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

+ ITA 412/2011

CIT Appellant
Versus

VEDARIS TECHNOLOGY PVT LTD Respondent

+ ITA 418/2011

CIT Appellant
Versus

VEDARIS TECHNOLOGY PVT LTD Respondent

Present:- Mr Rohit Madan, Adv. for the appellants.
Mr Manoj Arora, Adv. with Mr Siddharth Shankar,
Ms Shaista Arora, Adv. for respondents.

CORAM:
**HON'BLE MR. JUSTICE BADAR DURREZ AHMED, ACTING
CHIEF JUSTICE**
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
02.09.2013

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1. These appeals are directed against the order dated 31.03.2010 passed by the Income Tax Appellate Tribunal, Delhi Bench 'H', Delhi in ITA No.4372 (Del)/2009 as also in the cross-objection preferred by the Revenue before the Tribunal. The relevant assessment year is 2002-03. The only grievance of the Revenue/appellants in these appeals is that the Tribunal ought not have remanded the matter to the Assessing Officer and ought to have decided the issue itself. The relevant observations of the Tribunal with regard to the remand are contained in paragraph 6.2 of the impugned order. The said paragraph reads as under:



“6.2 We have considered the facts of the case and submissions made before us. Rule 10B(1)(e)(iii) provides that the net profit margin worked out under TNMM is to be adjusted to take into account the differences between international transaction and comparable uncontrolled transaction, which could materially affect the amount of net profit margin in the open market. Thus, the question is, - whether the availability of advances from the Vedaris, U.K. is a material factor in determining the rate of net profit? We are of the view that availability of funds without stipulation of interest does make difference in the rate of net profit. In the case of E-Gain Communications (P) Ltd. (supra), the division bench of the Tribunal held that in comparing controlled and uncontrolled transactions under TNMM, the differences having tangible bearing on cost price or profit are to be considered with a view to make reasonable adjustment so that the impact of such differences are eliminated. We have already given a finding that the advances received from the parent company may have impact on the net profit margin. However, its impact on the margin has not been examined by the lower authorities as they simply refused to make adjustment in this regard. Therefore, we restore this matter to the file of the AO to consider the working furnished by the assessee and decide the ground of adjustment after hearing the assessee. However, such adjustment shall now be worked only on the basis of the accounts of Sofia Software Ltd. Thus, ground No.3 is restored to the file of the AO for fresh decision to the extent of making this adjustment.”

2. On going through the above reasoning adopted by the Tribunal, we feel that since the Tribunal was of the view that the differences would have a tangible bearing on the cost price or profit and would have an impact on the ultimate result, therefore, it would be appropriate for the Assessing Officer to re-work the adjustments. In view of the fact that the factual considerations needed to be examined, there was nothing wrong in the



Tribunal remanding the matter to the Assessing Officer for the said purpose. We are not interfering with the impugned order passed by the Tribunal. However, it must be made clear that we have not expressed any opinion on the merits of the matter.

3. With these observations, we feel that no substantial question of law arises for our consideration in these appeals and the same are accordingly dismissed.

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BADAR DURREZ AHMED, ACJ

Vibhu Bakhru
VIBHU BAKHRU, J

SEPTEMBER 02, 2013

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