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

INCOME TAX APPEAL NO. 336 OF 2015

Commissioner of Income Tax-1 .. Appellant
v/s.

M/s. VFS Global Services Pvt. Ltd. .. Respondent

Mr. Suresh Kumar a/w Ms. Samiksha Kanani for the appellant
Mr. Niraj Seth i/b Mint and Confreres for the respondent

CORAM : S.V. GANGAPURWALA &
A.M. BADAR, J.J.

DATED : 19th JULY, 2017

P.C.

1. The present appeal pertains to Assessment Year 2008-09.

2. The learned Counsel for the appellant submits that the Tribunal was not justified in setting aside the issue of Transfer Pricing Adjustment, relating to International Transaction to the record of the Assessing Officer to examine the relevant facts and then decide the functional comparable of M/s. Cosmic Global Ltd. with the assessee, so as to include or exclude from the list of comparables for determining the ALP in respect of the International Transaction in question without appreciating the fact that the comparable M/s.

Cosmic Global Ltd. was selected as functionally comparable by the assessee itself. The learned Counsel submits that once the assessee had accepted M/s. Cosmic Global Ltd. as functionally comparable, it was not open for the assessee to deviate from the same. The learned Counsel further submits that the assessee had not produced documents before the TPO when called for. As such, the Tribunal was not justified in setting aside the issue of Transfer Pricing Adjustment relating to International Transaction for provision of UK VISA processing services. According to the learned Counsel, the assessee is duty bound to maintain the documents as per Rule 10D of the Income Tax Rules. In the absence of the assessee maintaining the said documents and not providing it, the Tribunal was not justified in setting aside the issue of Transfer Pricing Adjustment. According to the learned Counsel, the Tribunal was not justified in directing the Assessing Officer / TPO to determine the ALP interest by considering the London Inter Bank Operative Rate (LIBOR) plus 2% without appreciating that the Tribunal itself has given the finding that the rates of the Indian market should be considered.

3. The learned Counsel for the respondent submits that after the

Tribunal had relegated the parties before the Assessing Officer. Pursuant to the impugned order, the Assessing Officer has recalculated the Transfer Pricing Adjustment and has passed an order which is also subject matter of challenge before the Commissioner on one of the grounds.

4. So far as the case of M/s. Cosmic Global Ltd. is concerned, the benefit is given to the assessee by the Assessing Officer. The learned Counsel submits that so far as the direction of the Tribunal to consider the LIBOR plus 2%, the same is in consonance with the order of this Court in Income Tax Appeal No.1320 of 2012, decided on 3rd February, 2015. After remanding the matter, the Assessing Officer has now decided the issue.

5. We have considered the submissions. So far as M/s. Cosmic Global Ltd. is concerned, the Tribunal has come to the conclusion that the nature of business of said M/s. Cosmic Global Ltd. was distinct from the one carried out by the assessee as such, was not functionally comparable. The said finding appears to be a finding of fact. Moreover, the Assessing Officer had the opportunity to consider

the functional comparability of M/s. Cosmic Global Ltd. with the assessee and it appears that the Assessing Officer subsequently has held that the nature of business of M/s. Cosmic Global Ltd. is different than that of the assessee. As such, question nos. 2 and 3 raised herein would not survive.

6. So far as question no.4 raised with regard to LIBOR plus 2% as directed by the Tribunal, the same appears to be in tune with the judgment of this Court in Income Tax Appeal No.1320 of 2012, decided on 3rd February, 2015.

7. In the light of the above, no substantial question of law arises. The appeal as such is dismissed. No costs.

(A.M. BADAR, J.) **(S.V. GANGAPURWALA, J.)**