

IN THE SUPREME COURT OF INDIA

Petition(s) for Special Leave to Appeal (Civil)...../2009
CC 10920/2009

(From the judgement and order dated 19/12/2008 in
WPC No.7969/2008 of the HIGH COURT OF DELHI ([2008-TIOL-647-HC-DEL-IT](#)))

ADDL COMMISSIONER OF INCOME TAX, NEW DELHI

Vs

M/s HCL TECHNOLOGIES LTD

S H Kapadia And Aftab Alam JJ.,

Dated: August 17, 2009

Appellant rep by: Mr. Gourab Banerji, A.S.G. Mr. H. Raghavendra Rao, Adv. Mr. C.V. Subba Rao, Adv. Mr. B.V. Balaram Das, Adv.

Respondents rep by: Ms. Kavita Jha, Adv. Mr. Sandeep S.Karhail, Adv. Mr. Ajay Vohra, Adv.

Transfer Pricing - Section 92CA - TPO proposes adjustments to ALP without giving personal hearing - HC holds that personal hearing is a must under section 92CA(3) - remits the matter to TPO to be decided within three days after giving opportunity to assessee - Department files SLP - SC asks the parties to approach the Alternate Dispute Resolution panel under the proposed section 144C.

ORDER

Delay condoned.

Heard both sides.

We are of the view that in the peculiar facts and circumstances of this case, particularly when the High Court has remitted the matter to the Transfer Pricing Officer from whose Order an appeal is pending before the CIT (A), it would be in the interest of both sides to resort to Alternate Dispute Resolution Mechanism suggested in the Budget of 2009 (See Sec.144-C of the Income Tax Act, 1961). It is made clear **that the Competent Authority will not reject the Application herein made by the assessee on the ground that the proposal has come after the cut-off date.** The learned Additional Solicitor General will, accordingly, communicate instructions to the

Department. The Competent Authority will decide the matter notwithstanding the pendency of the Appeal before the C.I.T. Special Leave Petition is disposed of.