SIEMENS NETWORK INDIA P. LTD. ..... Respondent
Through: Mr. Ankul Goyal, Advocate

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% **26.07.2019**

CM APPL. 33398/2019 (Delay)

1. For the reasons explained in the application, the delay in re-filing the appeal is condoned. Application is disposed of.

ITA 692/2019

2. The Revenue is in appeal against an order dated 9th February, 2018 passed by the Income Tax Appellate Tribunal (ITAT) in ITA No. 1618/Del/2018 for the Assessment Year ('AY') 2005-06.

3. The Revenue is aggrieved by the order of the ITAT to the extent that the Assessee's appeal before it was allowed and three comparables i.e. ITI Ltd., Punjab Communications and Himachal Futuristic Communications (P) Ltd. were included as comparables for the purposes of computation of the transfer price for international transactions in the Assessee's manufacturing

and installation segment.

4. The learned counsel for the Revenue submitted that the inclusion of ITI Ltd. which is a Government company is not justified as it worked in an entirely different environment and mere functional similarity would not make it eligible for inclusion as a comparable. He referred to the order passed by the Transfer Pricing Officer (TPO) specific to this comparable, wherein it was observed that the financing of ITI by the Government indicated that it was unable to compete effectively in the market. Further, the questions of autonomy and other factors made PSUs generally incomparable, as their working was not influenced by market conditions.

5. The ITAT differed from the view expressed by the TPO and accepted the reasoning put forth by counsel for the Assessee that the finances of the three comparables which included ITI Ltd., with reference to their respective annual reports, did show that there was a general trend in the industry of either loss-making or declining revenues. The ITAT was of the view that loss making companies should not be excluded only on that basis. In the present case there was no dispute on the functional profile of the Assessee being similar to that of ITI Ltd. In support of its conclusion, the ITAT referred to the decision of this Court in ***Chryscapital Investment Advisors (India) (P.) Ltd. v. Deputy Commissioner of Income Tax (2015) 376 ITR 183 (Del)***.

6. Having heard the learned counsel for the parties, the Court is of the view that the opinion expressed by the ITAT is a plausible one in the facts and

circumstances of the case. The inclusion of ITI Ltd. and the other two comparables is supported by sound reasoning given by the ITAT which, in the considered view of this Court, cannot be said to be perverse. No substantial question of law arises.

7. The appeal is accordingly dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 26, 2019
PB