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

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Date of decision: 10.10.2023+ **ITA 1159/2017****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) 2012-13.
2. *Via* the instant appeal, the appellant/assessee seeks 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 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 five questions proposed hereinabove are broadly covered.

4.1 All questions 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).

5. Insofar as the grievance with regard to the Tribunal remanding the issue of selected comparables to the 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 (v) do not arise for consideration.



2023:DHC:7930-DB



6. Given this position, the appeal is closed.
7. 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
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ITA No.1159/2017

Page 3 of 3