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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision:31.07.2023

+ **ITA 413/2023**

PR. COMMISSIONER OF INCOME TAX -7, DELHI

..... Appellant

Through: Mr Puneet Rai, Sr Standing Counsel
with Mr Ashvini Kumar, Ms Madhavi
Shukla, Standing Counsels along with
Mr Nikhil Jain, Adv

versus

M/S RESERVATION DATA MAINTENANCE INDIA PVT. LTD.

..... Respondent

Through: Mr Mayank Negi, Advocate

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

CM No.38389/2023

1. Allowed, subject to just exceptions.

CM No. 38390/2023*[Application filed on behalf of the petitioner seeking
condonation of delay of 05 days in filing the appeal]*

CM No. 38391/2023*[Application filed on behalf of the petitioner seeking
condonation of delay of 28 days in re-filing the appeal]*

2. The above-captioned applications have been filed on behalf of the
petitioner seeking condonation of delay 5 days in filing and 28 days in re-



filing the appeal.

3. Learned counsel for the respondent/assessee does not oppose the prayers made in the above-captioned applications. Accordingly, the delay is condoned.

4. The applications are disposed of, in the aforesaid terms.

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5. This appeal concerns Assessment Year (AY) 2009-10.

6. Via this appeal, the appellant/revenue seeks to assail the order dated 02.12.2022.

7. The moot question which arises for consideration is: whether the Income Tax Appellate Tribunal [in short, “Tribunal”] rightly sustained the view of the Commissioner of Income Tax (Appeals) [in short, “CIT(A)”] that the following four comparables are to be excluded; i.e., (i) Accentia Technology Ltd., (ii) Eclerx Services Ltd., (iii) Coral Hub Ltd. and (iv) Cosmic Global Ltd?

8. These comparables were excluded by the CIT(A) for the purposes of computation of Arm’s Length Price (ALP) vis-à-vis international transactions.

9. Before we proceed further, we may also note that respondent/assessee had preferred cross objections against the CIT(A)’s order dated 30.01.2017, with regard to working capital adjustment.

10. The perusal of the impugned order would show that the Tribunal has remanded this issue to the Assessing Officer (AO). Evidently, qua this direction, the appellant/revenue is not agitated, as it does not form part of the instant appeal.



11. The record shows that in order to adjudicate the instant appeal, the following broad facts are required to be noticed:

- (i) The respondent/assessee is in the business of Information Technology enabled services/BPO services and also processes online data.
- (ii) The respondent/assessee had filed its Return of Income (ROI) for the AY in issue i.e., AY 2009-10 on 29.09.2009. In the ROI, it declared its income as Rs.3,47,99,820/-.
- (iii) The respondent/assessee's ROI was picked up scrutiny.
- (iv) Having regard to the fact that the respondent/assessee had entered into international transactions, the aspect concerning the same was referred to the Transfer Pricing Officer (TPO) for ALP determination.
- (v) The TPO via order dated 21.01.2013 proposed an upward adjustment amounting to Rs.4,07,44,788/-.
- (vi) The record shows that a final assessment order was passed on 16.05.2023, whereby the petitioner's income was assessed at Rs. 7,55,44,608/-, which included the aforementioned upward adjustment crystallized ed by the TPO.
- (vi) It is against the final assessment order that the respondent/assessee preferred an appeal with the CIT(A). The CIT(A) partly allowed the respondent/assessee's appeal and directed TPO to examine inclusion of one comparable concerning a company going by the name Omega Healthcare Management Services Pvt. Ltd.
- (vii) As noticed above, cross-appeals were filed against the order of CIT(A).
- (viii) The Tribunal via the impugned order sustained the inclusion of the



four comparables and remanded the issue regarding adjustment of working capital to the AO.

12. Mr Puneet Rai, learned senior standing counsel, who appears on behalf of the appellant/revenue, contended that insofar as the exclusion of Eclerx Services Ltd. and Coral Hub Ltd. is concerned, the approach taken by the Tribunal is covered by the decision of the coordinate bench of this court rendered in ***Rampgreen Solutions (P.) Ltd. v. CIT*** [2015] 377 ITR 533 (Del).

13. Mr Rai, however, submitted that as regards the other two comparables, i.e., Accentia Technology Ltd. and Cosmic Global Ltd, the Tribunal has misdirected itself on facts and in law.

13.1 It is Mr Rai's contention that there was functional similarity between the business of the respondent/assessee as well as the two comparables i.e., Accentia Technology Ltd. and Cosmic Global Ltd.

14. On the other hand, counsel for the respondent/assessee submitted that the findings of fact returned by the Tribunal would show that this submission of Mr Rai is completely misconceived.

15. We may note that Tribunal has returned the following findings of the fact with regard to Accentia Technology Ltd. and Cosmic Global Ltd.

15.1 Insofar as the Accentia Technology Ltd. is concerned, the Tribunal notes the following:

- (i) Firstly, it has developed its own software.
- (ii) Secondly, it is in the business of medical transcription services and not the BPO services.
- (iii) Thirdly, during the period in issue, it experienced an extraordinary



economic event i.e., it had acquired 96% stake in Oak Technologies Inc. which added heft to both its top and bottom line.

16. As regards Cosmic Global Ltd, the Tribunal has returned a finding of fact that it operated on a business model which was different from that of the respondent/assessee. According to the Tribunal, Cosmic Global Ltd outsourced a major part of its business and that in the relevant period, it had registered abnormal profit.

17. These findings are recorded by the Tribunal in paragraphs 21.1 to 21.3 insofar as Accentia Technologies Ltd. is concerned. Likewise, insofar as Cosmic Global Ltd is concerned, the findings are recorded in paragraph 20.1. to 20.3. of the impugned order.

18. According to us, these are findings of fact which cannot be termed as perverse. Even otherwise, we find that there is no question of law proposed by the appellant/revenue categorizing these findings as perverse.

19. For the foregoing reasons, we are not inclined to interfere with the impugned order. According to us, no substantial question of law arises for our consideration.

20. At this stage, Mr Rai says that insofar as the decision of coordinate bench in ***Rampgreen Solutions (P.) Ltd.*** is concerned, an appeal has been preferred with the Supreme Court, which is pending adjudication.

21. Needless to add, if the appellant/revenue were to succeed in the appeal pending before the Supreme Court, they could then approach the court in accordance with the law insofar as the above-captioned appeal is concerned.

22. The appeal is accordingly closed.



23. Parties will act based on the digitally signed copy of the judgment.

RAJIV SHAKDHER
JUDGE

GIRISH KATHPALIA
JUDGE

JULY 31, 2023/as

Click here to check corrigendum, if any