IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

230

ITA-540-2017 (O&M)
Date of Decision: 20.8.2019

The Principal Commissioner of Income Tax, Gurgaon

...... Appellant

Versus

Corporate Executive Board India P. Ltd., Gurgaon ...... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present : Mr. Tajender K. Joshi, Sr. Standing Counsel for the appellant.

Mr. Vishal Kalra, Advocate for the respondent.

***

AJAY TEWARI, J. (Oral)

1. This order shall dispose appeal bearing No. ITA No. 540-2017 preferred by the Revenue under section 260A of the Income Tax Act, 1961 (for short "the Act") against the order dated March 17, 2017 (Annexure A-III) passed by the Income Tax Appellate Tribunal, Delhi Bench, New Delhi (hereinafter referred to as "the Tribunal") in ITA No. 963/Del/2015 for Assessment Year 2010-11, claiming the following substantial question of law:-

> *"Whether in the facts and circumstances of the case and in law, the Hon'ble ITAT was correct in excluding M/s. Accentia Technologies Limited, M/s. TCS E-Serve Ltd. and M/s. TCS E-Serve International Ltd. used as a comparable for determining the ALP in the case of the assessee company, since the TPO*

> *had made detailed findings by analyzing functionality, turnover and profile of various comparables considered in his order. Further the ITAT was not justified to consider issues pertaining to earlier years, since each year is a separate assessment year and should be considered independently. The comparables had been selected by the TPO by applying suitable and relevant parameters."*

2. A few facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee was engaged in providing data collection, web services, information research and related support services to its associated enterprises. It filed its return of income on 1.10.2010 for the assessment year 2010-11 declaring income of Rs.5,75,377. The Assessing Officer noticed that the assessee had entered into international transactions with its associated enterprises and, therefore, a reference was made to the Transfer Pricing Officer (in short "the TPO") to determine the Arm's Length Price ("ALP"). The TPO vide order dated 21.01.2014 (Annexure A-II) passed under Section 92CA(3) of the Act and determined the transfer pricing adjustment at Rs.4,25,05,514./- Thereafter, draft assessment order was passed against which the assessee approached the Dispute Resolution Panel-III, New Delhi. The Dispute Resolution Panel-III vide order dated 22.12.2014 revised the adjustment to Rs. 2,40,24,399/- instead of Rs.4,25,05,514/-. Thereafter, the Assessing Officer vide order dated 6.2.2015 (Annexure A-1) framed the assessment under section 143(3) read with section 144C of the Act at a total income of Rs. 4,25,99,780/- including the addition of Rs.4,20,24,399/- on account of Transfer Pricing Adjustments. Feeling aggrieved, the assessee filed an appeal before the Tribunal. The Tribunal vide order dated 17.3.2017 (Annexure-A-III) partly allowed the appeal of

the assessee. Hence, the present appeal by the Revenue.

3. Learned counsel for the Revenue submitted that the Tribunal had erred in law in excluding comparables, namely, M/s Accentia Technologies Limited, M/sTCS E-Serve Ltd. and M/s TCS E-Serve International Ltd. used as comparables for determining the ALP in the case of the assessee company when the assessee company and comparable companies are providing similar nature of services. He further relied upon the order passed by the TPO while dealing with these companies as comparables.

4. On the other hand, learned counsel for the appellant besides supporting the order passed by the Tribunal has submitted that the Tribunal had rightly excluded M/s Accentia Technologies Limited, M/s TCS E-Serve Ltd. and M/s TCS E-Serve International Ltd. from comparables for determining the ALP. In support of his contentions, he has placed reliance upon the following judgments:-

(i) *The Pr. CIT vs Corporate Executive Board India P. Ltd.: ITA No. 142 of 2018 (Respondent's own case for AY 2008-09)*

(ii) *PCIT vs B.C. Management Services (P.) Ltd. [2018] 403 ITR 45 (Del)*

(iii) *Ameriprise India (P.) Ltd. vs DCIT: ITA No. 7014 of 2014 –* ***(affirmed by the Hon'ble Delhi High Court: ITA No.461/2016)***

5. The issue of excluding M/s. Accentia Technologies Limited for the list of comparables was decided by this Court in the case of the assessee in ITA No. 142 of 2018 for the A.Y. 2008-09, wherein it was held that the ITAT has rightly excluded M/s Accentia Technologies Limited from the list of comparables as the same was not functionally

comparable.

