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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **ITA 374/2022**

**THE PR. COMMISSIONER OF INCOME TAX -6 ..... Appellant**

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

versus

**MARUBENI ITOCHU STEEL INDIA PVT.LTD. .... Respondent**

Through: Mr. Himanshu Sinha & Mr. Vibhu  
Gupta, Advocates.

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Date of Decision: 28<sup>th</sup> September, 2022

**CORAM:**

**HON'BLE MR. JUSTICE MANMOHAN**

**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA**

**J U D G M E N T**

**MANMOHAN, J (Oral):**

1. Present income tax appeal has been filed challenging the impugned order dated 30<sup>th</sup> October, 2019, passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 6655/Del./2015 for Assessment Year 2011-12.

2. Learned counsel for the Appellant states that the ITAT has erred in not considering the description of the activities carried out by the assessee as being akin to that of a trader. He states that the ITAT has erred in rejecting the use of Free on Board (FOB) value in the cost base without appreciating that the same is relevant cost base for determining the ALP of the international transaction of the assessee with its AEs given the function performed, assets utilized, and risk undertaken by the assessee.

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3. Admittedly, the questions of law urged in the present appeal are covered by the decisions of this Court in assessee's own case in ITA 94/2015 dated 23<sup>rd</sup> April, 2015 and ITA 376/2018 dated 4<sup>th</sup> April, 2018.
4. Learned Counsel for the Appellant states that the Revenue has not accepted the aforesaid decisions and has preferred Civil Appeal No.11882/2018 against the same.
5. Though the judgments of this Court have been challenged and are pending adjudication before the Supreme Court, yet there is no stay of the said judgments till date.
6. Consequently, in view of the judgments passed by the Supreme Court in *Kunhayammed and Others vs. State of Kerala and Another*, (2000) 6 SCC 359 and *Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras* (1992) 3 SCC 1, the present appeal is covered by the judgments passed by the learned predecessor Division Bench.
7. Accordingly, no substantial question of law arises for consideration in the present appeal and the same is dismissed.
8. However, it is clarified that the order passed in the present appeal shall abide by the final decision of the Supreme Court in the aforesaid Civil Appeal.

**MANMOHAN, J**

**MANMEET PRITAM SINGH ARORA, J**

**SEPTEMBER 28, 2022/msh**

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