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

% *Date of decision: 10.10.2023*

\+ **ITA 1160/2017**

CORNING SAS-INDIA BRANCH OFFICE..... Appellant
Through: Mr Aniket D. Agrawal, Advocate.

versus

DEPUTY DIRECTOR OF INCOME-TAX ..... Respondent
Through: Mr Sunil Agarwal, Sr. Standing Counsel with Mr Shivansh B. Pandya and Mr Utkarsh Tiwari, Advocates for respondents/revenue.

CORAM:
HON'BLE MR JUSTICE RAJIV SHAKDHER
HON'BLE MR JUSTICE GIRISH KATHPALIA
[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

1. This appeal concerns Assessment Year (AY) 2011-12.

2. *Via* the instant appeal the appellant/assessee sought to assail the order dated 29.05.2017 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"].

3. In the appeal, the following questions of law are proposed for consideration by this court:

> *"(i) Whether on the facts and in the circumstances of the case, the impugned order passed by the Tribunal is perverse and untenable in law?*
> *(ii) Whether on the facts and in the circumstances of the case, the Tribunal erred in law in directing the TPO to undertake fresh Transfer Pricing study for the combined benchmarking of international transactions relating to 'provision of agency services' and 'provision of marketing support services', thereby throwing open the entire Transfer Pricing assessment in total disregard to the settled principles of remand?*

(iii) Whether on the facts and in the circumstances of the case, the Tribunal failed to appreciate that benchmarking analysis undertaken in the order passed by the TPO and approved by the Dispute Resolution Panel attained finality vis-à-vis the Revenue and thus, could not be disturbed by the Tribunal to the detriment of the appellant?

(iv) Whether on the facts and in the circumstances of the case, the impugned order is perverse and unsustainable in law insofar as the basis assigned by the Tribunal for remanding the issue of selection of comparables to the file of TPO for fresh consideration bears no connection, howsoever remote, to the object of such remand?

(v) Whether on the facts and in the circumstances of the case, the Tribunal erred in law in not adjudicating the ground raised by the appellant challenging the very existence of international transaction on account of 'delay in payment of outstanding receivables', as alleged by the TPO?

(vi) Whether on the facts and in the circumstances of the case, the Tribunal erred in law in remanding the issue of adjustment on account of alleged international transaction of interest 'delay in payment of outstanding receivables' to the file of TPO to be re-computed, inter alia, in accordance with the directions of DRP?

(vii) Whether on the facts and in the circumstances of the case, the findings arrived at by the Tribunal are perverse, inasmuch as no reasonable person correctly informed of the provisions of law would come to such a conclusion?"

4. According to Mr Aniket D. Agrawal, learned counsel, who appears on behalf of the appellant/assessee, the seven questions proposed hereinabove are broadly covered, can be divided into two issues.

4.1 The proposed question nos. (i) to (iv) articulated the grievance which the appellant/assessee had with regard to the Tribunal's directions to remand the issue of selected comparables which were filed with the Transfer Pricing Officer (TPO).

4.2 The proposed question nos. (v) to (vii) represent, once again according to Mr Agrawal, the second grievance which is that the Tribunal did not adjudicate upon the principal issue concerning existence of international transaction on account of receivables, and simply remanded the matter to the TPO for recomputation of adjustment in accordance with the findings returned by the Dispute Resolution Panel.

5. Insofar as the grievance with regard to the Tribunal remanding the issue of selected comparables to the file of TPO is concerned, we are informed by Mr Agrawal that during the appeal effect proceedings, the TPO *via* order dated 28.12.2019 after computing the adjustment on account of selection of comparables, has concluded that no upward adjustment is required to be made.

5.1 Given this position, the proposed question nos. (i) to (iv) do not arise for consideration.

6. Insofar as the other grievance is concerned, as indicated above, Mr Agrawal states that in the appeal effect proceedings the adjustment was recomputed. Thus, for AY 2011-12, *via* TPO order dated 28.12.2019, adjustment had been recomputed and pegged at Rs.2,32,939/-.

7. Since the amount is small, Mr Agrawal says that the grievance as articulated above is not being carried forward by the appellant/assessee.

7. Given this position, the appeal is closed.

8. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

OCTOBER 10, 2023 / tr

Signature Not Verified
Digitally Signed By:ATUL JAIN
Signing Date:01.11.2023 14:42:50