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

\+ ITA 437/2019

THE PR. COMMISSIONER OF INCOME TAX -9 .....Appellant

Through: Mr. Anurag Ojha, SSC with Ms. Hemlata Rawat & Mr. V.K. Saksena, JSCs.

versus

WARNERMEDIA INDIA PRIVATE LIMITED .....Respondent

Through: Mr. Deepak Chopra, Mr. Rohan Khare & Mr. Priyam Bhatnagar, Advs.

15

\+ ITA 773/2019

WARNERMEDIA INDIA PRIVATE LIMITED .....Appellant

Through: Mr. Deepak Chopra, Mr. Rohan Khare & Mr. Priyam Bhatnagar, Advs.

versus

COMMISSIONER OF INCOME TAX .....Respondent

Through: Mr. Anurag Ojha, SSC with Ms. Hemlata Rawat & Mr. V.K. Saksena, JSCs.

16

\+ ITA 774/2019

WARNERMEDIA INDIA PRIVATE LIMITED .....Appellant

Through: Mr. Deepak Chopra, Mr. Rohan Khare & Mr. Priyam Bhatnagar, Advs.

versus

COMMISSIONER OF INCOME TAX-VI .....Respondent

Through: Mr. Anurag Ojha, SSC with Ms. Hemlata Rawat & Mr. V.K. Saksena, JSCs.

17

\+ ITA 775/2019

WARNERMEDIA INDIA PRIVATE LIMITED .....Appellant

Through: Mr. Deepak Chopra, Mr. Rohan Khare & Mr. Priyam Bhatnagar, Advs.

versus

COMMISSIONER OF INCOME TAX .....Respondent

Through: Mr. Anurag Ojha, SSC with Ms. Hemlata Rawat & Mr. V.K. Saksena, JSCs.

18

\+ ITA 838/2019

PRINCIPAL COMMISSIONER OF INCOME TAX, DELHI-9, ...Appellant

Through: Mr. Anurag Ojha, SSC with Ms. Hemlata Rawat & Mr. V.K. Saksena, JSCs.

versus

WARNERMEDIA INDIA PRIVATE LIMITED .....Respondent

Through: Mr. Deepak Chopra, Mr. Rohan Khare & Mr. Priyam Bhatnagar, Advs.

19

\+ ITA 866/2019

PRINCIPAL COMMISSIONER OF INCOME TAX, DELHI-9, ...Appellant

Through: Mr. Anurag Ojha, SSC with Ms. Hemlata Rawat & Mr. V.K. Saksena, JSCs.

versus

WARNERMEDIA INDIA PRIVATE LIMITED .....Respondent

Through: Mr. Deepak Chopra, Mr. Rohan Khare & Mr. Priyam Bhatnagar, Advs.

20

\+ ITA 875/2019

PRINCIPAL COMMISSIONER OF INCOME TAX, DELHI-9, ...Appellant

Through: Mr. Anurag Ojha, SSC with Ms. Hemlata Rawat & Mr. V.K. Saksena, JSCs.

versus

WARNERMEDIA INDIA PRIVATE LIMITED .....Respondent

Through: Mr. Deepak Chopra, Mr. Rohan Khare & Mr. Priyam Bhatnagar, Advs.

21

\+ ITA 1014/2019

THE PR. COMMISSIONER OF INCOME TAX-09, ...Appellant

Through: Mr. Anurag Ojha, SSC with Ms. Hemlata Rawat & Mr. V.K. Saksena, JSCs.

versus

WARNERMEDIA INDIA PRIVATE LIMITED .....Respondent

Through: Mr. Deepak Chopra, Mr. Rohan Khare & Mr. Priyam Bhatnagar, Advs.

22

\+ ITA 876/2019

PRINCIPAL COMMISSIONER OF INCOME TAX, DELHI-9, ...Appellant

Through: Mr. Anurag Ojha, SSC with Ms. Hemlata Rawat & Mr. V.K. Saksena, JSCs.

versus

WARNERMEDIA INDIA PRIVATE LIMITED .....Respondent

Through: Mr. Deepak Chopra, Mr. Rohan Khare & Mr. Priyam Bhatnagar, Advs.

23

\+ ITA 127/2020

WARNERMEDIA INDIA PRIVATE LIMITED .....Appellant
Through: Mr. Deepak Chopra, Mr. Rohan Khare & Mr. Priyam Bhatnagar, Advs.

versus

COMMISSIONER OF INCOME TAX-VI .....Respondent
Through: Mr. Anurag Ojha, SSC with Ms. Hemlata Rawat & Mr. V.K. Saksena, JSCs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

O R D E R

% 10.09.2024

ITA Nos. 437/2019, 838/2019, 866/2019, 875/2019, 1014/2019 & 876/2019

1. The Principal Commissioner impugns the order of the **Income Tax Appellate Tribunal**[1] dated 18 June 2018 [ITA 437/2019], 8 October 2018 [ITA 1014/2019], 01 January 2019 [ITA 838/2019 and ITA 875/2019], and 04 February 2019 [ITA 866/2019 and ITA 876/2019] and posits the following questions for our consideration:

> "2.1 Whether the ld. ITAT was right in fact and in law in seeking only distributor companies while searching for comparable companies of the assessee under TNMM whereas the requirement of law and international jurisprudence require' seeking similar comparables companies?
>
> 2.2 Whether the ld. ITAT was right in fact and in law in demanding comparability standards that may itself defeat the purpose of law relating to determination of ALP under the Income Tax Act?
>
> 2.3 Whether the ld. ITAT was right in fact and in law in rejecting the comparables i.e. Malilyalam Communications Ltd., Raj Television Network ltd., TV Today Network Ltd., Sun TV Network Ltd., Zee Entertainment Enterprises Ltd. Zee Media Corporation Ltd. and UTV software communications Ltd on the

[1] Tribunal

ground that these comparables are functionally dissimilar when the TPO has established in section 92C under which strict similarity in not mandated as in other TP methods?

