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

+ **ITA 398/2024**

THE PR. COMMISSIONER OF INCOME

TAX -7

.....Appellant

Through: Mr. Ruchir Bhatia, SSC with
Mr. Anant Mann, JSC & Mr.
Pratyaksh Gupta, JSC

versus

SWATCH GROUP (INDIA) PVT. LTD.

.....Respondent

Through: Appearance not given

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

30.07.2024

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CM APPL. 42812/2024 (759 Days Delay in Refiling)

This is an application seeking condonation of 759 days in refiling the appeal. For the reasons stated in the application, the delay is condoned. Application is disposed of.

ITA 398/2024

1. This appeal is directed against the order of the Income Tax Appellate Tribunal [“**Tribunal**”] dated 30 January 2020 and has framed the following questions for our consideration:-

“2.1 Whether on the facts and circumstances of the case, Ld. ITAT was justified in upholding the order of the CIT(A) who had deleted the addition made by the AOITPO by excepting the fresh evidence/claims of the Assessee during appellate proceedings and without seeking remand report from AO/TPO?

2.2 Whether on the facts and circumstances of the case and in law, the Ld. ITAT justified in allowing the adjustment an account of extra customs duly paid by the Assessee, by taking the rate of customs duty from the data available on the official website of the European Union and without any FAR analysis and without considering the market conditions as per provisions of Rule 10B(1)

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(b) and 10B(2)(b) & (d) of I.T. Rules, 1962?”

2. The dispute essentially is in respect of the adjustments which were made bearing in mind the variance in the custom duties which were borne by the comparables of the respondent-assessee. While dealing with this aspect, the Tribunal has observed as follows:-

“19. It was also brought to the notice of the first appellate authority that besides the differences, there are significant differences in terms of taxes, duties, etc. levied in the Indian market vis a vis Italy on the import of luxury watches, which result in significant bearing on the gross and operating margins of the Indian companies engaged in resale of imported luxury watches in India.

20. After considering the facts and submissions and referring to Rule 10B(2) of the IT Rules and also referring to the OECD TP Guidelines for Multinationals and Tax Administrators, the Id. CIT(A) observed that use of foreign comparables is appropriate in light of the lack of information on comparables dealing in luxury watches in the year under consideration.

21. However, the Id. CIT(A) further observed that although the use of foreign comparables has been agreed, but it is essential to undertake reasonable adjustments to establish comparability between the foreign comparables used and the assessee. One of the adjustments, related to customs duty. The Id. CIT(A) was of the opinion that the TPO while selecting the foreign comparables did not consider the differences in custom duty rate prevalent in India vis a vis Italy.

22. The first appellate authority observed that the high custom duty rates on luxury watches in India accounted for 32.37% of the net sales of the assessee and custom duty paid by the assessee on the import of watches and spares was above 50% of the total cost of goods sold. According to the Id. CIT(A), high custom duty rates in India are bound to have significant bearing on the gross margins as well as operating margins of the assessee vis a vis Italian comparables.

23. Accordingly, the Id. CIT(A) was convinced that high cost of importing goods into India should be adjusted for, since the foreign comparables operating in Italy enjoy the benefit of NIL or negligible customs duty and do not have to spend the same proportion of import duty cost as the assessee. Hence, in view of the provision of Rule 10B(2)(d) and 10B(3) of the Rules, appropriate adjustments for differences on account of geographical location, size of market, level of competition, government regulations is called for and the Id. CIT(A) accordingly, held that reasonable quantitative adjustments should be made in order to make a comparison of the profitability of the assessee vis a vis the



comparable companies and computed the gross margin as under:

	Year ending 31 st March 2004
Sales	401,065,696
Opening Stock	44,024,469
Add: Purchase value of traded products	
Purchase Value of traded products (net of marketing subsidy)	199,842,038
Customs Duty (normalizing to 5 percent of purchase value)	9,992,102
Other expenses related to purchases	1,107,890
Less: Closing stock	98,957,492
Cost of Goods sold	156,009,007
Gross Profit	245,056,689
Gross Margin	61.10%

3. It is in the aforesaid backdrop that the Tribunal has accepted the adjustments which were made on account of difference in the rates of custom duties which were borne by comparables and the assessee.

4. We note that the aforesaid differentiations would have clearly merited consideration bearing in mind the language of clause (d) of Rule 10B(2) of Income Tax Rules, 1962 [**“Rules”**], which reads as under:-

“10B(2) For the purposes of sub-rule (1), the comparability of an international transaction or a specified domestic transaction with an uncontrolled transaction shall be judged with reference to the following, namely:-

(a) the specific characteristics of the property transferred or services provided in either transaction;

(b) the functions performed, taking into account assets employed or to be employed and the risks assumed, by the respective parties to



the transactions;

(c) the contractual terms (whether or not such terms are formal or in writing) of the transactions which lay down explicitly or implicitly how the responsibilities, risks and benefits are to be divided between the respective parties to the transactions;

(d) conditions prevailing in the markets in which the respective parties to the transactions operate, including the geographical location and size of the markets, the laws and Government orders in force, costs of labour and capital in the markets, overall economic development and level of competition and whether the markets are wholesale or retail.”

5. In view of the aforesaid, we find that the appeal fails to raise any substantial question of law. Consequently, it shall stand dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

JULY 30, 2024/_{RM}

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