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

INCOME TAX APPEAL NO.105 OF 2017

The Pr. Commissioner of Income Tax-1 ... Appellant
versus
Emptoris Technologies India Pvt. Ltd. ... Respondent

Mr. Suresh Kumar, for Appellant.
None for Respondent.

CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.

DATE: 4TH JUNE, 2019

P.C.:

1. This Appeal is filed by the Department to challenge the Judgment of the Income Tax Appellate Tribunal. The following reframed question was argued before us :

> "Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT erred in excluding the comparables selected by the TPO."

2. The issue pertains to the Respondent-Assessee for the Assessment Year 2008-09 and arise out of the transferring pricing adjustment made by the Department. The sole grievance of the Department in this Appeal is with the decision of the Tribunal in discarding three instances of Companies namely (i) KALS Information Systems Ltd., (ii) eZest Solutions Ltd., and (iii) Bodhtree Consulting Ltd., as

comparables, while benchmarking the international transactions entered into by the Assessee with its associated enterprises. A perusal of the impugned judgment of the Tribunal would show that the Tribunal had relied upon a decision of Pune Bench in the case of Barclays Technology Centre India (P) Ltd. V/s. ACIT, in which under similar circumstances, the instances of the same three companies came up for consideration. By a detailed Judgment, the Pune Bench had given reasons why the instances of the said companies had to be discarded from comparables. The Revenue had challenged the said Judgment of the Tribunal in the case of Barclays Technology Centre India (P) Ltd. V/s. ACIT. The Appeal filed by the Revenue came to be dismissed by this Court by a Judgment dated 26th June, 2018 [reported in (2018) 95 taxmann.com 170 (Bombay)]. The Court after referring to the material in Court observed as under :

> *"5. In the above view, the finding of the Tribunal is entirely one of the fact and the Revenue has failed to show as to how the finding arrived at by the Tribunal is perverse in any manner. Nor has the Revenue even attempted to demonstrate that analysis done by the Tribunal while excluding the aforesaid four companies from the list of comparables, was in any manner contrary to the settled position in law. Thus, we see no reason to entertain this appeal.*
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> *6. However, before closing, we would like to record the fact that we find that the Revenue is regularly filing appeals from the orders of the Tribunal in respect of Transfer Pricing particularly with regard to exclusion and inclusion of certain companies as comparables to determine ALP of tested*

parties. These appeals are being filed in a ritualistic manner. This results in the orders of the Tribunal which are essentially findings of fact in respect of exclusion/inclusion of a comparable being challenged without pointing out in any manner perversity of finding or failure to adhere to the settled principles of law while determining comparables such as Rule 10B of the Income Tax Rules, 1961. This unnecessarily takes up the scarce time of the Court. The Revenue and the Assessee would do well to bear in mind observations of the Delhi High Court in Pr. CIT V WSP Consultants India (P) Ltd., [2018] 253 Taxman 58/[2017] 87 Taxmann.com 266 (Delhi) wherein it has been observed :

"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."

7. We hope the above observations would be kept in mind both by the Revenue and the Assessee who seek to prefer appeals from the orders of the Tribunal on Transfer Pricing particularly inclusion/exclusion of comparables. The Commissioner of Income Tax and the Assessee in general would do well to also review the Appeals filed and withdraw the same, in case the only challenge therein is to finding of facts, if the same is without evidence of any perversity or is in the face of settled legal position. The counsel of the Revenue is directed to serve a copy of this order on the Principal Chief Commissioner of Income Tax within the State of Maharashtra for necessary action.

8. Accordingly, Appeal dismissed. No order as to costs."

3. The issue raised in the above Income Tax Appeal being similar, this Appeal is also dismissed.

(S.J.KATHAWALLA, J.) **(AKIL KURESHI, J.)**