6. The Tribunal further in this year directed the AO/TPO to exclude TCS E-Serve Ltd. and TCS E-Serve International Ltd. from the list of comparables on the ground that the same were functionally dissimilar to the assessee company. The tribunal held that the above mentioned comparable companies were engaged in providing technical services such as software testing, verification and validation of software at the time of implementation and data centre management activities and no segmental information was available to bifurcate the income and expenses between the ITES services and technical services. The ITAT, while excluding the comparable followed the decision of the coordinate Bench of the Tribunal in the case of Ameriprise India Private limited (supra) and Equant Solutions India Private Limited ITA No. 1202/ Del/ 2015 wherein both the above said companies were discussed and held to be not comparable with assessees providing back office ITeS services. It was also pointed out by the learned counsel for the respondent that the decision in the case of Ameriprise India (P.) Ltd. vs DCIT (supra) relied upon by the Tribunal in the instant case has been affirmed by the Delhi High Court in ITA No.461/2016.

7. In addition to the factual matrix noticed by the Tribunal for excluding these comparables, it was urged by the learned counsel for the assessee that various High Courts in respect of these very comparables in the same line of industry have already held them to be not valid comparables.

8. The Delhi High Court in the case of **PCIT vs B.C. Management Services (P) Ltd (supra)** while upholding the decision of

the Tribunal in excluding Accentia Technologies Pvt. Ltd and TCS E-Serve from the list of comparables in the line of assessee's industry had held as under:-

> *"13. The exclusion of second comparable ICRA Techno Analytics Ltd. was on the basis that it had engaged itself in processing and providing software development and consultancy and engineering services/web development services. The reasons for execution were functional dissimilarities and that segmental data were unavailable. Again the findings of the ITAT are reasonable and based on record. The third comparable that the AO/TPO excluded is TCS E-serve. The ITAT observed that though there is a close functional similarity between that entity and the assessee, however, there is a close connection between TCS E-serve and TATA Consultancy Service Ltd. which was high brand value; that distinguished it and marked it out for exclusion. The ITAT recorded that the brand value associated with TCS Consultancy reflected impactedTCS E-serve profitability in a very positive manner. This inference too in the opinion of Court, cannot be termed as unreasonable. The rationale for exclusion is therefore upheld. The assesse was aggrieved by the inclusion of Accentia a Software Development Company. The Revenue is aggrieved by the exclusion of Accentia from the TP analysis. The DRP had directed its deletion. We observe that the ITAT has noticed the unavailability of the segmental data so far as these comparables are concerned. Furthermore, the functionality of this entity was concerned, it is different from that of the assessee; Accentia was engaged in KPO services in the healthcare sector.*
>
> *14. In view of the above findings, this Court is of the opinion that no substantial question of law arises. The appeals are dismissed. "*

9. Learned counsel for the Revenue was unable to demonstrate that the order of the Tribunal suffers from any illegality or perversity as it had failed to consider or appreciate any relevant circumstances for excluding these three comparables, namely, M/s. Accentia Technologies Ltd., M/s. TCS E-Serve Ltd. and Ms. TCS E-Serve International Ltd. for determining the ALP.

10. In view of the above, it cannot be held that the aforesaid findings recorded by the Tribunal in the appeal warrant any interference by this Court.

11. Accordingly, no substantial question of law arises. Consequently, the appeal is dismissed.

(AJAY TEWARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

20.8.2019
anuradha

Whether speaking/reasoned - Yes/No
Whether reportable - Yes/No