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

\+ **ITA 525/2017**

JCB INDIA LTD. ..... Appellant

Through: Mr.M.S.Syali, Sr.Advocate with Mr.Mayank Nagi, Mr.Tarun Singh & Mr.Hardeep Singh Chawla, Advocates.

versus

DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE 13(1), NEW DELHI ..... Respondent

Through: Mr.Ruchir Bhatia, Sr.Standing Counsel.

\+ **W.P.(C) 6058/2017**

JCB INDIA LTD. ..... Petitioner

Through: Mr.M.S.Syali, Sr.Advocate with Mr.Mayank Nagi, Mr.Tarun Singh & Mr.Hardeep Singh Chawla, Advocates.

versus

DEPUTY COMMISSIONER OF INCOME TAX CIRCLE 13(1) NEW DELHI ..... Respondent

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE I.S.MEHTA

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

% **17.05.2019**

1. The present appeal is against the judgment dated 31st March 2016 passed

by the ITAT in ITA No.1075/Del./2016 for assessment year 2011-12. While admitting its appeal on 18th April 2018 this Court framed the following two questions for consideration:

> "(i) Whether the Income Tax Appellate Tribunal was justified in law in rejecting the principle of aggregation of closely linked transactions using Transactional Net Margin Method?
>
> (ii) Whether the Income Tax Appellate Tribunal erred in law in adjudicating upon Issues not arising from the order under challenge in relation to Section 37 of the Income Tax Act?"

2. It Also requires to be mentioned that the scope of the appeal before the ITAT, by the Assessee as noted in Para 2 of the impugned order of the ITAT as under:

> "2. The only grievance raised in this appeal is against the addition of Rs.156,38,82,889/- made by the AO on account of transfer pricing adjustment."

3. Inasmuch as the ITAT has remanded the matter to the Transfer Pricing Officer ('TPO') for a fresh determination of the arm's length price (ALP) of the transaction of payment of royalty by applying the decision of this Court in ***CIT v. Cushman & Wakefield (India) (P.) Ltd. (2014) 367 ITR 730 (Del.)*** and left it open to the TPO to consider making additions under Section 37(1) of the Act, the Petitioner filed a miscellaneous application under Section 254(2) of the Act before the ITAT. By an order dated 31st March 2017, the said application was dismissed.

4. Against the above order dated 31st March 2017 dismissing the said

application the Assessee filed WP(C) 6058 of 2017 in which while directing notice to issue on 19th July 2017 this Court stayed the operation of both orders dated 31st March 2016 and 31st March 2017.

5. Today, Mr. Syali, learned Senior Counsel for the Appellant/Petitioner has placed before this Court copy of a letter dated 2nd May 2019 received by the Petitioner from the office of the Deputy Commissioner of Income Tax Section 13(2) in regard to the settlement reached between the Assessee and the department under the Mutual Agreement Procedure ('MAP') between the Competent Authority (CA) of India and CA of UK under Article 27 of the India – UK Double Taxation Avoidance Agreement ('DTAA'). This specifically deals with the issue of royalty failed by the Assessee during the AY in question. Assessee having agreed to abide by the settlement reached is required to withdraw the present appeal as far as the Question No.1 framed by the Court is concerned.

6. The above fact has not been disputed. Mr. Ruchir Bhatia, learned Senior Standing Counsel for the Revenue, has no objection to the Court permitting the Appellant to withdraw his appeal as far as Question No.1 is concerned.

7. As far as Question No.2 is concerned, it is a direct outcome of the impugned order dated 31st March 2016 passed by the ITAT. Since the remand to the TPO, in terms thereof no longer survives on account of the settlement reached under MAP between the Assessee and its department, the Court is not called upon to answer the second question since it no longer survives. In that view of the matter, the impugned orders dated 31st March

2016 and 31st March 2017 of the ITAT themselves no longer survive. The appeal and the writ petition are disposed of.

8. Copy of the order be given '*dasti*' under the signatures of the Court Master.

S. MURALIDHAR, J.

I.S. MEHTA, J.

MAY 17, 2019
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