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

INCOME TAX APPEAL NO. 598 OF 2016

The Pr. Commissioner of Income Tax-2, Pune .. Appellant.
v/s.
PTC Software (I) Pvt. Ltd., .. Respondent.

Mr. Suresh Kumar, for the Appellant.
Mr. Madhur Agrawal i/b. Mr. Atul Jasani, for the Respondent.

CORAM: M.S.SANKLECHA &
SANDEEP K. SHINDE,JJ.
DATE : 16th APRIL, 2018.

P.C:-

This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the order dated 31st October, 2014 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order dated 31st October, 2014 is in respect of Assessment Year 2009-10.

2 Revenue urges only the following questions of law, for our consideration:

"(a) Whether on the facts and in the circumstance of the case and in law, the Tribunal erred in excluding KALs Information Solutions Ltd., from the list of comparables on the basis of previous years documentations of the assessee without verifying the functions performed by the comparables in the year under consideration?

(b) Whether on the facts and in the circumstance of the case and in law, the Tribunal was justified in ignoring the comparable company on the ground that the assessee company is functionally not comparable, has accepted Bodhtree

Consulting Ltd., as comparable company and also that the said company was selected as a comparable by the assessee itself for the A. Y. 2008-09?

(c) Whether on the facts and in the circumstance of the case and in law, the Tribunal was justified in excluding Vishal Information Technology Ltd., and Cosmic Global Ltd., from the list of comparable companies without appreciating the fact that both the companies operate only in ITES segment and functionally comparable to the assessee's ITES segment?

(d) Whether on the facts and in the circumstance of the case and in law, the Tribunal was justified in excluding Accentia Technologies Ltd. from the list of comparables?

(e) Whether on the facts and in the circumstance of the case and in law, the Tribunal was justified in excluding Eclerx Services Ltd., from the list of comparable?"

3 **Re. Question (a):**

(i) The impugned order of the Tribunal allowed the Respondent-Assessee's appeal on the above issue. This by following its decision dated 30th April, 2013 in the case of the same Respondent-Assessee for the Assessment Year 2007-08.

(ii) Mr. Suresh Kumar, learned Counsel for the Revenue very fairly states that being aggrieved by the order dated 30th April, 2013 of the Tribunal, in respect of Assessment Year 2007-08, the Respondent had preferred an Appeal to this Court being Income Tax Appeal No. 732 of 2014 (CIT v/s. PTC Software (I) Pvt. Ltd.,) This Court by an order dated 26th September, 2016, dismissed the Revenue's above Appeal on the above issue and held that KALS Information Solution Ltd., could not be a comparable to the Respondent-Assessee's transaction to determine its Arms Length Price (ALP). Further, no distinguishing features for the subject Assessment Year from that existing in the Assessment Year 2007-08 in the case of same Respondent-Assessee has been shown to us.

(iii) Thus, question (a) does not give rise to any substantial question of law. Thus not entertained.

4 **Re. Question (c):**

(I) **Vishal Information Technology Ltd., (now known as Coral Hubs Ltd.:-**

(i) The impugned order of the Tribunal held that it is to be excluded from the list of comparables to determine the ALP of the Respondent. This, by following its order dated 30th April, 2014 in the Respondent-Assessee's own case for the Assessment Years 2006-07 and 2007-08. It was so held as functionally Vishal Information Technologies Ltd., outsources the services to be rendered by it to third party – vendors while the Respondent itself rendered services to its Associated Enterprise (AE) and did not outsource its services.

(ii) Mr. Suresh Kumar, learned Counsel for the Respondent-Revenue very fairly states that being aggrieved by the two orders dated 30th April, 2014 for the Assessment Year 2006-07 and 2007-08 in the case of the same Respondent-Assessee, it had preferred appeals to this Court being Income Tax Appeal No. 732 of 2014 (CIT v/s. PTC Software (I) Pvt. Ltd.) and Income Tax Appeal No. 337 of 2014

(CIT v/s. PTC Software (I) Pvt. Ltd., Both the appeals by the Revenue had challenged the exclusion of the Vishal Information Technologies Ltd., as a comparable, were dismissed by orders dated 10th October, 2016 (Assessment Year 2006-07) and 26th September, 2016 (Assessment Year 2007-08), as not giving rise to any substantial question of law. No distinguishing features have been pointed out for the subject Assessment Year from that prevailing in Assessment Years 2006-07 and 2007-08 which would warrant a different view.

(iii) Thus, sub-question (I) as proposed does not give rise to any substantial question of law. Thus, not entertained.

