$~10

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

\+ ITA 115/2018

PRINCIPAL COMMISSIONER OF INCOME TAX – 2 .....Appellant

Through: Mr. Shlok Chandra, SSC with Ms. Madhavi Shukla, Ms. Priya Sarkar, JSCs, Mr. Sudarshan Roy & Ms. Kavita Rani, Advs.

versus

BIRLASOFT PVT. LTD. .....Respondent

Through: Mr. Neeraj Jain & Mr. Aniket D. Agrawal, Advs.

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

<u>O R D E R</u>

% **02.08.2024**

1. The Principal Commissioner seeks to assail the order of the Income Tax Appellate Tribunal ["**Tribunal**"] dated 31 July 2017 and which has been rendered in the context of Assessment Year ["**AY**"] 2006-07. By the time the appeal came to be taken up by the Tribunal, it represented the second round of litigation since in the first round of proceedings before it, the appeal was disposed of and the matter remanded back to the Transfer Pricing Officer ["**TPO**"] with the following directions:

> "...We, therefore, restore this matter back to the file of the Assessing Officer/ Transfer Pricing Officer for fresh adjudication and for the purpose of determining the arm's length price in respect of the international transactions undertaken with the associated enterprise by making internal comparison of profitability from the international transactions with associated enterprise and profitability from the international transactions with unrelated parties after allocating respective revenues and expenses to both the segmental. The Assessing officer/ TPO shall provide reasonable

opportunity of being heard to the assessee. The assessee shall furnish all the details and particulars before the authorities below to enable them to make internal comparison of the profitability from the international transactions with associated enterprise and unrelated parties undertaken by the assessee in the similar functional and economic scenario. We order accordingly."

2. The Tribunal has also taken into consideration the undisputed fact that by the time this appeal came to be taken up for consideration, the Department had taken a consistent view in AY 2007-08 to 2011-12 insofar as comparables and controlled transactions were concerned. However, the Tribunal noted that the TPO had proceeded far beyond the directions of remit which had been framed and undertaken an exercise to recompute the net profit margin. This becomes evident from a reading of paragraph 13, which is reproduced hereinbelow:

"**13.** <u>It has been observed that Ld. AO, instead of restricting himself to the directions of this Tribunal proceeded to re-compute the net profit margin earned from unrelated transaction in non-AE segment, by substituting the actual cost of employee expense and cost of outsourced work in the unrelated party segments at the same level as that in the related party segment</u>."

3. In view of the aforesaid, we find no ground to entertain this appeal. No substantial question of law arises. The appeal, consequently, stands dismissed.

YASHWANT VARMA, J

RAVINDER DUDEJA, J

AUGUST 2, 2024/kk