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

\+ **ITA 662/2019**

PR. COMMISSIONER OF INCOME TAX – 1 ..... Appellant

Through: Mr.Deepak Anand, Sr.Standing Counsel with Mr.Zoheb Hossain, Sr.Standing Counsel.

versus

M/S AVERY DENNISON INDIA PVT.LTD. ..... Respondent

Through: Mr.Vishal Kalra, Advocate.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% 23.07.2019

CM APPL. 32141/2019 (delay) in ITA 662/2019

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

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2. This is the Revenue appeal against the order dated 29th October 2018 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.5404/Del/2018 for the Assessment Year (AY) 2014-15.

3. The issue sought to be urged by the Revenue is whether the ITAT erred in deleting the addition made by the Assessing Officer ('AO') without considering the findings of the Transfer Pricing Officer ('TPO') on the issue

of determining the Arm's Length Price ('ALP') of international transactions involving the Assessee and its Associated Enterprises (AEs).

4. There is a long line of precedents involving the same Assessee concerning the earlier AYs. As far as AYs 2007-08, 2008-09 and 2010-11 are concerned the very same issue regarding determination of ALP of international transactions involving the Assessee was decided by this Court against the Revenue and in favour of the Assessee. The Special Leave Petitions filed by the Revenue thereagainst are stated to be pending in the Supreme Court.

5. However, for AYs 2012-13 and 2013-14 the ITAT appears to have remanded the matter to the TPO for a fresh determination. As far as the ITAT's order for AY 2013-14 is concerned the Assessee came in appeal to this Court by filing ITA No.219 of 2019. While disposing of the Assessee's appeal vide order dated 8th March 2019 this Court clarified that the TPO will pass a fresh order for AY 2013-14 uninfluenced by the observations made by the ITAT for the AY 2012-13.

6. It is accordingly pointed out by learned counsel for the Assessee appearing on advance notice that these two AYs i.e. 2012-13 and 2013-14 stood on a different footing and even there this Court was persuaded to clarify that the facts for one AY i.e. 2012-13 would not influence the decision in the subsequent AYs i.e. 2013-14.

7. Learned counsel for the Revenue made two submissions. One was to say that since for AYs 2012-13 and 2013-14 the matter had been remanded to

the TPO, the ITAT should have, even for the present AY i.e. 2014-15 remanded the matter to the TPO for a fresh determination.

8. The Court finds that in the impugned order, the ITAT has given detailed reasons for not remanding the issue to the TPO. In particular, the ITAT noted that in AYs 2010-11 to 2012-13 the Dispute Resolution Panel ('DRP') accepted the Assessee's determination of the ALP with regard to two intra group services received by the Assessee viz., Ticketing HUB and VIPFS. As regards the other intra group services, the ALP was ascertained to be NIL by application of the CUP.

9. The ITAT has also discussed the avenues provided by the Assessee in respect of each and every service received by it. In Para 24, the ITAT has observed as under:

> "24. In the present days, such businesses are mostly done through emails and service provider, who is providing service through emails and electronic media. None of the lower authorities have made any adverse comment in respect of services provided through emails. Moreover, such is the practice since AY 2007-08 and in earlier AYs, the same has been accepted. Above all, composite contract/ agreement is same and there is no change in the business profile of the assessee. The assessee has made payments in accordance with the written agreements which are supported by detailed evidence regarding receipt of services. Since the payments have been made in pursuance to written agreements, in our considered opinion, the same should be a reasonable basis to confirm that payments are legitimate."

10. The Court finds that the ITAT has given detailed reasons for accepting

the case put forward by the Assessee. The view taken is a plausible one and does not give rise to any substantial question of law.

11. The other submission made is that the ITAT in fact did not consider the materials placed before the TPO and the decision taken thereon by the TPO in relation to each of the intra group services received by the Assessee from its AEs. The Court finds that the ITAT has in fact applied its mind to the evidence on record and given factual findings which this Court does not find to be perverse.

12. No substantial question of law arises. The appeal is dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 23, 2019
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