IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA-264-2016 (O&M)
Date of decision:- 05.12.2016

The Pr. Commissioner of Income Tax, Gurgaon
...Appellant

Versus

IHG IT Services (India) Pvt. Ltd.
...Respondent

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE DEEPAK SIBAL

Present:- Mr. Tajender K. Joshi, Advocate,
for the appellant.

Mr. Kamal Sawhney, Advocate,
Mr. Rahul Srivastava, Advocate,
for the respondent.

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S.J. VAZIFDAR, C.J. (ORAL)

This is an appeal against the order of the Tribunal excluding from consideration two comparables, namely, Nucleus Netsoft and GIS (India) Limited and Vishal Information Technologies Limited. The matter pertains to the assessment year 2006-2007.

2. The appellant contends that the following substantial question of law arises in the appeal:-

> "Whether in the facts and circumstances of the case and in law, the Hon'ble ITAT was correct in excluding the cases of M/s Nucleus Netsoft & GIS India Ltd. and M/s Vishal Information Technologies Ltd. from the set of comparables, for determining Arm's Length Price of International Transaction entered into by the assessee with its Associated Enterprises?"

3. The Tribunal excluded both the comparables on the ground that a substantial part of their business is outsourced which is not so with the assessee. In each case, the extent of outsourcing exceeded 40%. In the case of Nucleus Netsoft and GIS (India) Limited, the Tribunal held that it is not a valid comparable also on the ground that another company was merged into it. We are informed that the transfree company, M/s Nucleus Netsoft & GIS India Ltd., had its name changed to that of the transferor company.

4. It is not necessary to go into the question of the effect of the merger as the order of the Tribunal can be upheld on the ground that both the companies are not appropriate comparables as a major part of their business is outsourced, whereas the major part of the respondent-assessee's business is not outsourced.

5. As far as Vishal Information Technologies Limited is concerned, there is no difficulty whatsoever for the Tribunal has come to a clear finding of fact that it outsourced about 44.81% of its business. For instance, it was observed that Vishal Information Technologies Limited has a low employee cost of 1.25% of operating revenue. The Tribunal also observed that the TPO had himself referred to the NASSCOM survey that the average wages and salaries to sales ratio of IT/ITES industry in India was 46.1%. The assessee's wages to sales is 53% which is not comparable to Vishal Information Technologies Limited whose wages to sales is 1.25%. This is a finding of fact and there is nothing to indicate that the same is erroneous much less perverse. The exclusion of Vishal Information Technologies Limited is, therefore, justified.

6. The only contention regarding the exclusion of Nucleus Netsoft and GIS (India) Limited is that there is no reasoning. This, however, is not even a ground taken in the appeal filed before us. In any event, we perused the 22nd Annual Report for the year 2005-2006 of Nucleus Netsoft and GIS (India) Limited. Schedule 12 furnishes the operating & other expenses. The data processing charges are ₹ 1.04 crores out of the total operating & other expenses of about ₹ 2.41 crores. Thus, an amount of over 40% is outsourced. The finding of the Tribunal, therefore, cannot be held to be perverse.

7. By our order and judgement dated 24.08.2016 in ITA-101-2015 titled as The Commissioner of Income Tax, Faridabad Vs M/s Mercer Consulting (India) Pvt. Ltd. Gurgaon, we, inter alia, held that the finances of the company that outsources a major part of its business cannot be compared to one that does not.

8. In these circumstances, a substantial question of law does not arise.

9. The appeal is accordingly dismissed.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(DEEPAK SIBAL)
JUDGE

05.12.2016
Amodh

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No