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

\+ ITA 417/2016

PRINCIPAL COMMISSIONER OF
INCOME-TAX-O1 ..... Appellant

Through: Mr. Sanjay Kumar, Advocate.

versus

ACTIS GLOBAL SERVICES PVT. LTD . .... Respondent

Through

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE NAJMI WAZIRI

<u>O R D E R</u>

% 05.08.2016

1. This is an appeal preferred by the Revenue against the impugned order dated 10th December, 2015 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 30/Del/2015.

2. The two questions urged by the Revenue are: (i) whether the ITAT has erred in excluding Infosys BPO from the final list of comparables, and (ii) whether the ITAT erred in excluding M/s Eclerx Services Ltd. (ESL) from the list of comparables?

3. As far as the exclusion of Infosys BPO is concerned, it is an admitted position that the Assessee is a Knowledge Processing Outsourcing ('KPO') entity, and therefore, on the face of it the exclusion of Infosys BPO from the list of comparables does not call for interference.

4. As far as the exclusion of ESL is concerned, the ITAT appears to have relied upon para 31 of the decision of this Court in ***Rampgreen Solutions Pvt Ltd v. Commissioner of Income Tax (2015) 377 ITR 533 (Del)***. The ITAT has extracted para 31 of the said decision where *inter alia* the Court pointed out that:

> "...31......We find it difficult to accept this view as it is contrary to the fundamental rationale of determining ALP by comparing controlled transactions/entities with similar uncontrolled transactions/entities. ITeS encompasses a wide spectrum of services that use Information Technology based delivery. Such services could include rendering highly technical services by qualified technical personnel, ITA 102/2015 Page 31 of 42 involving advanced skills and knowledge, such as engineering, design and support. While, on the other end of the spectrum ITeS would also include voice-based call centers that render routine customer support for their clients. Clearly, characteristics of the service rendered would be dissimilar. Further, both service providers cannot be considered to be functionally similar. Their business environment would be entirely different, the demand and supply for the services would be different, the assets and capital employed would differ, the competence required to operate the two services would be different. Each of the aforesaid factors would have a material bearing on the profitability of the two entities. Treating the said entities to be comparables only for the reason that they use Information Technology for the delivery of their services, would, in our opinion, be erroneous...."

5. It is urged by Mr Sanjay Kumar, learned counsel for the Revenue, that the ITAT ought not to have excluded ESL as a comparable because both ESL and the assessee were KPOs and both were catering to high-end clients.

6. The above submission overlooks what ITAT itself has noted in its

impugned order, that the function profile of the two companies were different. While the Assessee is catering to the capital and financial services markets, ESL works in the area of sales, marketing and supporting financial services. The financial profile of the two KPOs could not be said to be similar from the point of view of the type of businesses they were catering to.

7. This now virtually the third appeal. What the Court has to examine is whether the view taken by the ITAT is a plausible one and whether the impugned order gives rise to any substantial question of law. The Court is not persuaded to hold that the view taken by the ITAT is not a plausible one to take. No substantial question of law arises for consideration.

8. The appeal is dismissed.

S.MURALIDHAR, J

NAJMI WAZIRI, J

AUGUST 05, 2016/kk