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

\+ ITA 199/2022

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

Through: Mr. Sanjay Kumar and Ms. Easha Kadian, Advocates.

versus

DENTSPLY INDIA PVT. LTD. ..... Respondent

Through: None.

% Date of Decision: 18th July, 2022

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, J (Oral):

1. Present Income Tax Appeal has been filed challenging the Order dated 4th May, 2021 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 752/Del./2009 for Assessment Year 2002-03.

2. Learned Counsel for the Appellant states that the ITAT has erred in solely relying on the decision of ITAT, Mumbai Bench in the case of ***Mattel Toys (I) Pvt. Ltd. vs. DCIT in ITA No. 2476 & 2801/Mum/2008*** without appreciating that the facts in the case of the assessee are entirely different from the one relied upon. He further states that the ITAT has erred in directing application of the Resale Price Method (RPM) as the Most Appropriate Method ('MAM') when the selection of the Most Appropriate Method was not under challenge before lower authorities, also when the

assessee itself had applied the Trans Net Margin Method (TNMM) as the MAM in the TP Study.

3. Having perused the paper book, this Court finds that the authorities below have found that 95% of the business of the assessee involves trading activity. In fact, the function of the assessee during the year under consideration, as stated in the Orders of the lower authorities, is reproduced herein under:-

> *"The assesses company is a wholly owned subsidiary of Dentsply International, USA The assessee company is engaged in manufacturing and trading of dental products. The total sale of the assessee during the year was Rs. 14.05 crores. The raw material, for the dental products manufactured by the assessee, is procured from unrelated parties. The products traded by the assessee are entirely purchased from its Associated Enterprises.* ***The trading activity constituted about 95% of the business and the remaining 5% is from manufacturing activity.*** *The dental products manufactured or traded by the Assessee are sold to the dealers or distributors of these dental products and also to dentists directly."*

4. Consequently, the facts in the present case are akin to the case of ***M/s Mattel Toys India Pvt. Ltd.*** (supra).

5. Further, the mere fact that the assessee had relied on TNMM in its transfer pricing report would not in any way preclude the ITAT from adopting the RPM as the MAM under Section 92C of the Act, if it so finds in the circumstances of the case. The decision of Supreme Court in ***Kedarnath Jute Manufacturing Co. Ltd. V. Commercial Tax Officer, AIR 1996 SC 12*** is an authority for the proposition that tax authorities and adjudications as well as assessee are not precluded by the positions taken in returns, documents or accounts and have the duty (and a corresponding right) to apply the correct legal principle. Thus, the use of one method in a

transfer pricing report does not estop the assessee from later claiming that another method is the most appropriate one, provided that is indeed the correct position. [See: ***PCIT vs Matrix Cellular International Services Pvt. Ltd. [ITA 484/2017***].

6. In fact, this Court in ***Matrix Cellular International Services Pvt. Ltd.*** (supra) has upheld the finding of the Bombay Tribunal in ***Mattel Toys (I) Pvt. Ltd. vs. DCIT in ITA No. 2476 & 2801/Mum/2008,*** and observed as under:-

> *"10. A similar view has been adopted by the Mumbai bench of the ITAT in Mattel Toys v. Deputy Commissioner of Income Tax, (2013) 158 TTJ (Mum)461:*
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> > *"Thus, the RPM method identifies the price at which the product purchased from the A.E. is resold to a unrelated party. Such price is reduced by normal gross profit margin i.e., the gross profit margin accruing in a comparable controlled transaction on resale of same or similar property or services. The RPM is mostly applied in a situation in which the reseller purchases tangible property or obtain services from an A.E. and reseller does not physically alter the tangible goods and services or use any intangible assets to add substantial value to the property or services i.e., resale is made without any value addition having been made."*
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> *11. This view has also been affirmed by the Bombay High Court in its judgment dated 07.11.2014 in Commissioner of Income Tax v. L'Oreal India Pvt. Ltd. (ITA No. 1046 of 2012), where the Court found that there was no error in law*

committed by the ITAT when it held that RPM was the Most Appropriate Method in case of distribution or marketing activities especially when goods are purchased from associated entities and there are sales effected to unrelated parties without any further processing. In fact, a Division Bench of this Court in its decision in Bausch & Lomb Eyecare (India) Pvt. Ltd. v. Additional Commissioner of Income Tax, (2016) 381 ITR 227 (Del), while considering the decision of this Court in Sony Ericsson Mobile Communications India Pvt. Ltd. v. Commissioner of Income Tax, (2015) 374 ITR 118 (Del), noted that:

> *"The RP Method loses its accuracy and reliability where the reseller adds substantially to the value of the product or the goods are further processed or incorporated into a more sophisticated product or when the product/service is transformed."*

12. Therefore, a contrario, when the reseller does not add any value to the product of the goods, the RP method would be appropriate for determining the arms' length price.

13. Accordingly, we find that the ITAT committed no error in law in applying RPM as the Most Appropriate Method for computing the arms' length price. The Revenue's grievance is that the ITAT could not have applied RPM as the Most Appropriate Method, given that the assessee had itself, in its transfer pricing study report, and before the DRP, adopted the TNMM as the Most Appropriate Method to benchmark the international transactions it had undertaken, and only adopted the RPM as a secondary method to justify its losses at the net level.

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15. This Court finds that the ITAT's reasoning on this issue is without flaw. The ITAT's reasoning, relying on the decision in Luxottica (supra), that since the ultimate aim of the transfer pricing exercise is to determine an accurate value of the arms' length price for the purpose of taxation/and therefore the appellate authorities would not be barred from adopting a

different method, from that adopted by the assessee in the transfer pricing report, if the latter is not found to be the Most Appropriate Method. Accordingly, this Court does not discern any illegality in the ITAT's approach in determining that RPM was, in the given circumstances, and having regard to the business of the assessee, the Most Appropriate Method for determining the arms' length price. The mere fact that the assessee had relied on TNMM and had only used RPM as a secondary method in its transfer pricing report, would not in any way preclude the ITAT from adopting the RPM as the Most Appropriate Method under Section 92C of the Act, if it so finds in the circumstances of the case. Kedarnath Jute Manufacturing Co. Ltd. v. Commercial Tax Officer, AIR 1966 SC 12 is an authority for the proposition that tax authorities and adjudicators as well as assessees are not precluded by the positions taken in returns, documents or accounts and have the duty (and a corresponding right) to apply the correct legal principle. Thus, the use of one method in a transfer pricing report does not estop the assessee from later claiming that another method is the most appropriate one, provided that is indeed the correct position.

16. For the above reasons, we are of the opinion that no substantial question of law arises. The appeal is accordingly dismissed."

7. Keeping in view the aforesaid, this Court is of the view that no substantial question of law arises for consideration in the present appeal. Accordingly, the present appeal is dismissed.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

JULY 18, 2022/msh