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

+ **ITA 9/2023 & CM Appl.926/2023**

HAIER APPLIANCES INDIA PVT LTD .....Appellant  
Through: Mr Neeraj Jain, Mr Aniket D.  
Agrawal, Mr Saksham Singhal & Mr  
Abhishek Singhvi, Advs.

*versus*

DCIT CIRCLE 11(1) NEW DELHI .....Respondent  
Through: Mr Abhishek Maratha, Sr. Standing  
Counsel.

+ **W.P.(C) 261/2023 & CM Appls.992/2023**

HAIER APPLIANCES INDIA PVT LTD .....Petitioner  
Through: Mr Neeraj Jain, Mr Aniket D.  
Agrawal, Mr Saksham Singhal & Mr  
Abhishek Singhvi, Advs.

*versus*

DCIT CIRCLE 11(1) NEW DELHI .....Respondent  
Through: Mr Abhishek Maratha, Sr. Standing  
Counsel.

**CORAM:**  
**HON'BLE MR JUSTICE RAJIV SHAKDHER**  
**HON'BLE MS JUSTICE TARA VITASTA GANJU**

**ORDER**

**10.01.2023**

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

1. The above-captioned actions concern Assessment Year [AY] 2008-2009.



2. ITA 9/2023 is directed against the order dated 21.09.2020 passed by the Income Tax Appellate Tribunal [in short “Tribunal”] in ITA No. 2279/Del/2018, while W.P.(C) 261/2023 is directed against the order dated 10.08.2022 passed by the Tribunal in M.A. No. 69/Del/2021.

3. This application had been filed by the appellant/assessee to seek rectification of what it construed as error apparent on the face of the record, with regard to the order dated 21.09.2020 passed in the appeal lodged before the Tribunal.

4. In the appeal i.e., ITA 9/2023, the appellant/assessee has proposed the following questions of the law:

*“(i) Whether in the facts and in the circumstances of the case, the impugned order dated 21.09.2020 passed by the Tribunal is perverse / self-contradictory inasmuch as, on the one hand, the Tribunal following the decision of this Hon’ble Court in appellant’s own case in ITA No. 713/2016 specifically allowed the appellant’s contention that AMP expenses should be benchmarked by the applying RPM method and that the adjusted gross profit margin of appellant is higher than the adjusted gross profit margin of the comparable company [thus, resulting in deletion of the entire addition], while on the other hand, adjudicating the alternative (without prejudice) submission of the appellant thereby, upholding AMP adjustment to the extent of Rs.2,85,10,127?”*

*(ii) Whether the impugned order dated 21.09.2020 passed by the Tribunal based on grossly untenable application of legal principles and incorrect appreciation of facts, to the extent of issues raised in the present appeal, is factually and legally perverse?”*

5. The proposed questions, in a sense, broadly articulate the grievance of the petitioner/assessee.



5.1 The petitioner/assessee asserts, and in our view quite rightly, that since the benchmark of its advertising, marketing and sales promotion expenses had been carried out using Resale Price Method (RPM) with the comparable accepted by the Transfer Pricing Officer [TPO] i.e., Vivek Ltd., the Tribunal ought not to have gone further and dealt with the alternate plea raised by the assessee.

6. A perusal of the order dated 21.09.2020 passed by the Tribunal shows, that the ratio of adjusted gross profit to sales of the appellant is pegged at 24.32%, while that of Vivek Ltd. is fixed at 8.80%.

6.1 If this position is to be taken into account, then the ratio of adjusted gross profit to sales of the assessee is better than the comparable i.e., Vivek Ltd.

7. The assessee, thus, says that even if the sales and distribution expenses of Rs 101,850,415/- are excluded, *albeit* without prejudice to its rights and contentions, the upward adjustment, at best, would work out to Rs. 2,85,10,127/-.

8. The Tribunal, while upholding the main plea of the petitioner, has also ruled on an alternative plea, and therefore, according to the assessee, contradicted itself.

8.1 The assessee, in order to persuade the Tribunal to correct the error moved the M.A. i.e., M.A. No. 69/Del/2021 which was rejected by the Tribunal *via* the aforementioned impugned order dated 10.08.2022, impugned in W.P.(C) 261/2023.

9. Accordingly, the proposed questions of law are admitted.



10. Since the issue falls in a narrow compass, Mr Abhishek Maratha, who appears on behalf of the respondent/revenue says that he will return with instructions.

11. List the matter on 03.02.2023.

**RAJIV SHAKDHER, J**

**TARA VITASTA GANJU, J**

**JANUARY 10, 2023/r**  
*ITA 9/2023 & connected*

*Click here to check corrigendum, if any*  
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