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THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 14.03.2013

\+ **ITA 1828/2010**
\+ **ITA 1829/2010**
\+ **ITA 1254/2011**

CIT ..... Appellant

versus

GLOBAL VANTEDGE PVT. LTD. ..... Respondent

Advocates who appeared in this case:
For the Appellant : Mr Sanjeev Sabharwal, Sr. Standing Counsel with Ms Gayatri Verma, Advocate.
For the Respondent : Mr Vikas Srivastava with Mr Jatinder Pal Singh and Parag Mohanty, Advocates.

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE R.V.EASWAR

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

These three appeals by the revenue relate to the assessment years 2003-04, 2004-05 and 2005-06. The appeals in respect of the assessment years 2003-04 and 2004-05 (ITA No.1828/2010 and 1829/2010) arise out of the Income Tax Appellate Tribunal's order dated 17.12.2009 passed in ITA Nos.1432 and 2321/Del/2009. The third appeal (ITA No.1254/2011)

is in respect of the assessment year 2005-06 and arises out of the Tribunal's order dated 06.05.2011 passed in ITA No.116/Del/2011. The latter order passed by the Tribunal has merely followed the earlier order dated 17.12.2009.

2. The issue sought to be raised in the present appeals is with regard to the determination of the arms' length price. From the impugned orders and, in particular, the order dated 17.12.2009 we find that the Tribunal has examined this issue at length and has extensively quoted the decision of Commissioner of Income Tax (Appeals) on the said issue. After having done so and examining the order of the Commissioner of Income Tax (Appeals), the Tribunal confirmed the said finding for want of any cogent reasons on the part of the revenue to disturb the said findings. In fact, the exact language used by the Tribunal for confirming the findings of the CIT (Appeals) is as under: -

> "19. During the course of hearing of this, appeal, neither the ld Counsel of the Assessee nor the D.R. for the revenue have been able to point out any basis or material or criteria to controvert or to rebut the finding and conclusion arrived at by the ld. CIT (A) except by relying upon their respect stand taken before the ld. CIT (A). Though the ld. counsel for the Assessee made a specific submission about the benefit of adjustment of +5% to be given while determining the arms Length Price, the ld. Counsel for the Assessee has not been

pointed out as to who and in what manner, the order of the CIT (A) in rejecting this claim of the Assessee is improper and unjustified. Since both the parties have not been able to controvert the finding recorded by the ld. CIT (A) or point out any material to enable us to take a view other than view taken by the ld. CIT (A), we are inclined to uphold the order of ld. CIT (A) on the point of determination of Arms Length Price in respect of the transaction entered into the Assessee with its association enterprise, namely, RCS Centre Corp. Therefore, the order of the ld. CIT (A) is upheld, and the ground raised by the Assessee as well as by the revenue on this issued are rejected."

3. The learned counsel for the revenue contended that it was incumbent upon the Tribunal to have recorded its own findings rather than merely confirming the findings of the CIT (Appeals). However, the learned counsel for the respondent/ assessee drew our attention to the Supreme Court decision in the case of ***CIT v. K.V. Pilliah and Sons*** **: (1966) 63 ITR 411 (SC)**, wherein, on a similar point having been raised, the Supreme Court observed as under: -

"The Income-tax Appellate Tribunal is the final fact-finding authority and normally it should record its conclusion on every disputed question raised before it, setting out its reasons in support of its conclusion. But, in failing to record reasons, when the Appellate Tribunal fully agrees with the view expressed by the Appellate Assistant Commissioner and has no other ground to record in support of its conclusion, it does not act illegally or irregularly, merely because it does not repeat the grounds of the Appellate Assistant Commissioner on which the decision was given

> against the assessee or the department. The criticism made by the High Court that the Tribunal had "failed to perform its duty in merely affirming the conclusion of the Appellate Assistant Commissioner" is apparently unmerited."

4. In view of the observations of the Supreme Court in the case of ***K.V. Pilliah and Sons*** (supra) it is apparent that merely because the Tribunal confirmed the findings of the lower appellate authority it does not mean that the Tribunal has acted illegally or irregularly. In the present case, we find that the Tribunal had examined the findings of the Commissioner of Income Tax (Appeals) in detail and had given an opportunity to the departmental representative to controvert or rebut the findings and conclusions arrived at by the CIT (Appeals). However, despite that opportunity, it is recorded in the order, a portion whereof was extracted above, that the departmental representative had not been able to controvert those findings and point to any material to enable the Tribunal to take a view other than the view taken by the CIT (Appeals). It is in these circumstances that the Tribunal concurred with the view taken by the CIT (Appeals). It is also not the case of the revenue that the departmental representative had made certain points controverting the findings of the CIT (Appeals), which have not been taken into account by the Tribunal. Had that been done, possibly, the revenue would have filed

an application under section 254 of the Income Tax Act, 1961 for rectification but that has also not been done. In these circumstances, we do not find any substantial question of law which arises for our consideration in these appeals. The appeals are dismissed.

BADAR DURREZ AHMED, J

R.V.EASWAR, J

MARCH 14, 2013
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