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

+ ITA 156/2020

THE PR. COMMISSIONER OF INCOME TAX -6 Appellant

Through: Mr. Ruchir Bhatia, Sr. Standing
Counsel for Revenue along with Ms
Mansie Jain, Advocate.

versus

MACQUARIE GLOBAL SERVICES PVT. LTD. Respondent

Through: Ms. Ananya Kapoor, Mr. Salil
Kapoor & Mr. Sumit Lal Chandani,
Advocates.

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Date of Decision: 22nd September, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

CM APPL. 7944/2020

Keeping in view the averments made in the application, the delay of 28 days in filing the appeal is condoned.

Accordingly, present application stands disposed of.

ITA 156/2020

1. Present appeal has been filed seeking a direction for setting aside the order dated 31st July, 2019, passed by the Income Tax Appellate Tribunal



(‘ITAT’) in ITA No. 1023/DEL/2016 with respect to Assessment Year (‘AY’) 2011-12.

2. The learned Senior Standing Counsel for the Appellant/Revenue states that the ITAT fell in error in holding that the Assessee is not a Knowledge Processing Outsourcing Unit (‘KPO’) whereas the Assessee itself in the transfer pricing study report had declared that it is engaged in KPO activities. He states that the ITAT erred in rejecting eClerxservices as a comparable as it ignored the fact that the said comparable provides Data Analysis and Outsourcing Services which are a part and parcel of the ITES Segment. He states that similarly ITAT fell in error in rejecting ICRA Techno Analytics Ltd. as a comparable whereas this company provides IT enabled services. He further states that ITAT fell in error in applying the high turnover threshold limit while excluding the comparable as it failed to appreciate that margins in the ITES industry are not linked to the turnover of the company.

3. We have heard the learned counsel for the appellant. In this case, in view of the international transactions of the Assessee, the case was referred to the Transfer Pricing Officer (‘TPO’). The main international transaction of the Assessee is provision of ITES. The Assessee adopted the Transactional Net Margin Method (TNMM) as the most appropriate method and Operating Profit/Operating Cost (OP/OC) as the Profit Level Indicator (PLI). The TPO reached a final set of comparables, which included four companies i.e., eClerxservices, TCS eServe, Accentia Technologies Ltd. and ICRA Techno Analytics Ltd., which are the subject matter of this appeal. The Assessee resisted the inclusion of the above said comparables and filed objections before the Dispute Resolution Panel (‘DRP’) and the DRP by its



order dated 04th November, 2015, accepted the objections of the Assessee and directed the exclusion of these four comparables on a finding of functional diversity as well as non-availability of segmental data. While giving effect to the directions of the DRP, the AO computed the revised margins of the comparables after excluding the above four companies and worked out the adjustment at 'nil'.

4. The ITAT as well in the impugned order has after examining the financial and annual reports of each of the four comparables, concurred with the DRP's finding that each of the four comparables are functionally dissimilar. With respect to Accentia Technologies Ltd., the ITAT considered that the said comparable has also been excluded in Assessee's own case in AY 2009-10. It has also come on record that similarly, eClerxservices was also excluded as a comparable during the AY 2009-10. The ITAT has recorded that admittedly, there has been no change in the functions performed by the Assessee for the earlier years and in AY 2009-10 when the said comparables were excluded in the case of the Assessee after analyzing its functional profile.

5. The ITAT and the DRP have thus, returned concurrent finding of facts with respect to the functional dissimilarities of the said four comparables with the Assessee. In the present appeal, the challenge is to the said finding of facts and there is no perversity in the said findings. The Revenue has not been able to demonstrate that the analysis done by ITAT and DRP while excluding the companies suggested by Revenue from the list of comparables, was in any manner contrary to the settled position in law.

6. This Court in *Pr. Commissioner of Income Tax-9 vs. WSP Consultants India Pvt. Ltd., 2017 SCC OnLine Del 11438* has held that



inclusion or exclusion of comparables *per se* cannot be treated as a question of law unless it is demonstrated to the Court that the Tribunal took into account irrelevant consideration or excluded irrelevant factors in the ALP that impact significantly. In our view, the ITAT has not committed any perversity or applied incorrect principle to the given facts and therefore, we do not find that any substantial questions of law arise for consideration in the present appeal. Accordingly, the same is dismissed.

MANMEET PRITAM SINGH ARORA, J

SEPTEMBER 22, 2022/msh

MANMOHAN, J

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