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

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**ITA 374/2015**

PR. COMMISSIONER OF INCOME TAX-09 ..... Appellant  
Through: Ms Suruchi Aggarwal, Senior Standing  
Counsel with Ms Vibhooti Malhotra, Junior  
Standing Counsel and Ms Radhika Gupta,  
Advocates.

versus

TOLL GLOBAL FORWARDING INDIA PVT. LTD..... Respondent  
Through: Dr. Rakesh Gupta, Ms. Poonam Ahuja  
Mr. Rohit Kumar Gupta, Advocates.

**AND**

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**ITA 396/2015**

PR. COMMISSIONER OF INCOME TAX-09 ..... Appellant  
Through: Ms Suruchi Aggarwal, Senior Standing  
Counsel with Ms Vibhooti Malhotra, Junior  
Standing Counsel and Ms Radhika Gupta,  
Advocates.

versus

TOLL GLOBAL FORWARDING INDIA PVT. LTD..... Respondent  
Through: Dr. Rakesh Gupta, Ms. Poonam Ahuja  
Mr. Rohit Kumar Gupta, Advocates.

**CORAM:**  
**JUSTICE S. MURALIDHAR**  
**JUSTICE VIBHU BAKHRU**

**ORDER**  
**10.12.2015**

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1. These are two appeals by the Revenue under Section 260A of the Income Tax Act 1961.

2. ITA No. 374/2015 is directed against the impugned order dated 18<sup>th</sup> November, 2014 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.5025/Del/2010 for Assessment Year ('AY') 2006-07. ITA No. 396/2015 is directed against the impugned order dated 18<sup>th</sup> November, 2014 passed by the ITAT in ITA No. 774/DEL/2012 for the AY 2007-08.

3. The Respondent Assessee is a logistics service provider, offering a bouquet of international and domestic freight handling services including time defined air and ocean transport and freight forwarding services. The Assessee has been using the Comparable Uncontrolled Price ('CUP') Method for benchmarking its international transactions with its Associated Enterprises ('AEs'). The residual profits were split between the Assessee and the AEs in the ratio of 50:50.

4. A reference was made by the Assessing Officer (AO) to the Transfer Pricing Officer ('TPO') to determine the Arm's Length Price (ALP) under Section 92CA(3) in respect of the international transactions entered into by the Assessee during the financial years in question. In the order 21<sup>st</sup> August, 2009, the TPO observed that initially the Assessee only submitted its audited financials along with the auditor's tax audit report, computation of total income and the previous assessment orders. Pursuant to notices issued by the TPO, a Transfer Pricing Study was also furnished by the Assessee. The

TPO was not persuaded to adopt the CUP Method since according to the TPO the Assessee was required to “furnish the documents/vouchers related to third party for export and import transactions related to controlled and uncontrolled transactions.” The TPO, therefore, proceeded to adopt the Transactional Net Margin Method (‘TNMM’) and benchmarked the profitability of the Assessee with comparable companies engaged in a similar business by application of the TNMM at the entity level by using operating margin as the profit level indicator. On this methodology, the TPO determined that there was a difference of Rs.20,900,179/- between the booked value and the ALP and since the same was more than 5%, the said difference was added back to the income of the Assessee.

5. On the basis of the above order of the TPO for AY 2006-07 the AO passed a draft assessment order on 26<sup>th</sup> November, 2009 which was taken up before the Dispute Resolution Panel (DRP) by the Assessee unsuccessfully. Ultimately, the AO passed the final assessment order on 20<sup>th</sup> September, 2010 in line with the order of the TPO. A similar exercise was performed for AY 2007-08 and against both the orders of the AO appeals were filed before the ITAT.

6. The impugned order of the ITAT for AY 2006-07 noted at the outset in para 5 as under:

“We find that in the present case it is not really even in dispute that in this field of business activity, the 50:50 business model (i.e. the business model of sharing residual profits in equal ratio with the service provider at the other end of the

transaction i.e. at the consignee's end in the case of export transaction and at consigner's end in the case of import transaction), is a standard practice. In other words, even with respect to the transaction with unrelated parties in this line of activity, it is admitted practice to share the residual profit in equal ratio and that is precisely the assessee claimed to have been adopted with the associated enterprise as well.”

7. The ITAT acknowledged that where a standard formula is adopted, the data regarding the precise amount charged or received for precisely the same services may not be available. Since the Assessee failed to furnish data to show that exactly the same amount was charged for the same service in the uncontrolled transactions, the TPO rejected the CUP method and instead adopted the TNMM, which is normally deployed as a method of last resort for computation of ALP.

8. The ITAT then proceeded to examine, in light of Rule 10B(1)(a), the appropriateness of adopting the CUP Method in the present case notwithstanding that the Assessee “has not even made any efforts to demonstrate nor claimed that actual amount charged for comparable services rendered to, or received from, associated enterprise is the same as in the case of the independent enterprise.” What the Assessee fell back on, and was accepted by the ITAT as sufficient for arriving at the conclusion that the

price charged was at arm's length, was the fact that the profit sharing ratio of the transaction between the Assessee and the AEs was no different from that with a third party, viz., 50:50. In para 19 of the impugned order of the ITAT, it was observed as under:

“19. It is also important to bear in mind the fact that what we are dealing with at present is a classic case in which while there is no, and there cannot be any, dispute even at the assessment stage, that the terms at which the assessee has entered into the arrangements with the AEs are the same as the terms at which the assessee has entered into arrangements with the independent enterprise, there are still some procedural issues, with regard to application of methods of determining arm's length price as set out in Rule 10B. Here is a case in which there is no dispute that the price determination for all business associates, whether associated enterprises or independent enterprises, is on the same terms and as per the same business model, which is admittedly unique to that line of business, but, owing to the limitations of the methods prescribed under Rule 10B(1)(a) to (e), as the prescribed method of determining the arm's length price existed at the relevant point of time, there are certain, what can at best be described as, unresolved procedural issues.”

9. The ITAT concluded in para 29 of the impugned order as under:

“We hold that the assessee's contention to the effect that the arm's length price of services rendered to, or received from, the associated enterprises, which was computed on the basis of the same 50:50 model as is the industry norm and as has been employed by the assessee for computing similar services to the independent enterprises, was at arm's length. Accordingly, the impugned arm's length price adjustment of Rs.2,09,00179/- stands deleted.”

10. Accordingly, the ALP adjustment for the AY 2006-07 was deleted. The same result followed in the Assessee's appeal AY 2007-08.

11. It was urged by Ms Suruchi Aggarwal, learned Senior Standing Counsel for the Revenue, that even if it is accepted that CUP is the most appropriate method to be adopted as per the prevailing industry norm, the matter should nevertheless be sent back to the TPO for the Assessee to furnish the relevant details which would help the TPO determine whether the price charged for the international transaction with the AE was an ALP.

12. The Court finds that in the present appeals the questions projected for the Court's consideration by the Revenue are only regarding the appropriateness of adopting CUP method as against the TNMM for determination of the ALP. The question urged before the Court, not having been projected in the present appeals, is left open for consideration in an appropriate case where it is properly raised consideration in accordance with law.

13. As far as the present appeals are concerned, the Court finds the impugned order of the ITAT to be well reasoned and researched. The legal principles governing the determination of ALP in a TP adjustment exercise have been expounded lucidly by the ITAT in the impugned orders.

14. The Court does not find any substantial question of law arising from the impugned orders of the ITAT.

15. The appeals are accordingly dismissed.

**S. MURALIDHAR, J**

**VIBHU BAKHRU, J**

**DECEMBER 10, 2015**  
**MK**