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

\+ ITA 375/2019

THE PR. COMMISSIONER OF INCOME TAX-4 ..... Appellant

Through: Mr. Ruchir Bhatia, Adv.

versus

GREAVES TRAVEL INDIA PVT. LTD. ..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE PRATEEK JALAN

O R D E R

% **08.11.2019**

Review Petition 369/2019 & C.M. No. 40121/2019

By the aforesaid application i.e. C.M. No.40121/2019, the applicant seeks condonation of 71 days delay in filing the review petition. The review has been filed on the premise that there is an inaccurate recording of the factual position in paragraph 3 of the order dated 12.04.2019, wherein this Court recorded "*The Cost-Plus Method was apparently accepted in 2010-2011 and, even subsequently*"

The submission of the appellant is that the revenue had not accepted the adoption of the Cost-Plus Method for subsequent years i.e. for the years after 2010-2011. In this regard, the submission made by the appellant/ review petitioner in paragraphs 5 and 6 reads as follows:

> *"5. That after the order passed by this Hon'ble Court was received by the petitioner, the facts were examined and it was*

noticed that in AY 2010-11, the TPO accepted cost plus method (CPM) as employed by the assessee – which was the first year of reference and assessee had shown profit margin of 15% (from its AE) against profit margin of 10.5% with non – AE. As margin with AE was high in comparison to non-AE, TPO did not propose any adjustment. For AY 2011-12 and 2012-13, after considering the facts and the business model of the assessee in particular the nature of services provided by the assessee, TPO deemed it appropriate to use transactional net margin method (TNMM) as MAM rather than CPM for benchmarking the service income received from AE. In AY 2013-14, TPO did not propose adjustment. However, this was on account of the fact that even applying TNMM, assessee's margin was higher than the average margin of comparables.

6. That it is respectfully submitted that the above facts show that except for AY 2010-11, the Department stand is that in assessee's case, for benchmarking of international transaction undertaken by the assessee, most appropriate method is TNMM and not CPM. However, the ld. ITAT in its order took a view that in AY 2010-11 and 2013-14, Department has accepted CPM as MAM and therefore, applying rule of consistency in AY 2011-12, CPM is to be regarded as MAM only. Copy of order dated 24.10.2018 passed by Ld. ITAT is annexed as Annexure – B."

Be that as it may, considering the fact that the tax effect in the present appeal is less than Rs. One Crore, in view of the circular dated 08.08.2019, the present review petition is not maintainable.

Dismissed.

VIPIN SANGHI, J

PRATEEK JALAN, J

NOVEMBER 08, 2019

N.Khanna