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

WRIT PETITION NO.2960 OF 2018

Lionbridge Technologies Pvt. Ltd. … Appellant

V/s.

Union of India and ors. … Respondents

Mr.R.V.Easwar with Ms.Rubal Bansal with Mr.Harsh R. Shah with Mr.Paras Savla for the Petitioner.
Mr.Suresh Kumar for the Respondents.

CORAM : AKIL KURESHI AND
M.S.SANKLECHA, JJ.
DATE : DECEMBER 13, 2018.

P.C.:-

1. Heard learned Advocates for the parties for final disposal of the petition. Petitioner has challenged an order dated 15th June, 2018 passed by the Income Tax Appellate Tribunal ("Tribunal" for short) rejecting the petitioner's rectification application in part. Learned counsel for the petitioner has raised three separate grievances with respect to the order passed by the Tribunal. However, during the course of arguments, he confined it only to

one of them namely the decision of the Tribunal to accept the comparison for transfer pricing the case of the petitioner assessee with one Cybermate Infoteck Ltd. ("CIL" for short). The contention of the petitioner is that the comparison was not permissible in view of the decision of this Court in case of **Commissioner of Income-tax-II, Pune Vs. PTC Software (I) Private Limited**[1] in which the Court has held that the software services and software products are not identical activities and therefore, the two separate companies or entities providing respective services would not give rise to comparable instances. In the original order while dismissing the assessee's appeal on this issue, the Tribunal did not accept the contention. Through rectification application the assessee sought to bring to the notice of the Tribunal that the issue is covered by virtue of Bombay High Court judgment in case of **PTC Software India Private Limited (supra)** and further that a similar view was taken by the Tribunal in case of this very assessee in earlier assessment years. The Tribunal by the impugned judgment rejected such a ground.

1 (2016) 75 taxmann.com 31(Bombay)

2. We notice that while rejecting the above mentioned ground of the assessee, the Tribunal had entertained and allowed the rectification application in part. To the limited extent the Tribunal allowed the rectification application, further hearing of the tax appeal is scheduled before the Tribunal on 16th January, 2019.

3. In facts and circumstances of the case, we would request the Tribunal to undertake a fresh and a detailed inquiry as to the permissibility of comparing the instances of CIL with that of the petitioner/assessee with special focus on the decision of this Court in case of **PTC Software India Private Limited (supra)**. We have expressed no opinion on the rival contentions. This mode we are adopting primarily for two reasons. Firstly, the Tribunal is even otherwise hearing the tax appeal on certain limited issues. Secondly, it is prima facie brought to our notice that the Tribunal in earlier assessment years in case of this assessee had dealt with similar issue differently.

4. Under the circumstances, petition is allowed in part. The

impugned judgment of the Tribunal limited to the extent of comparing the CIL with the assessee is restored to the Tribunal which shall be heard alongwith the other issues, which the Tribunal in any case is in the process of doing. Petition disposed of accordingly.

(M.S.SANKLECHA,J.) **(AKIL KURESHI,J.)**

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