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

\+ ITA 874/2019

THE RP. COMMISSIONER OF INCOME TAX -6..... Appellant

Through: Mr. Ruchir Bhatia, Advocate.

versus

MICROSOFT CORPORATION INDIA PVT. LTD...... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE SANJEEV NARULA

<u>O R D E R</u>

% **27.09.2019**

<u>C.M. No. 43458/2019</u>

By this application, the appellant seeks condonation of 287 days' delay in re-filing the appeal. Since the delay relates for re-filing, we are inclined to condone the same. Accordingly, the same is condoned.

The application stands disposed of.

<u>ITA 874/2019</u>

The appellant has preferred the present appeal to assail the order dated 22.06.2018 passed by the Tribunal, inter alia, in ITA No. 1206/Del/2014 preferred by the Revenue for assessment year 2009-10. The said appeal had been preferred to assail the order passed by the DRP, whereby the DRP had deleted M/s Basiz Fund Services Private Limited from the list of comparable enterprises. The order of the DRP was premised on its earlier order in relation to the assessment year 2008-09. The DRP held that M/s Basiz Fund Services Private Limited was not appropriate for the purpose of comparison, on account of functional dissimilarity.

The Tribunal held the finding of the DRP – that the company M/s Basiz Fund Services Private Limited is functionally dissimilar to the assessee, is founded on the circumstances that the said company is involved in fund accounting services; it possesses significant intangible assets, and; it had different employees profile, which resulted in significant growth at 57.61% and earning of profits at 46.75% at supernormal level.

Even if the supernormal level of profit at 46.75% were not to be considered as a reason to treat the said enterprises as not comparable, the fact remains that the Tribunal concurred with the view of the DRP on functional dissimilarity.

Aforesaid being the position, in our view, no question of law arises in the present appeal since concurrent findings of fact have been returned by the DRP and the Tribunal. The same is, accordingly, dismissed.

VIPIN SANGHI, J

SANJEEV NARULA, J

SEPTEMBER 27, 2019

B.S.Rohella