R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

INCOME TAX APPEAL NO. 178 OF 2017

Pr. Commissioner of Income Tax -1 .. Appellant

Versus

Capgemini Business Services (India) Ltd .. Respondent

....

- Mr. Suresh Kumar for the Appellant
- Mr. Atul Jasani for the Respondent

....

CORAM : AKIL KURESHI &
SARANG V. KOTWAL, JJ.

DATE : MARCH 19, 2019.

P.C.:

1. This appeal is filed by the Revenue to challenge the judgment of the Income Tax Appellate Tribunal ("the Tribunal" for short) raising following questions for our consideration:-

> "(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in holding that the comparable i.e M/s. Vishal Information Technologies Limited, should be excluded for the purpose of determining the arm's length pricing in the case of the assessee in terms of Section 92C(1) of the I.T. Act, 1961 r/w Rule 10B(2) of the I.T. Rules?
>
> (ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in deleting the disallowance of Rs. 9,53,437/- made by the AO in respect of purchase of

> the shelf software from QAD Singapore Pvt Ltd u/S. 40(a)(i) of the Act on the ground that the said expenditure was subject to deduction of tax at source u/S. 195 of the Act?"

2. In so far as the first question is concerned, the Tribunal, in the impugned judgment recorded that the case of Vishal Information Technologies Ltd cannot be taken as comparable to determine the arm's length price of the transactions of the assessee with its associates enterprise on the ground that the business module of the said company was entirely different. It was observed that Vishal Information Technologies Ltd was engaged in the service of data analytics and providing data services solutions whereas the assess is engaged in providing business process management services in the areas of finance accounts, operational control assessment, administration of foreign exchange etc. Through series of judgments this Court as well as other High Courts have taken a view that when fundamentally the business module of the two companies are different, the results of a company can be taken as a comparable in order to carry out the study for arm's length price of the transactions of the assessee with its associates enterprise. Reference in this respect can be made to the decision of Delhi High Court in case of **Rampgreen Solutions (P) Ltd Vs. CIT[1].** This question is therefore, not entertained.

3. Learned counsel for the Revenue pointed out that Question No. (ii) has been considered by this Court and the appeals have been admitted. Ordinarily, we would have admitted the Revenue's appeal in connection with this question. However, we notice that revenue implication in relation to such a question is quite small. This being a sole question and the revenue effect being low, the same is not entertained. Needless to say, this would not mean confirmation of the decision of the Tribunal on merits.

4. In view of above, the appeal is dismissed.

[SARANG V. KOTWAL, J.] **[AKIL KURESHI, J]**

1 [2015] 377 ITR 533 (Delhi)