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

+ **ITA 430/2024**

PR. COMMISSIONER OF INCOME TAX - 1,Appellant

Through: **Mr. Vipul Agarwal, SSC.**

versus

M/S AVERY DENNISON (INDIA) PVT. LTD.....Respondent

Through: **Mr. Vishal Kalra and Mr. S.S.
Tomar, Advocates.**

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% **05.09.2024**

**CM APPL. 45897/2024 (28 Days Delay), CM APPL. 45898/2024
(178 Days Delay in Refiling)**

Bearing in mind the disclosures made, the delay in filing and
refiling the appeal is condoned.

The applications shall stand disposed of.

ITA 430/2024

1. The Principal Commissioner impugns the order of **the Income
Tax Appellate Tribunal¹** dated 05 June 2023 and posits the following
questions of law for our consideration:-

“A) Whether in the facts and circumstances of the case and in law
the Hon'ble ITAT was justified in deleting the addition made by
the TPO and holding that the payment made for Intra Group
Services was for commercial expediency?

B) Whether in the facts and circumstances of the case and in law
the Hon'ble ITAT was right in holding that the TPO has re-
characterized the intra group services transaction?

¹ Tribunal



C) Whether in the facts and circumstances of the case and in law the Hon'ble ITAT was right in not appreciating that TPO has not disallowed the intra group services merely on the issue of non-substantiation of commercial expediency by the assessee but on several factors?

D) Whether in the fact and circumstances of the case and in law the Hon'ble ITAT was justified in deciding the issue relying on the judgement in the case of assessee itself for AY 2007-08 & 2008-09, without considering that in the case of assessee company for AY 2007-08 & 2008-09, the issue was not decided by the Hon'ble Apex Court due to low tax effect and the issue is yet to be decided on merits by the Apex Court thus not attained finality?

E) Whether in the fact and circumstances of the case and in law, the Hon'ble ITAT was right in dismissing the Revenue's appeal holding that "huge details of intra-group services have been furnished by the assessee" without discussing details of the assessee's submissions and not considering the TPO's issues with these submissions despite being the highest fact-finding authority."

2. We note that identical issues appear to have been sought to be urged and canvassed by the Revenue right from **Assessment Year² 2007-2008**.

3. The Court while disposing of **Pr. Commissioner of Income Tax-1 vs. M/s Avery Dension India Pvt. Ltd³** had noticed the previous litigation in some detail and thus we deem it apposite to extract the order passed on that appeal hereinbelow:-

"2. This is the Revenue appeal against the order dated 29th October 2018 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.5404/Del/2018 for the Assessment Year (AY) 2014-15.

3. The issue sought to be urged by the Revenue is whether the ITAT erred in deleting the addition made by the Assessing Officer ('AO') without considering the findings of the Transfer Pricing Officer ('TPO') on the issue of determining the Arm's Length Price ('ALP') of international transactions involving the Assessee and its Associated Enterprises (AEs).

4. There is a long line of precedents involving the same Assessee concerning the earlier AYs. As far as AYs 2007-08, 2008-09 and

² AY

³ ITA 662/2019 decided on 23 July 2019



2010-11 are concerned the very same issue regarding determination of ALP of international transactions involving the Assessee was decided by this Court against the Revenue and in favour of the Assessee. The Special Leave Petitions filed by the Revenue thereagainst are stated to be pending in the Supreme Court.

5. However, for AYs 2012-13 and 2013-14 the ITAT appears to have remanded the matter to the TPO for a fresh determination. As far as the ITAT's order for AY 2013-14 is concerned the Assessee came in appeal to this Court by filing ITA No.219 of 2019. While disposing of the Assessee's appeal vide order dated 8th March 2019 this Court clarified that the TPO will pass a fresh order for AY 2013-14 uninfluenced by the observations made by the ITAT for the AY 2012-13.

6. It is accordingly pointed out by learned counsel for the Assessee appearing on advance notice that these two AYs i.e. 2012-13 and 2013-14 stood on a different footing and even there this Court was persuaded to clarify that the facts for one AY i.e. 2012-13 would not influence the decision in the subsequent AYs i.e. 2013-14.

7. Learned counsel for the Revenue made two submissions. One was to say that since for AYs 2012-13 and 2013-14 the matter had been remanded to the TPO, the ITAT should have, even for the present AY i.e. 2014-15 remanded the matter to the TPO for a fresh determination.

8. The Court finds that in the impugned order, the ITAT has given detailed reasons for not remanding the issue to the TPO. In particular, the ITAT noted that in AYs 2010-11 to 2012-13 the Dispute Resolution Panel ('DRP') accepted the Assessee's determination of the ALP with regard to two intra group services received by the Assessee viz., Ticketing HUB and VIPFS. As regards the other intra group services, the ALP was ascertained to be NIL by application of the CUP.

9. The ITAT has also discussed the avenues provided by the Assessee in respect of each and every service received by it. In Para 24, the ITAT has observed as under:

"24. In the present days, such businesses are mostly done through emails and service provider, who is providing service through emails and electronic media. None of the lower authorities have made any adverse comment in respect of services provided through emails. Moreover, such is the practice since AY 2007-08 and in earlier AYs, the same has been accepted. Above all, composite contract/ agreement is same and there is no change in the business profile of the assessee. The assessee has made payments in accordance



with the written agreements which are supported by detailed evidence regarding receipt of services. Since the payments have been made in pursuance to written agreements, in our considered opinion, the same should be a reasonable basis to confirm that payments are legitimate.”

10. The Court finds that the ITAT has given detailed reasons for accepting the case put forward by the Assessee. The view taken is a plausible one and does not give rise to any substantial question of law.

11. The other submission made is that the ITAT in fact did not consider the materials placed before the TPO and the decision taken thereon by the TPO in relation to each of the intra group services received by the Assessee from its AEs. The Court finds that the ITAT has in fact applied its mind to the evidence on record and given factual findings which this Court does not find to be perverse.

12. No substantial question of law arises. The appeal is dismissed.”

4. Both the Dispute Resolution Panel as well as the Tribunal have ultimately come to hold that in the facts and circumstances which were apparent from the record, there existed no justification to take a contrary view.

5. Although Mr. Agarwal has taken us through the order passed by the **Transfer Pricing Officer**⁴ and the tabular statement which forms part thereof to contend that in this particular year the TPO had found that no service has been rendered, we note that apart from certain stray observations which appear in that chart, the TPO does not rely upon any cogent evidence or material to support those observations. The issue in any case, would merit closure, bearing in mind the principles of consistency.

6. Consequently, and following the view which had been taken for previous years by this Court, we find no justification to interfere with the order impugned.

⁴ TPO



7. The appeal fails and shall stand dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

SEPTEMBER 5, 2024*/neha*