IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

106 **ITA-341-2019 (O&M)**
Date of Decision : 10.1.2020

The Pr. Commissioner of Income Tax, Gurgaon ...... Appellant

Versus

Nissin Brake India Pvt. Ltd. ...... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
: HON'BLE MR. JUTICE AVNEESH JHINGAN

Present : Mr. T.K.Joshi, Standing Counsel
for the appellant.

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AJAY TEWARI, J. (Oral)

1. This appeal has been filed against the order dated 16.11.2018 passed by the Income Tax Appellate Tribunal ,Delhi Bench 'I-1' New Delhi in ITA No. 6366/DEL/2017 for the assessment year 2013-14 whereby the matter was remanded back to the Transfer Pricing Officer (TPO) for fresh consideration for setting aside the impugned order. The appellant has claimed the following substantial question of law:-

> *"i. Whether, on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was right in not appreciating the fact that CUP is most appropriate method for benchmarking of transaction of Royalty and Product development fee ?*
>
> *ii. Whether, on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was right in not appreciating that the facts of the case of the assessee are different from the case of CIT vs EKL Appliances Ltd.-341*

ITR 241 (Del.) ?

iii. Whether, on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was right in holding that benefit test is not applicable for the benchmarking of transaction related to Royalty and product development fee ?"

2. Brief facts of the case are that the appellant filed his return of income for the assessment year 2013-14 on 29.11.2013 and claimed certain expenses, the same were disallowed by the TPO by introducing the 'CUP Method' (as opposed to the earlier TNMM Method which had been used in the past) and by resorting to the ALP. By the impugned order, the Tribunal has held that on fact there was no good reason for the TPO to abandon the TNMM Method and invoke the CUP Method and remanded the case back to him for a fresh decision after hearing the parties.

3. Before us learned counsel has argued that the Tribunal could at best have set aside the assessment order and remanded the case back for fresh decision but it could not dictate what method to follow.

4. However, he has not been able to show that on fact the applicability of the CUP Method is more appropriate. Neither any reason is put forth to justify the departure from the TNMM being followed earlier nor there is any averment of change in circumstances from the previous years. In this view of the matter, we see no legal infirmity in the Tribunal being the final fact finding authority to come to the conclusion that the invocation of the CUP method was not justified and no reason existed for the departure from the past practice.

5. Consequently, the appeal stands dismissed.

6. Since the main case has been dismissed, the pending application, if any also stands disposed of.

(AJAY TEWARI)
JUDGE

(AVNEESH JHINGAN)
JUDGE

10.1.2020
anuradha

Whether speaking/reasoned - Yes/No
Whether reportable - Yes/No