IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 121 of 2014 (O & M)
Date of Decision:- 02.07.2015

Agilent Technologies (International) Pvt. Ltd. ......Appellant(s)

vs.

The Assistant Commissioner of Income Tax, Gurgaon ......Respondent(s)

CORAM:- HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present:- Mr. Vishal Kalra, Advocate,
and Mr. Rohit Khanna, Advocate,
and Mr. Rohit Kumar, Advocate,
for the appellant.

Mr. Tejinder K. Joshi, Advocate,
for the respondent.

S.J. VAZIFDAR, A.C.J. (Oral)

1. This is an appeal against the order of the Tribunal dated 14.06.2013 rendered in an appeal against the order of the Dispute Resolution Panel.

2. Learned counsel appearing on behalf of the appellant reframed the questions of law as under:-

> *"1) Whether on the facts and circumstances of the case, the order of the Tribunal was perverse and it fell into error while giving open-ended, capricious/arbitrary directions to the AO/TPO to reconsider certain comparable companies afresh, placing reliance on the Special Bench constituted in the case of* ***Giesecke & Devirent*** *on application of turnover*

filter, which was pending adjudication and subsequently disbanded?

2) Whether on the facts and circumstances of the case, the Tribunal erred in law in upholding the inclusion of comparable companies chosen by the TPO, which were functionally not comparable. Further was the order of the Tribunal perverse as it erred in not considering the decisions of the coordinate benches upholding exclusion of such comparable companies?

3) Whether on the facts and circumstances of the case, the order of the Tribunal was perverse and non-speaking owing to non-adjudication of certain grounds raised by the Appellant in the appeal memo filed before the Tribunal and further erred in not appreciating that the same were never withdrawn / conceded by the Appellant during the course of hearing?

3. As far as the first question is concerned, the matter has, in fact, not been decided finally by the Tribunal. The Tribunal noted that it had come to its notice that a Special Bench has been constituted to consider the impact of turnover on comparability and further observed that in view thereof, it would not be appropriate for it to adjudicate the issue. The Tribunal, therefore, remitted the issue of comparison on these comparables to the files of the Transfer Pricing Officer (in short 'TPO) and directed the TPO to consider the same afresh after the decision of the Special Bench.

We are informed that the Special Bench has been dissolved on account of that matter, being ITA No. 5924/DEL/2012, having been withdrawn by the assessees. Obviously, therefore, the Tribunal would have to decide the matter either itself or by having the same referred to another Special Bench. The application in this regard must, in the first instance, be made by the appellant before the Tribunal.

4. As regards the third question, learned counsel for the appellant contended that the Tribunal had wrongly recorded that the assessee's counsel had confined the grievance on behalf of the assessee to the inclusion of four comparables in software service segment and that it had only been argued that the comparables mentioned therein had been wrongly included by the TPO. Learned counsel for the appellant has invited our attention to the written submissions filed before the Tribunal.

This contention must at least, in the first instance, be raised by the appellant before the Tribunal. The appellant is at liberty to do so. In the event of the Tribunal not entertaining the application, the appellant is at liberty to adopt appropriate proceedings including in any appeal that may be filed against the main order.

5. The second issue has been decided against the appellant. We clarify that we are not considering the same at this stage. The matter before the Tribunal remains inconclusive at this stage in view of what we have mentioned regarding the first question namely that the order of the Tribunal is not capable of being implemented on account of ITA No. 5924/DEL/2012 having been withdrawn and the Special Bench in that matter having been dissolved. In our view, it would be appropriate that the matter is finally decided by the Tribunal and the appellant be granted liberty to challenge the order if necessary including on question no. 2 in an appeal against the final order. There would be no question of limitation, in such a case. The limitation would begin only after the final decision of the Tribunal.

6. It is also clarified that it would be open to the Tribunal to decide whether or not to permit the appellant to make any further arguments

on the second question. It is also clarified that all the contentions raised in this appeal regarding question no. 2 can also be raised in the appeal that the appellant may file after the final order of the Tribunal.

7. The appeal accordingly stands disposed of.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(G.S. SANDHAWALIA)
JUDGE

02.07.2015
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