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

+ **ITA 110/2023**

ITA 111/2023

ITA 112/2023

ITA 113/2023

ITA 114/2023

ITA 115/2023

PRINCIPAL COMMISSIONER OF INCOME TAX - 4 DELHI

..... Appellant

Through: Mr Abhishek Maratha, Sr. Standing
Counsel.

versus

JOHNSON MATTHEY INDIA PVT LTD

..... Respondent

Through: Mr Sumit Mangae with Mr Mayank
Aggarwal and Ms Anukrati Gupta,
Advocates.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

ORDER

27.02.2023

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[Physical Hearing/Hybrid Hearing (as per request)]

1. We are informed, that for Assessment Years (AYs) 2007-2008, 2008-2009 and 2009-2010, the appellant/revenue's appeal has been admitted.

1.1 This is not disputed by the counsel for the respondent/assessee. In fact, counsel for the respondent/assessee has placed before us, a hardcopy of order dated 12.11.2018 passed in ITA Nos.826/2018, 808/2018 and 814/2018 concerning the said AYs.

ITA 110/2023 & connected appeals

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1.2 The question of law framed by the coordinate bench reads as follows:

“Whether the Income Tax Appellate Tribunal was right in directing that Transactional Net Margin Method and not Comparable Uncontrolled Price Method should be applied to compute the Arms Length Price in respect of ‘intra-group services?’”

2. Counsel for the respondent/assessee says, that the question of law framed in the said AYs is broad.

2.1 It is his contention, that there are two kinds of expenses in the instant appeals. First, the cost sharing charges; and, second, testing charges.

2.2 Insofar as cost sharing charges are concerned, this issue arises in the appeals filed by the appellant/revenue, which as noticed above, have already been admitted.

2.3 Insofar as testing charges are concerned, it is the contention of counsel for the respondent/assessee, that the CIT(A) applied the “benefit test” as well, and thereafter, concluded that the respondent/assessee had derived benefit.

2.4 This finding, according to the counsel for the respondent/assessee, has been affirmed by the Income Tax Appellate Tribunal [in short, “Tribunal”] as well. The contention being, that if the instant appeals are admitted, then the question of law should be confined to cost sharing charges.

2.5 It is also submitted by the counsel for the respondent/assessee, that insofar as testing charges are concerned, the appellant/revenue never lodged an appeal with the Tribunal.



3. Mr Abhishek Maratha, learned senior standing counsel, who appears on behalf of the appellant/revenue, says that the Transfer Pricing Officer (TPO) had made an upward adjustment concerning the AYs in issue in the instant appeals, because no evidence was laid before him.

4. We have queried Mr Maratha, as to whether after the CIT(A) had ruled in favour of the respondent/assessee, any ground was raised by the appellant/revenue in their appeal preferred before the Tribunal, that no evidence was laid.

4.1 Mr Maratha states, that he will file the record which was placed before the Tribunal, for being considered by the Court.

5. Accordingly, list the appeals on 21.04.2023.

CM APPL. 9360-61/2023*[Applications filed on behalf of the appellant seeking condonation of delay of 113 days in filing and re-filing the appeal]*
in ITA 110/2023

CM APPL. 9362-63/2023*[Applications filed on behalf of the appellant seeking condonation of delay of 113 days in filing and re-filing the appeal]*
in ITA 111/2023

CM APPL. 9366-67/2023*[Applications filed on behalf of the appellant seeking condonation of delay of 113 days in filing and re-filing the appeal]*
in ITA 112/2023

CM APPL. 9369-70/2023*[Applications filed on behalf of the appellant seeking condonation of delay of 113 days in filing and re-filing the appeal]*
in ITA 113/2023



CM APPL. 9372-73/2023 [*Applications filed on behalf of the appellant seeking condonation of delay of 113 days in filing and re-filing the appeal*] in ITA 114/2023

CM APPL. 9375-76/2023 [*Applications filed on behalf of the appellant seeking condonation of delay of 113 days in filing and re-filing the appeal*] in ITA 115/2023

6. Counsel for the respondent/assessee says, that since the appellant/revenue's appeal had been admitted for the AYs indicated above, the delay in both filing and re-filing the instant appeals should be condoned.

6.1 It is ordered accordingly.

7. Consequently, the applications are disposed of.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

FEBRUARY 27, 2023 / tr

[Click here to check corrigendum, if any](#)