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

\+ ITA 1017/2019

NYMPHEA DEVELOPERS PVT. LTD. ..... Appellant

Through: Mr. Ritesh Sinha and Ms. Rashmi Chopra, Advs.

versus

INCOME TAX OFFICER, WARD 18(4), NEW DELHI ..... Respondent

Through: Mr. Shlok Chandra, Jr. Standing counsel with Ms. Madhura M.N. and Ms. Chandra Tanay, Advs.

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

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

% **24.12.2019**

<u>CM APPL. 54665/2019 (exemption)</u>

1. Exemption allowed, subject to all just exceptions.

2. The application stands disposed of.

<u>ITA 1017/2019</u>

3. Issue notice. Learned counsel for the respondent accepts notice.

4. The present appeal is directed against the order dated 08.11.2019 passed by Income Tax Appellate Tribunal (ITAT) in S.A. No. 982/Del/2019 in ITA No. 7555/Del/2019 preferred by the appellant in relation to the Assessment Year (AY) 2014-15. The assessee is aggrieved by the ‘Nil’ arm’s length pricing fixed by the Transfer Pricing Officer (TPO) in respect of its transaction with its associated enterprise.

5. Learned counsel for the appellant has placed reliance on the decision of this Court in **ITA 475/2012** in ***Commissioner of Income Tax-I v. M/s Cushman And Wakefield India (Pvt.) Ltd.,*** decided on 23.05.2014 to submit that the TPO has no jurisdiction to doubt the said transaction and on that basis assess the arm's length price at Nil.

6. Learned counsel for the appellant further submits that the amount transferred by the appellant to the associated enterprise has already been taxed in the hands of the associated enterprises. In this background, appellant's application for stay was rejected by the Tribunal by the impugned order and consequently the appellant is before us. The appellant has proposed several questions of law, touching on the aspect whether the Tribunal was justified in law, in rejecting the stay application, in relation to the demand raised by the Respondent.

7. Having heard the learned counsels, the following questions of law are framed:-

> *A. Whether on the facts and circumstances of the case and under law, the Income Tax Appellate Tribunal (ITAT) has erred in law is rejecting the application for the stay of demand as well as the request for early hearing of the case made by the Appellant?*
>
> *B. Whether the Income Tax Appellate Tribunal (ITAT) erred in holding that the Appellant could not prove her case for grant of early hearing?*

8. In the light of the aforesaid submissions, the questions of law framed above are answered in favour of the appellant. We, therefore, dispose of this appeal by directing the Tribunal to hear the appeal of the appellant, pending before it.

9. List on 28.01.2020 before the Tribunal.

10. Till then, no coercive steps be taken against the appellant, for recovery of the tax demand.

VIPIN SANGHI, J

SANJEEV NARULA, J

DECEMBER 24, 2019

Pallavi