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

\+ **ITA 94/2017**

PR. COMMISSIONER OF INCOME TAX -1 ..... Appellant
Through: Ms. Lakshmi Gurung, Advocate

versus

ACTIS GLOBAL SERVICE PVT. LTD. ..... Respondent
Through: Mr. Kamal Sawhney, Mr. Shikhar Garg & Mr. Prashant Meharchandani, Advocates

CORAM: JUSTICE S.MURALIDHAR
JUSTICE CHANDER SHEKHAR

<u>O R D E R</u>
% **15.05.2017**

<u>CM No. 3769/2017</u>
1. Allowed, subject to all just exceptions.

<u>ITA No. 94/2017</u>
2. This is an appeal by the Revenue under Section 260A of the Income Tax Act, 1961 against the order dated 29th July, 2016 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 6175/Del/2015 for the Assessment Year 2011-12.

3. Although the Revenue has urged a question concerning the exclusion by the ITAT of the three comparables in determining the arms length price of international transactions involving the Respondent/Assessee, Ms. Lakshmi Gurung, learned counsel for the Revenue, confines the challenge to the

exclusion of one comparable i.e., TCS E-Serve Ltd. (‘TCS’). She explains that as regards the exclusion of two other comparables, namely, Infosys BPO Ltd. and EClerx Services Pvt. Ltd. (‘ECS’), this Court has in its order dated 5th August, 2016 in ***PCIT-01 v. Actis Glboal Services Pvt. Ltd. (ITA No. 417/2016)*** upheld the exclusion of those two comparables and has also held that such exclusion does not give rise to any substantial question of law.

4. It is noted by the ITAT in the impugned order that TCS is involved both in ‘transaction processing’ and ‘technical services’. The ITAT has referred to the decision of a Coordinate Bench of the ITAT in the case of ***Ameriprise India Pvt. Ltd.*** in ITA No. 7014/Del./2014 where, again, while determining the arms length price, TCS has been excluded as a comparable.

5. It is pointed out by learned counsel for the Respondent/Assessee that the order in ***Ameriprise India Pvt. Ltd.*** has been affirmed on 19th October, 2016 by this Court by dismissing the Revenue's appeal i.e. ITA No. 461/2016.

6. Ms. Laxmi Gurung insisted that the only ground on which the ITAT proceeded to exclude TCS as comparable was that the segmental turnover data was not available. The ITAT observed that it was not known as to what extent the turnover of TCS was attributable to ‘transfer processing’ and which portion to ‘technical service’. She submitted that the said information was in fact available as set out elsewhere in the impugned order. TCS's ‘transfer processing’ income was Rs. 1,35,94,110/- and the remaining had to be attributed to ‘technical service’

7. The Court finds merit in the contention of Mr. Kamal Sawhney, learned counsel for the Respondent, that as far as profile of the Assessee was concerned, it was not involved in software development at all but only in BPO activities. This apart the size and scale of TCS's operations makes it an inapposite comparable vis-a-vis the Petitioner.

8. The Court is not convinced that the ITAT has committed any error in holding that TCS is not an appropriate comparable as far as determining of the arms length price of international transactions involving the Assessee is concerned. No substantial question of law arises on this issue. The appeal is dismissed.

S.MURALIDHAR, J

CHANDER SHEKHAR, J

MAY 15, 2017
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