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

\+ ITA 426/2022

PRINCIPAL COMMISSIONER OF INCOME TAX-1 .....Appellant

Through: Mr Vipul Agrawal with Ms Sakashi Shairwal and Mr Akshat Singh, Advocates.

versus

M/S. AVAYA INDIA PRIVATE LTD. .....Respondent

Through: Dr Shashwat Bajpai with Mr Sarthak Tripathi, Advocates.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE VINOD KUMAR

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

% **11.09.2025**

1. This petition was admitted on 10.12.2024 on a solitary substantial question of law which we reproduce as under:

> *"A. Whether the Tribunal, in the facts and circumstances of the case and in law, has erred in excluding RS Software (India) Ltd. as a comparable for benchmarking the international transaction, without appreciating the act that the said company is functionally similar to the assessee and qualifies all the filters applied by the TPO?"*

2. On 25.02.2025, this Court, by noting the submission of Mr. Vipul Agrawal, learned Senior Standing Counsel to take instructions on the submissions made by Dr. Sashwat Bajpai, had adjourned the matter.

3. Today, Mr. Agarwal has placed before us a communication dated 21.03.2025 which is an intraoffice communication from the Deputy

Commissioner of Income Tax, Transfer Pricing Officer-1(1)(1) to the Joint Commissioner of Income-tax (OSD) Circel-1(1), New Delhi, wherein *inter alia* the following has been stated:-

> *"Thus, the margin of the assessee falls within the arm's length tolerance range even if RS Software Limited is included in the final list. Thus, due to exclusion of above 3 comparables, the assessee's PLI falls within the arm's length tolerance range and the adjustment would be Nil even if RS Software Ltd is included in the final list. Hence the exclusion or inclusion of the comparable RS Software Ltd. would have no bearing."*

4. Though, it is also stated that this Court may decide the issue of the comparable RS Software Ltd on merits, but in view of the stand taken that even if RS Software Ltd is included in the final list, the adjustment would be nil and as such the exclusion or inclusion of the RS Software would have no bearing, we are of the view that the issue being academic, the present appeal need to be closed, leaving the substantial question of law as framed in the order dated 10.02.2024 open, to be decided in a more appropriate case.

V. KAMESWAR RAO, J

VINOD KUMAR, J

SEPTEMBER 11, 2025
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