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

+ ITA 126/2022

THE PR. COMMISSIONER OF INCOME TAX -6 Appellant
Through: Mr.Ruchir Bhatia, standing counsel.

versus

MENTOR GRAPHICS (INDIA) PVT. LTD. Respondent
Through: None.

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Date of Decision: 26th April, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

MANMOHAN, J (Oral):

C.M.Nos.19916-19917/2022

Keeping in view the averments in the applications, delay in filing (75 days) and re-filing (144 days) the present appeal is condoned. Appeal is taken on record.

Accordingly, the applications stand disposed of.

ITA No.126/2022

1. Present Income Tax Appeal has been filed challenging the order dated 26th February, 2019 passed by Income Tax Appellate Tribunal ('ITAT') in

ITA No. 1883/Del./2015 for the Assessment Year 2010-11.

2. Learned counsel for the Appellant states that the ITAT has erred in rejecting Persistent Systems Ltd., E-Infochips Banlagore Ltd., Infinite Data Systems Pvt. Ltd. and Zylog Systems Ltd. as comparables.

3. Learned counsel for the appellant further states that the grievance of the Appellant/Revenue is that the ITAT has excluded the aforesaid four comparables for benchmarking the international transaction without giving clear and cogent reasons.

4. A perusal of the impugned order reveals that the ITAT has given the cogent reasons for rejecting the aforesaid four companies as comparables.

The relevant portion of the impugned order is reproduced hereinbelow:-

“PERSISTENT SYSTEMS LTD. (PERSISTENT)

16. Persistent is taxpayer's own comparable which is has now sought to be excluded on the ground that its segmental financials are not available. Perusal of the profit & loss account for the year under assessment, available at page 388 of the paper book (Annual Reports), shows that the income of Persistent is from sale of software services and products to the tune of Rs.5196.91 as on 31.03.2009 and Rs.5044.13 as on 31.03.2010 with no segmental financials.

17. Persistent has already been rejected by the coordinate Bench of the Tribunal in taxpayer's own case foray 2008-09, available at pages 63 to 79 of the paper book, on ground of non-availability of segmental data. So, we are of the considered view that Persistent is not a valid comparable, hence ordered to be excluded.

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E-INFOCHIPS BANAGALORE LTD. (E-INFOCHIPS)

28. So, in view of what has been discussed above, we are of the considered view that E-Infochips being a product and semi-conductor engineering services having 500 product for key verticals

like aerospace and defence, security and surveillance, etc. having huge intangibles which increased its brand value and its segmental financials are not available, is not a suitable comparable vis-a-vis the taxpayer, hence ordered to be excluded.

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INFINITE DATA SYSTEMS PVT. LTD. (INFINITE)

32. So, in view of what has been discussed above, we are of the considered view that Infinite is functionally dissimilar vis-a-vis taxpayer having been into providing solutions that encompass technical consulting, design and development of software maintenance, systems integration, implementation, testing and infrastructure management services. Furthermore, Infinite has entered into Build, Operate and Transfer (BOT) agreement with Fujitsu Services Limited to set up global delivery centres in India to provide offshore capabilities to Fujitsu and Fujitsu's associated companies. It has also shown exceptional growth in business operation in the last four years i.e 908% growth rate over the previous year. So, Infinite cannot be a valid comparable vis-a-vis the taxpayer, hence ordered to be excluded.

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ZYLOG SYSTEMS LTD. (ZYLOG)

35. In view of what has been discussed above, on account of diversified operation, substantial brand value and huge intangible assets having significant AMP spent and R & D expenses. Zylog cannot be a valid comparable vis-a-vis taxpayer which is a captive software development service provide to its AE only, so we order to exclude the same."

5. Keeping in view the aforesaid, this Court is of the opinion that it would be incorrect to state that the ITAT did not take into account the relevant facts while excluding the aforesaid four companies as comparables. It is also pertinent to mention that in the assessee's own case, this Court has dismissed appellant's appeal being ITA 318/2017 raising similar grievance.

Consequently, this Court does not find any substantial question of law arising on this aspect and therefore declines to frame any question. Accordingly, the present appeal is dismissed.

MANMOHAN, J

DINESH KUMAR SHARMA, J

**APRIL 26, 2022
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