2.4 Whether the ld. ITAT was right in fact and in law in holding that Malayalam Communications Ltd., Raj Television Network Ltd., TV Today Network Ltd., Sun TV Network Ltd., Zee Entertainment Enterprises Ltd., Zee Media Corporation Ltd. and UTV software communications Ltd should not be taken as comparables when all of these comparables are engaged in electronic media' and entertainment industry in providing production and related support services of television programmes and are hence functionally similar to the applying the Transactional Net Margin method under Rules 10B(1)(e) read with Rule 10B(2) of the Income Tax Rules, 1962?

2.5 Whether while seeking the exact comparability the ld. ITAT was right in fact and in law in allowing 'software distributor companies' and disallowing companies involved in running 'entertainment Channels?

2.6 Whether the Hon'ble Tribunal was right in fact and in law in allowing 'software distributor companies' to be selected as comparable without giving an opportunity to Revenue to conduct fresh search for other more suitable software and other distributor companies?"

2. The solitary issue which has been canvassed for our consideration is in respect of the exclusion of seven comparables. The Tribunal while holding in favour of the assessee in this respect had taken into consideration its determination in the assessee's own case for **Assessment Year**[2] 2007-08 and 2008-09 and where it had held that satellite TV Channels and cable network operators cannot be equated with the activities undertaken by the assessee.

3. The assessee, it becomes pertinent to note, is concerned with the distribution of TV channels. The Tribunal has, in the aforesaid light, observed as follows:

"11. We have heard the rival submissions and also perused the relevant findings given in the impugned orders as well as the material referred to before us. From the state of the DRP, ten

[2] AY

comparables have been selected with an average mean of 11.95% and based on such comparables adjustment of Rs.10,07,35,464/- has been made in the distribution segment. The details of these comparables companies with this average margin have already been incorporated above. Out of the said comparable companies, seven comparables have been sought to be excluded by the assessee which are channel and contents owners who are full-fledged channel companies who owned and operate various TV channels and undertake content creation on their own. The Tribunal in assessee's own case for the Assessment Year 2007-08 and 2008-09 and also in Assessment Year 2006-07 have held that Satellite TV channels and cable network operators have significantly different operating models and provide earning model and once the Tribunal has held that such channel/ content owner companies should not be included for the purpose of comparability analysis, then there is no reason why the TPO is again selecting such companies for the purpose of benchmarking the ALP of the assessee's distribution segment. Before us, the learned counsel has already clarified on the basis of material available on record that distribution activity and ancillary/ production activity of the assessee are two distinct set of transactions for which, not only separate remuneration has been earned for each of the said activities. So far as production activity is concern, the same has been found at arm's length by the TPO and once these are two different segments then there is no justification to mix up the functions of such ancillary activities with that of distribution activity so as to justify selection of such channel/ content owner companies, especially when transaction from such ancillary services constitutes only 4% of the value of the international transaction of the assessee. Apart from that, the assessee is providing these services as a captive service provider for which it is remunerated separately and ALP of such transaction is not in dispute. Accordingly, we reject the DRPs and TPO action for mixing the functionality of distribution and production activities which are in fact independent and also separately benchmarked. We are in tandem with the contention of the learned counsel that these two activities cannot be mixed up for distorting the functionality and justifying the selection of channel owner companies. Thus, we hold that the seven comparable companies, namely, i) Malayalam Communications Ltd.; ii) Raj Television Network Ltd.; iii) TV Today Network Ltd.; iv) Sun TV Network Ltd.; v) Zee Entertainment Enterprises Ltd.; vi) Zee media Corporation Ltd.; and vii) UTV Software Communications Ltd.; are directed to be excluded. The other three comparables, namely, Empower Industries India Ltd. (56.65%), Sonata Information Technologies Ltd. (4.54%) and Softcell Technologies Ltd. (4.23%), have been accepted by the assessee. However, after working capital adjustment OP/OR of these three companies are as under:

S. No.	Name of comparable	Working capital adjusted OP/OR
1.	Empower Industries India Ltd.	0.43%
2.	Sonata Information Technologies Ltd.	0.67%
3.	Softcell Technologies Ltd.	2.24%
	Mean	1.11%

4. Before us it could not be disputed that the seven comparables which ultimately came to be excluded could not, by any stretch of imagination, be said to be engaged in activities which would satisfy the test of functional similarity.

5. We also bear in consideration that the view taken by the Tribunal in this respect for AY 2007-08 and 2008-09 was never assailed or questioned by the appellants.

6. Consequently, and for reasons assigned by the Tribunal and which we have taken note of hereinabove, we find no merit in the instant appeals. They shall, consequently, stand dismissed.

ITA Nos.773/2019, 774/2019, 775/2019 & 127/2020

7. In light of the decision rendered by us today on the batch of appeals which had been preferred by the Revenue, Mr. Chopra, learned counsel for the appellants, on instructions states that these appeals are not proposed to be pressed any further.

8. They shall, accordingly, stand dismissed as not pressed.

YASHWANT VARMA, J

RAVINDER DUDEJA, J

SEPTEMBER 10, 2024/kk