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

\+ ITA 858/2019

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

Through: Mr. Abhishek Maratha, Sr.SC with Ms. Nupur Sharma and Mr. Parth Semwal, Advs.

versus

M/S WOODWARD INDIA PVT. LTD.
..... Respondent

Through: Mr. Vishal Kalra, Adv.

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

**ORDER**

% **01.03.2024**

1. The Principal Commissioner has instituted the present appeal seeking to question the order passed by the Income Tax Appellate Tribunal ["**ITAT**"] dated 25 March 2019. It has in that connection proposed the following questions for our consideration:

> "A. Whether on facts and in the circumstances of the case and also prevailing law, the ITAT is correct in deleting the adjustment pertaining to Royalty and payment of Technical fee, ignoring the fact that for A.Y, 2009-10, the evidences produced by the assessee have already been considered at the level of the TPO?
> B. Whether on facts and in the circumstances of the case and also prevailing law, the ITAT is justified in ignoring the fact that every year is different and independent and the principle of res judicata is not applicable to income tax proceedings?
> C. Whether the ITAT is justified in relying on the case of *Magnetti Marelli* ignoring a later judgment of this Court in the case of *Gurner India*?
> D. Whether the ITAT's reliance on this Court's decision in *Magnetti Marelli* is erroneous as contrary to the position of law laid down in the said case, the impugned order grants impunity to

> the Respondent assessee against the burden of establishing ALP of each transaction separately, royalty and payment of technical fee?"

2. However, we note that when the matter was examined on 08 December 2023, we had identified the central issue which arose in the following terms:

> "**3.** ….Whether the upward adjustment made by the Transfer Pricing Officer (TPO) concerning royalty and fees for technical services paid by the respondent/assessee to its Associated Enterprise (AE), namely, Woodward Governor Company, USA, was tenable in law and on facts?"

3. As is evident from the aforesaid extract, the principal question was with respect to the upward adjustments directed and pertaining to royalty and fee for technical services paid by the assessee. It was in the aforesaid context that the Court had also taken note of the contention of Mr. Kalra that the procedure as suggested by the assessee of both the aspects being treated with an aggregated approach had been accepted by the Department itself for Assessment Years ["**AYs**"] 2011-12, 2012-13 and 2013-14.

4. It was also found by us that insofar as AY 2010-11 is concerned, the TPO had made similar upward adjustments which were ultimately deleted by the Dispute Resolution Panel ["**DRP**"].

5. Mr. Maratha, learned counsel appearing for the appellant, on instructions apprises us that although the aspect of royalty may have constituted the subject matter of the AYs as noticed by us hereinabove, the issue of technical know-how fee did not form the subject matter of consideration in AYs 2011-12, 2012-13 and 2013-14.

6. However, we note that undisputedly in AY 2010-11, both aspects were duly examined by the DRP. The direction as framed by the DRP in terms of the statutory regime which prevails would clearly

bind the Assessing Officer.

7. In view of the above, and bearing in mind the consistent approach which has been adopted for subsequent years, we find no justification to entertain the instant appeal. Consequently, we see no reason to interfere with the impugned order of the ITAT. The present appeal stands dismissed on the aforesaid terms.

**YASHWANT VARMA, J.**

**PURUSHAINDRA KUMAR KAURAV, J.**

**MARCH 01, 2024/p**