Sequeira

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1226 OF 2015

The Pr. Commissioner of Income Tax - 1. .. Appellant
Vs
BNY Mellon International Operations
(India) Pvt. Ltd. .. Respondent

Mr.Suresh Kumar, for the Appellant.
Mr.Percy Pardiwala – Senior Advocate a/w Mr.Nitesh Joshi i/b Mr.Atul Jasani, for the Respondent.

CORAM : M.S.SANKLECHA &
SANDEEP K. SHINDE, JJ.
Date : April 23, 2018.

P.C. :

This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the order dated 11 February 2015 passed by the Income Tax Appellate Tribunal (the Tribunal). This appeal relates to Assessment Year 2009-10.

2. The Respondent-Assessee is engaged in Business Process Outsourcing – BPO services (transaction services). The Revenue has urged the following re-framed question of law for our consideration :

> *"Whether on the facts and in the circumstances of the case and in law, the Hon'ble Income Tax Appellate Tribunal is justified in law in excluding the International Comparables justified by the TPO in respect of the following -*
>
> *i. Accentia Technologies Limited (ATL)*
> *ii. Cosmic Global Limited.*
> *iii. Eclerx Services Limited.*
> *iv. Coral Hubs Limited (CHL).*
> *v. Crossdomain Solutions Limited."*

3. The impugned order of the Tribunal held that the following entities mentioned at nos.(i) to (iv) above are not Comparables to the Respondent. This by following the decision of its Co-ordinate Bench in *PTC Software (I) Pvt.Ltd. (India) Private Limited vs. DCIT* vide *ITA No.336/PN/2014* , decided on 31 October 2014.

4. Mr.Suresh Kumar learned counsel appearing for the Revenue very fairly pointed out that being aggrieved by the decision of the Tribunal in *PTC Software (I) Pvt.Ltd. (I) Pvt. Ltd. (supra),* the Revenue had preferred an appeal to this Court being *Income Tax Appeal No.598 of 2016 – The Pr. Commissioner of Income Tax-2, Pune vs. PTC Software (I) Pvt.Ltd.* This Court dismissed the Revenue's above appeal on 16 April 2018 upholding the view of the Tribunal. The Revenue does not dispute that the above decision in *PTC Software (I) Pvt.Ltd. (supra)* of this Court rendered on 16 April 2018 would apply to this case.

5. Therefore for the reasons indicated in our order dated 16 April

2018 in case of *PTC Software (I) Pvt.Ltd. (supra)* the entities listed at serial nos.(i) to (iv) cannot be held to be comparable to the Respondent-Assessee.

6. So far as the entity listed at serial no.(v) above, namely Crossdomain Solutions Limited, is concerned the impugned order of the Tribunal has excluded it from the list of comparables. This by following its decision in *DCIT vs M/s Wills Processing Services (India) Pvt. Ltd.* vide *ITA No.2152/Mum/2014 dated 10.10.2014*. Mr.Suresh Kumar learned counsel appearing for the Revenue states that inspite of his best efforts, the Revenue is unable to instruct him whether or not an appeal has been preferred against the order of the Tribunal dated 10 October 2014, in the case of *M/s Wills Processing Services (supra).*

7. In the above view we proceed on the basis that no appeal from the order passed in *M/s Wills Processing Services (supra)* has been filed by the Revenue. We further note that the impugned order records that the services provided by Crossdomain Solutions is in the nature of KPO (Knowledge Process Outsourcing).

8. It is an agreed position between the parties that the entity at serial no.(v) above was a subject matter of consideration by this Court in the Revenue's appeal being *Income Tax Appeal No.1209 of 2015 – The Pr. Commissioner of Income Tax-1, vs. Aptara Technology Pvt. Ltd.,* rendered on 26 March 2018. In the aforesaid case, this Court

recorded the fact that M/s Crossdomain Solutions Ltd. was engaged in distinct activities such as payroll activity, 'Knowledge Process Outsourcing'(KPO) service, development of products and routine IT services. Thus, it was found not comparable with an entity which was rendering E-learning services. In the present case also the Respondent provides BPO services which is not with KPO services.

9. It is an agreed position between the parties that for the reasons indicated in our order dated 26 March 2018, in the case of *Aptara Technology (supra)* . the finding of fact rendered by the Tribunal in the impugned order holding M/s Crossdomain Solutions Ltd. not to be comparable, cannot be found fault with.

10. In the above view the question as proposed being one essentially of fact and as agreed between the parties stands conlcuded against the Revenue by the order of this Court in *PTC Software (I) Pvt.Ltd. (supra)* and *Aptara Technology (supra).* Therefore no substantial question of law arises. Thus, not entertained.

(SANDEEP K. SHINDE, J.) *(M.S.SANKLECHA, J.)*