$~24

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

\+ ITA 304/2023

PR. COMMISSIONER OF INCOME TAX, DELHI-7 ..... Appellant

Through: Mr. Puneet Rai, Sr.SC with Mr. Rishabh Nangia and Mr. Ashvini Kumar, Jr.SCs along with Mr. Nikhil Jain, Adv.

versus

TUPPERWARE INDIA PVT. LTD. ..... Respondent

Through: Mr. Rohit Tiwari, Ms. Tanya, Mr. Shobhit Tiwari, Ms. Shivani and Mr. Jaind Kumar Jaiswal, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **14.03.2024**

CM APPL. 28277/2023 (93 Days' Delay)

1. This is an application filed by the appellant seeking condonation of 93 days' delay in filing the present appeal.

2. For the reasons stated in the application, the delay of 93 days in filing the appeal is condoned.

3. Application is disposed of.

ITA 304/2023

4. The order dated 25 May 2023 reflects that the primary question which was presented for our consideration was found to have been answered against the appellant by virtue of the judgment rendered by

this Court in **Sony Ericsson Mobile Communications India Pvt. Ltd. v. Commissioner of Income Tax - III**, [2015 SCC OnLine Del 8083].

5. When the appeal was taken up today, the solitary question which Mr. Rai chose to address was question B1, which reads as under:

> "B1. Whether on the facts and in the circumstances of the case, Hon'ble ITAT erred in not considering the TPO's findings that the comparables proposed by the assessee are not acceptable as they do not have similar FAR as that of the assessee?"

6. We note that while dealing with the issue of comparables as accepted and included by the Transfer Pricing Officer ["**TPO**"] as well as the Dispute Resolution Panel ["**DRP**"], the Income Tax Appellate Tribunal ["**ITAT**"] has found as follows:

> "16. We have heard the rival submissions of the Ld. Representative of the parties and perused the material available on records. The Ld. TPO as well as the Hon'ble DRP has upheld CUP as the most appropriate method for benchmarking transactions with respect to payment of royalty. Since the application of CUP is not disputed either by Ld. AR or DR, we hold CUP to be the most appropriate method for benchmarking the payment of royalty. The issue thus remaining for our consideration is with respect to inclusion / exclusion of comparables.
>
> **xxx xxx xxx**
>
> 16.2 We find force in the contention of the assessee that royalty agreements operating in different geographical regions can be applied as a filter as the Ld. TPO himself has accepted royalty agreements operating in foreign jurisdictions. While the primary objection of the Hon'ble DRP in respect of comparability analysis is that the comparable selected by the assessee are from a different geographical region (i.e. USA), we observe that the three comparables considered by the Ld. TPO in the remand report are from the same geographical location (i.e. USA) and hence in our view the objection relating to difference in geographical region does not hold good.
>
> 16.3 So far as the objection of the Hon'ble DRP on the product dissimilarity is concerned, it is observed from the perusal of the

> <u>description of the agreements as provided in the Royaltstat database, all the three comparables selected by the Ld. TPO and the comparables selected by the assessee belong to same industry i.e. "kitchenware and home furnishing items" and hence these are valid comparables</u>."

7. The assessee also sought inclusion of further comparables as would be evident from paragraph No.16.5 of the ITAT's order. Dealing with the aforesaid, the ITAT has held as under:

> "17. <u>Perusal of the above chart shows that five comparables selected by the assessee are from same geography i.e. USA and the same industry i.e. "Kitchenware and home furnishing items" as the comparables considered by the Ld. TPO. The Ld. TPO rejected two of his own comparables i.e. Mikasa Inc. and Oneida Ltd. by holding that these two comparables are providing know-how whereas the assessee is not obtaining know-how which in our considered view is incorrect as evident from the license agreement as well as other documentary evidence submitted by the assessee. The assessee has paid royalty for use of trademark and marketing information /marketing know-how. All the eight comparables listed in the chart in para 16.5 above are from the same geography and same industry and hence are valid comparables to that of the assessee</u>. Accordingly, <u>the Ld. AO/TPO is directed to include the aforesaid eight comparables in the final set of comparable agreements for the purpose of benchmarking the payment of royalty by the assessee</u>. Ground No. 6 and 9 are thus allowed."

The inclusion of eight comparables was not questioned before us.

8. Consequently, we find that the appeal raises no substantial question of law and we see no reason to interfere with the ITAT's impugned order. The appeal shall thus stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MARCH 14, 2024/p