(II) **<u>Cosmic Global Ltd.,</u>**

(i) The impugned order of the Tribunal records the fact that Cosmic Global Ltd., had outsourced its services to vendors just as M/s. Vishal Technologies Ltd., had done. In the above facts, the impugned order held that Cosmic Global Ltd., is not functionally comparable and, therefore, could not be included amongst the comparables to determine the ALP of the Respondent's transactions.

(ii) The aforesaid finding of fact by the Tribunal has not been shown to be perverse. In fact, the reasons indicated in the impugned order to hold that Vishal Technologies Ltd., is not a comparable, would equally apply to M/s. Cosmic Global Ltd.,

(iii) Thus, the sub-question (II) as proposed does not give rise to any substantial question of law. Thus, not entertained.

(III) Accordingly, the question as proposed does not give rise to any substantial question of law. Thus, not entertained.

5 **Re. Question (c):-**

(i) The impugned order of the Tribunal has excluded M/s. Accentia Technologies Ltd., from the list of comparables to determine the ALP of the Respondent's transactions.

(ii) The impugned order renders a finding of fact that the nature of activities carried out by M/s. Accentia Technologies Ltd., are different from that carried out by Respondent. M/s. Accentia Technologies Ltd., developes its own software and rendered Medical transcription services while the Respondent is providing BPO Services. Besides, the impugned order of the Tribunal held that high profit margins of M/s. Accentia Technologies Ltd., was attributable to amalgamation which took place in the previous years relevant to subject Assessment Year. Therefore, not comparable.

(iii) In fact, this Court in CIT v/s. Aptara Technology Ltd., (Income Tax Appeal No. 1209 of 2015) has upheld the view of the Tribunal in not accepting the Accentia Technologies Ltd., as comparable, inter alia, on account of fact that extra ordinary event such as merger/ amalgamation would affect the profitability of M/s. Accentia Technologies Ltd., Thus, making it incomparable.

(iv) Further, in that case, as in this case, the Tribunal has also recorded a finding of fact that the activities of M/s. Accentia Technologies Ltd., and the Respondent are different. Thus, not comparable. The above finding of fact is not shown to be perverse.

(v) In the above view, the question as proposed does not give rise to any substantial question of law. Thus, not entertained.

6 **Re. Question (d):-**

(i) The impugned order of the Tribunal held that Eclerx Services Ltd., is not a comparable to the Respondent-Assessee for the reasons that it was providing knowledge process outsourcing (KPO) - whereas Respondent is engaged in BPO Services.

(ii) The impugned order of the Tribunal place reliance upon the Special Bench of the Tribunal in the case of Maersk Global Centres (India) Pvt. Ltd., (Income Tax Appeal No. 7466/Mum/2012), to hold that Eclerx Services Ltd., was engaged in providing KPO Services which is distinct from the BPO Services. Thus, excluded the same from the list of comparables.

(iii) The impugned order of the Tribunal, in fact, relies upon the following extract in the Special Bench's decision of the Tribunal in Maersk Global Centres (India) Pvt. Ltd., as under:-

"Keeping in view the nature of services rendered by M/s. Eclerx Services Pvt. Ltd., and its functional profile, we are of the view that this company is also mainly engaged in providing high-end services involving specialized knowledge and domain expertise in the field and the same cannot be compared with the assessee company which is mainly engaged in providing low-end services to the group concerns."

(iii) Although both are providing ITES services, by virtue of that alone, both units will not become comparable as observed by this Court in ***Pr. CIT v/s. Aptara Technology Pvt. Ltd.,*** (Income Tax

Appeal No. 1209 of 2015) rendered on 26th March, 2018 – as follows:- '*merely because the tested party and the comparable provide ITES, they do not become comparable. The content of the services rendered by virtue of IT is to be examined before holding it to be comparable.*'

(iv) Further, our attention is invited to the decision of the Delhi High Court in ***Rampgreen Solutions P. Ltd., v/s. CIT 377 ITR 533*** – wherein Delhi High Court held that KPO services could not be compared to call centre services, although both would fall under the umbrella of ITES. Therefore, the functions of two cannot be considered to be similar for the purpose of being comparable.

(v) In the above view, this question also does not give rise to any substantial question of law. It is essentially a finding of fact which is not shown to be perverse. Thus, not entertained.

7 **Re. Question (b):-**

Appeal admitted on the substantial question of law at (b)

8 Registry is directed to communicate copy of this order to the Tribunal. This would enable the Tribunal to keep papers and proceedings relating to the present appeal available, to be produced when sought for by the Court.

Mr. Agrawal, learned Counsel waives service for the Respondent.

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