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

+ **ITA 819/2019**

THE PR. COMMISSIONER OF INCOME TAX -5 Appellant

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

versus

LI & FUNG (INDIA) PVT. LTD. Respondent

Through: **Mr.Neeraj Jain and Mr.Aniket
D.Agarwal, Advocates.**

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% 12.03.2020

CM APPL. 40531/2019 (delay in filing 117 days)

By this application, the applicant seeks condonation of delay of 117 days in filing the appeal. For the reasons stated in the application, the delay is condoned.

The application stands disposed of in the aforesaid terms.

ITA 819/2019

The present appeal has been filed challenging the order dated 31st October, 2018 passed by the learned Income Tax Appellate Tribunal in ITA No. 2480/Del/2015 for the Assessment Year 2010-11.

Learned counsels for the parties state that the issue raised in the present appeal is covered by the judgment of a Coordinate Bench of this Court in *Li and Fung India Pvt. Ltd. vs. Commissioner of Income Tax, ITA 306 of 2012*. The relevant portion of the said judgment is reproduced hereinbelow:

“39.The TPO’s determination enhanced LFIL’s cost base for applying the operating profit over total cost margin. LFIL’s compensation model is based on functions performed by it and the operating costs incurred by it and not on the cost of goods sourced from third party vendors in India. Allotting a margin of the value of goods sourced by third party customers from Indian exporters/vendors to compute the appellant’s profit is unjustified. This Court is of opinion that to apply the TNMM, the assessee’s net profit margin realized from international transactions had to be calculated only with reference to cost incurred by it, and not by any other entity, either third party vendors or the AE. Textually, and within the bounds of the text must the AO/TPO operate, Rule 10B(1)(e) does not enable consideration or imputation of cost incurred by third parties or unrelated enterprises to compute the assessee’s net profit margin for application of the TNMM. Rule 10B(1)(e) recognizes that “the net profit margin realized by the enterprise from an international transaction entered into with an associated enterprise is computed in relation to costs incurred or sales effected or assets employed or to be employed by the enterprise ...” (emphasis supplied). It thus contemplates a determination of ALP with reference to the relevant factors (cost, assets, sales etc.) of the enterprise in question, i.e. the assessee, as opposed to the AE or any third party. The textual mandate, thus, is unambiguously clear.

40.The TPO’s reasoning to enhance the assessee’s cost base by considering the cost of manufacture and export of finished goods, i.e., ready-made garments by the third party vendors (which cost is certainly not the cost incurred by the assessee), is nowhere supported by the TNMM under Rule 10B(1)(e) of the Rules. Having determined that (TNMM) to be the most appropriate method, the only rules and norms prescribed in that regard could have been applied to determine whether the exercise indicated by the assessee yielded an ALP. The approach of the TPO and the tax authorities in essence imputes notional adjustment/income in the assessee’s hands on the basis of a fixed percentage of the free on board value of export made by unrelated party vendors.”

In view of the aforesaid judgment, no question of law arises for consideration in the present matter. Accordingly, the present appeal is dismissed.

MANMOHAN, J

SANJEEV NARULA, J

MARCH 12, 2020

v