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

INCOME TAX APPEAL NO. 1729 OF 2013
ALONGWITH
INTERIM APPLICATION (L) NO. 8395 OF 2020
IN
INCOME TAX APPEAL NO. 1729 OF 2013

Wiilis Processing Services Pvt. Ltd. ....Appellant

V/s.

Dy. Commissioner of Income Tax
2(3) and Anr. ...Respondent

ALONGWITH
INCOME TAX APPEAL NO. 1728 OF 2013

Commissioner of Income Tax – 2,
Mumbai. ....Appellant

V/s.

Wiilis Processing Services (I) Pvt. Ltd. ...Respondent

Mr. Nishant Thakkar a/w Mr. Hiten Chande i/b Mr. Atul K. Jasani for Appellant in ITXA No.1729 of 2013 and for Respondent in ITXA No.1728 of 2013.
Mr. Suresh Kumar for Respondent in ITXA No.1729 of 2013 and for Appellant in ITXA No.1728 of 2013

CORAM : K.R. SHRIRAM &
N. J. JAMADAR, JJ.
DATED : 23rd FEBRUARY, 2022

P.C. :

1. Both the above appeals pertain to Assessment Year 2007-08.

2. Income Tax Appeal No. 1729 of 2013 is filed by the Assessee. The assessee challenges the findings of the Tribunal in so far as the selection or rejection of the following 9 companies as comparables.

a. Eclerx Services Ltd.

b. Infosys BPO Ltd.

c. Wipro Ltd.

d. Maple Esolutions Ltd.

e. Asit C Mehta Financial Services Ltd.

f. Mold-Tek Technologies Ltd.

g. Vishal Information Technologies Ltd.

h. HCL Comnet System & Services Ltd.

i. Bodhtree Ltd.

The same was admitted on the following question of law:

a. Whether the Tribunal ought to have held that no transfer pricing adjustment was required in laws or on facts, in respect of the Appellant's transactions with its Associated Enterprises ("AE")?

3. Income Tax Appeal No. 1728 of 2013 is filed by the Revenue. The same was admitted on the following questions of law:

a. Whether the Hon'ble Income Tax Appellate Tribunal erred in law in holding that payment for satellite link charges was not royalty as referred to in provision of clause (iva) of Explanation of section 9(1)(vi) of the I.T.Act, 1961 and was not liable to deduction of tax at source and thereby deleting the disallowance under section 40(a)(ia) of the I.T.Act 1961 on account of non-deduction of tax at source?

b. Whether in the facts and in the circumstances of the case and in law, the Hon'ble Income Tax Appellate Tribunal erred in law in applying related party filter of 15% and the finding of the Hon'ble Tribunal is perverse and arbitrary in holding that related party filter of 10% can be applied where comparables are available and 25% can be applied where comparables are not available?

c. Whether the Hon'ble Income tax Appellate Tribunal erred in law by not applying related party filter of 25% following the provisions of section 92A(2)(a) which defines an Associated Enterprise to be one with shareholding of 26% or more in another enterprise and disregarding such conclusion drawn on this basis by Hon'ble Delhi Tribunal in the case of Actis Advisors Private Limited in ITA No. 5277/Del/2011?

4. Questions (b) and (c) of Revenue's appeal in substance challenges the findings of the Tribunal insofar as the selection or rejection of the following 5 companies as comparables.

a. Allsec Technologies Ltd.

b. Flextronics Software Systems Ltd.

c. HCL Comnet System & Services Ltd.

d. ICRA Techno Analytics Ltd.

e. R Systems International Ltd.

5. Heard the Counsels for both the parties.

We are of the view that in so far as the selection or rejection of the aforesaid 13 companies as covered in questions (b) and (c) in revenue's appeal and question in assessee's appeal the matter requires to be remanded to the Tribunal for *denovo* consideration in view of subsequent orders passed by the Tribunal in assessee's case for other assessment years and in case of other assessees.

6. In so far as question (a) in Revenue's appeal is concerned, Mr.Thakkar without prejudice to assessees' rights and contentions agrees with Mr. Suresh Kumar to said question be also reconsidered by the Tribunal for a comprehensive decision.

7. In the circumstances, the finding of the Tribunal in so far the Assessee's obligation to deduct tax at source from payments made for satellite link charges is also set aside and remanded to the Tribunal for *denovo* consideration.

8. We clarify that we have not expressed any opinion on the

correctness or otherwise of the findings of the Tribunal and the Tribunal will decide the issues afresh.

9. Accordingly both Appeals as well as Interim Application stands disposed.

(N. J. JAMADAR, J.) **(K.R. SHRIRAM, J.)**