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

% Judgment delivered on: 03.11.2017

+ ITA 935/2017

THE PR. COMMISSIONER OF INCOME TAX -9 Appellant

versus

WSP CONSULTANTS INDIA PVT. LTD. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Ruchir Bhatia, Adv.

For the Respondent : Mr. Kamal Sawhney and Mr. Shikhar Garg and
Mr. Prashant Maherchandani, Advs

CORAM:-

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

S. RAVINDRA BHAT, J. (OPEN COURT)

CM No. 39550/2017 (condonation of delay)

For the reasons stated in the application, the delay in filing the appeal is condoned. Application is disposed of.

ITA 935/2017

1. The Revenue's appeal urges that the impugned order to the extent it excluded three comparables in ALP determination, of the assessee's income, is erroneous.

2. The assessee is subsidiary of Cyprus based company and is a global business provider involved in design, engineering, management consultancy services across the built and nature environment worldwide. It provides the services to transform the built environment and restore the natural environment and its expertise in the relative fields.

3. The brief facts of the case are that the assessee provides design and engineering services to private environment transporter and infrastructure sectors, its subsidiary Cyprus based entity which engages itself in these and other related activities.

4. The TPO, who had to consider the report filed by the assessee for ALP determination, took into consideration 16 comparables and derived the ALP bringing to tax a sum of Rs. 6,55,34,938/-. The DRP to which the assessee appealed, deleted 7 comparables and at the same time included 7 more. After giving effect to the DRP's direction, final adjustments of RS. 3,87,54,545/- was made by the AO.

5. Being aggrieved the assessee filed an appeal challenging inclusion of 3 comparables i.e. Ashok Leyland Projects Services Ltd., Kitco Ltd. and Mitcon Consultancy & Engineering Services Ltd., the ITAT upheld the assessee's contentions.

6. As far as the first comparable - Ashok Leyland Projects Services Ltd. is concerned, the ITAT was of the opinion that the major part of the Revenue derived was from wind energy segment and

secondly that during the relevant year there was an extraordinary event being merger of ALPSL with Ashok Leyland Wind Project Services Ltd. and another company which presented a clear possibility of differential advantage.

7. With respect to M/s Kitco Ltd. the Tribunal held that it was a substantial government undertaking and prominent business was from government entity. So far as Mitcon Consultancy & Engineering Services Ltd. was concerned, the Tribunal noticed that less than 75% of revenue derived by this entity was from consultancy services. Besides it is also engaged in diversified activities such as training and engaging in laboratories and research etc.

8. We have heard the counsel for the Revenue who urges that the rationale for exclusion of three comparables which were high income entities is unpersuasive.

9. This Court is of the opinion that the rationale that Ashok Leyland was deriving major part of its revenue from wind energy segment and that there was an extraordinary event of merger and likewise M/s Kitco Ltd. deriving income from government entity and Mitcon Consultancy & Engineering Services Ltd, is deriving less than 75% revenue from consultancy services, is a reasonable basis for their exclusion.

10. Any inclusion or exclusion of comparables per se cannot be treated as a question of law unless it is demonstrated to the Court that

the Tribunal or any other lower authority took into account irrelevant consideration or excluded relevant factors in the ALP determination that impact significantly.

11. In the present case, we find no such error. Consequently, the appeal is without merits and is, therefore, dismissed.

**S. RAVINDRA BHAT
(JUDGE)**

**SANJEEV SACHDEVA
(JUDGE)**

**NOVEMBER 03, 2017
'rs'**

