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

INCOME TAX APPEAL NO.1099 OF 2015

The Commissioner of Income Tax
Pune .. Appellant

v/s.

M/s. Cummins Turbo Technologies Ltd. .. Respondent

Mr. Tejveer Singh for the appellant
None for the respondent

CORAM : M.S. SANKLECHA &
SANDEEP K. SHINDE, J.J.

DATED : 28th FEBRUARY, 2018.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 29th September, 2014 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2007-08.

2. The Revenue urges the following questions of law for our consideration :-

(i) Whether in the facts and circumstances of the case and in law, the Tribunal was correct in excluding Informed Technologies

India Ltd. from the set of comparable companies on account of its high profit margin during the relevant year, though the company was found to be functionally comparable and retained as a comparable in Assessment Year 2008-09 by the Tribunal.

(ii) Whether in the facts and in circumstances of the case and in law, was the Tribunal justified in treating companies engaged in various different activities classified broadly as ITES can be treated as functionally comparable?

(iii) Whether in the facts and circumstances of the case and in law, the Tribunal was correct in excluding Maple E Solutions from the comparable set on the ground that there had been complaints of fraud etc. against the directors of the company without examining full facts and giving a finding that such complaints related to the year under consideration and had any bearing on the functionality or margins of the company?

3. **Regarding question no.(i) :-**

(a) We have today passed an order in Income Tax Appeal No.1095 of 2015 filed by the Revenue in respect of the same respondent assessee arising from the common impugned order dated 29th September, 2014 to the extent it related to A.Y. 2008-09. In our order in the above appeal an identical question as raised herein was dismissed by us.

(b) Mr. Tejveer Singh, learned Counsel appearing for the Revenue very fairly states that for the reasons indicated in our order passed today in Income Tax Appeal No. 1095 of 2015 in respect of question (I) herein would equally apply to the present question.

(c) Therefore, for the reasons recorded in our order passed today in Income Tax Appeal No. 1095 of 2015 in respect of the same question, as the question no.(i) herein also does not give rise to any substantial question of law. Thus, not entertained.

4. **<u>Regarding question no.(ii) :</u>**

(a) The respondent assessee is a company incorporated in United Kingdom and engaged in the business of manufacturing and selling of turbochargers. During the subject assessment year, the respondent earned taxable income in the form of royalty from Cummins India as well as IT enabled services from its India branch. The India branch of the respondent assessee is a 100% export oriented unit and renders support services in the area of finance, human resources, marketing database support, product management support, procurement/supply chain management support, information technology services and engineering services for its parent office.

(b) For the purposes of arriving at the Arms Length Price (ALP) of the services rendered by it, the Revenue placed reliance upon M/s. Maple E-Solutions Ltd. as a comparable. However, M/s. Maple E-

Solutions Ltd. is a BPO providing call service centre. The Tribunal on examination of the activities carried out by the respondent and the activities carried out by M/s. Maple E-Solutions Ltd., found that they are functionally different and, therefore, could not be used as a comparable in arriving at ALP. The impugned order held that merely because the call centre business is also understood broadly as an IT enabled services, would not by itself lead the respondent assessee and M/s. Mapple E-Solutions Ltd. to become a comparable, looking at the functional difference between the two.

(c) The view taken by the Tribunal on the facts is a reasonable and possible view. Therefore, the question as proposed does not give rise to any substantial question of law. Thus, not entertained.

5. **Regarding Question no.(iii) :-**

(a) We find that the impugned order of the Tribunal has placed reliance upon the decision of the Delhi Bench of the Tribunal in the case of ***ITO Vs. CRM Services India (P) Ltd***. ITA No. 4068 (Del.)/2009 rendered on 30th June, 2011. and a decision of Hyderabad branch of the Tribunal in ***M/s. Capital IQ Information Systems (India) Pvt. Ltd. Vs. DCIT***, ITA No.1961/Hyd /2011 rendered on 23rd November, 2012, wherein the Tribunal has discarded M/s. Maple E-Solutions Ltd. as a comparable. This for the reason that M/s. Maple E-Solutions Ltd. was found involved in frauds resulting in the financial results declared by it, being unreliable. The impugned order of the Tribunal placed reliance upon the aforesaid decisions and concluded because of the unreliability of the data of M/s. Maple E-Solutions Ltd., it could not be used as a comparable to determine the ALP of the respondent assessee's services.

(b) The above view of the Tribunal has not been shown to be perverse in any manner. It is reasonable and possible view on the facts and, therefore, does not give rise to any substantial question of law. Thus, not entertained.

6. Thus, the appeal is dismissed. No order as to costs.

(SANDEEP K. SHINDE, J.) **(M.S. SANKLECHA, J.)**