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

\+ ITA 1288/2018

SMART CUBE INDIA PVT. LTD. .....Appellant

Through: Mr Aniket D. Agrawal with Mr Abhishek Singhvi, Advocates.

versus

INCOME TAX OFFICER .....Respondent

Through: Mr Rahul Bhatt, Advocate for Mr Sanjay Kumar, SSC.

\+ ITA 206/2020

SMART CUBE INDIA PVT LTD .....Appellant

Through: Mr Aniket D. Agrawal with Mr Abhishek Singhvi, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX.....Respondent

Through: Mr Rahul Bhatt, Advocate for Mr Sanjay Kumar, SSC.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

O R D E R

% **07.11.2024**

1. The learned counsel appearing for the appellant submits that the present appeals have been rendered academic as a final assessment order passed by the assessing officer (AO) has been set aside. He states that the present appeals impugn the order dated 27.04.2018 in ITA No.1103/Del/2015 pertaining to Assessment Year (AY) 2010-11 as well as

order dated 29.07.2020 in ITA No.6078/Del/2015 in respect of AY 2011-12. The said orders were rendered in appeals preferred against the final assessment orders passed by the AO on 14.01.2015 in respect of AY 2010-11 and on 19.10.2015 in respect of AY 2011-12. The appellants were aggrieved as certain entities were included as comparables for determining the arm's length price under Section 92CA of the Income Tax Act, 1961 (hereafter *the Act*).

2. The appellant is aggrieved by the order passed by the learned Income Tax Appellate Tribunal (hereafter *ITAT*) remanding the matter to the learned Transfer Pricing Officer (TPO) with certain directions.

3. It is stated that the TPO had proceeded to pass fresh orders on 05.01.2021 in respect of AY 2010-11 and an order dated 29.03.2022 in respect of AY 2011-12. In terms of the said orders the TPO proposed an upward adjustment of ₹1,80,69,890/- and ₹1,43,77,827/- respectively. The AO passed assessment orders dated 29.09.2021 and 30.03.2022 pursuant to the order passed by the TPO. These assessment orders were challenged by the petitioner in writ petitions being WP(C) 12844/2021 and WP(C) 6365/2022. The said petitions were disposed of by a common judgment dated 02.09.2024 – ***Pr. CIT v. Sumitomo Corporation India (P.) Ltd*.:** (2024) 166 taxmann.com 55 (Del) quashing the said orders, *inter alia*, on the ground that the AO had not followed the procedure as stipulated under Section 144C of the Act.

4. In view of the above, the present appeals are rendered academic. Learned counsel seeks to withdraw the same with liberty to revive the said appeals in the event the judgment of this court in **Pr. CIT v. Sumitomo Corporation India (P.) Ltd.** is set aside.

5. The appeals are dismissed as withdrawn with the aforesaid liberty.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

NOVEMBER 07, 2024/tr *Click here to check corrigendum, if any*