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

\+ ITA 948/2018

THE PR. COMMISSIONER OF INCOME TAX - 3..... Appellant
Through Mr. Ruchir Bhatia, Advocate.

Versus

E-VALUESERVE SEZ(GURGAON) P. LTD. ..... Respondent
Through Mr. Ananya Kapoor & Mr. Sumit Lalchandani, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

<u>O R D E R</u>

% **29.08.2018**

Present appeal by the Revenue under Section 260A of the Income Tax Act, 1961 (Act, for short) impugns the order dated 28th March, 2018 of the Income Tax Appellate Tribunal (Tribunal, for short) in the case of E-Valueserve SEZ (Gurgaon) Private Limited. The appeal relates to Assessment Year 2011-12.

2. The issue raised pertains to exclusion/inclusion of comparables namely M/s TCS E-serve International Limited, M/s Infosys BPO Limited, M/s Accentia Technologies Limited, M/s ICRA Techno Analysis Limited and eClarx Services. The issue of exclusion/inclusions of these comparables for benchmarking had arisen in the case of the respondent-assessee in the Assessment Year 2010-11. The Tribunal accepting the stand the respondent-

assessee had held that M/s TCS E-serve International Limited and M/s Infosys BPO Limited, had high brand value and operated on an economic upscale, therefore, they were able to generate and declare better profits. The Tribunal observed that this view was correct in light of the judgment of a Division bench of this Court in ITA 1064/2017, ***Principal Commissioner of Income Tax versus B.C. Management Services Private Limited*** decided on 28th November, 2017. The Tribunal also held that M/s Accentia Technologies Limited, was performing medical transcription services, which was similar to the service in which the respondent-assessee was engaged. However, due to lack of segmented data accounts, the exclusion of this identity was justified. M/s ICRA Techno Analysis Limited it was observed, was engaged in business intelligence, analytics supplies, software development, consultancy services, engineering services, web development and hosting services and was therefore functionally dissimilar. Further, no segmented data with regard to the comparable activity in the case of M/s ICRA Techno Analysis Limited was available. Lastly, eClarx Services was functionally dissimilar to the respondent-assessee.

3. ITA No.241/2018 filed by the Revenue challenging findings of the Tribunal for the Assessment Year 2010-11 was dismissed vide order dated 26th February, 2018.

4. Reasoning of the Tribunal in the present year being identical and the comparables excluded being the same companies/identities as in Assessment Year 2011-11, we would dismiss the present appeal for the reasons stated in the order dated 26th February, 2018 in ITA No. 241/2018 in the respondent assessee's own case. No distinction and difference has been highlighted and pointed out. Accordingly, we hold that no substantial question of law arises

for consideration and the appeal is dismissed, without any order as to costs.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

AUGUST 29, 2018
VKR