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

\+ ITA 48/2018, CM APPL.1629/2018

PR. COMMISSIONER OF INCOME TAX-2 ..... Appellant
Through: Mr. Zoheb Hossain, Sr. Standing Counsel.

versus

M/S BECTON DICKINSON INDIA PVT. LTD. ..... Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.K. GAUBA

O R D E R

% **16.01.2018**

CM APPL.1629/2018 (condonation of delay)

For the reasons mentioned in the application, the delay in re-filing the appeal is condoned.

Application stands allowed subject to all just exceptions.

ITA 48/2018

1. The Revenue is aggrieved by the inclusion of three comparables which the Transfer Pricing Officer ("TPO") and the Assessing Officer ("AO") had excluded in the Arms Length Price determination carried out by the TPO. The CIT (A) directed the

inclusion of the three comparable companies having regard to their broad functional similarities. The ITAT concurred with the view of the CIT (A).

2. The assessee engages itself in the manufacturing and trading of medical devices and diagnostic equipments which included injection systems, insulin syringes, hypo syringes, hypo needles etc. It is a subsidiary of Becton Dickinson Mauritius Ltd. which in turn is a subsidiary of Becton Dickinson and Company, USA. The initial transfer pricing report filed by the assessee and relied upon before the TPO included Span Diagnostic Limited, Hicks Thermometers (India) Ltd. and Centenial Surgical Suture Ltd. as comparables. These were directed to be excluded by the TPO on the ground of functional dissimilarities. The rationale was that the Span Diagnostic mainly manufactures diagnostic regents, elissa kits for AIDS; Hicks Thermometers also manufacturing elissa kits, thermometers and Centenial Surgical was manufacturing surgical suture. The CIT (A) was of the opinion that the exclusion of these three comparables was not justified as all the companies including the assessee were involved in manufacturing and sell of medical and diagnostic equipment. The ITAT agreed with the conclusion of the appellate Commissioner.

3. Having considered the submissions and the materials on record, the Court is of the opinion that the concurrent findings in this case do not call for interference. The exclusion or inclusion of one or the other comparable would by itself not constitute a question of law unless it is shown that there are important functional dissimilarities or

that vital material facts which go to the route of profitability or other material circumstances are involved. In the present case, the comparables as well as the assessee are all manufacturers of medical/surgical equipments and, therefore, inclusion of three comparables is based upon appreciation of findings of fact; they do not call for interference. The appeal is, therefore, dismissed.

S. RAVINDRA BHAT, J

R.K. GAUBA, J

JANUARY 16, 2018
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