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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Decision delivered on: 18.12.2023+ **ITA 878/2018**

THE PR. COMMISSIONER OF INCOME TAX -4 Appellant
Through: Mr Ruchir Bhatia, Sr. Standing
Counsel.

versus

HONEYWELL INTERNATIONAL (INDIA)
PVT. LTD.

..... Respondent

Through: Mr Nageshwar Rao, Adv. with Mr
Parth and Ms Mehar Verma, Advs.

CORAM:**HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE GIRISH KATHPALIA****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J. (ORAL):**

1. This appeal concerns Assessment Year (AY) 2007-08.
2. *Via* the instant appeal, the appellant/revenue seeks to assail the order dated 30.06.2017, passed by the Income Tax Appellate Tribunal [in short, "Tribunal"].
3. Mr Ruchir Bhatia, learned senior standing counsel, who appears on behalf of appellant/revenue, says that the grievance of the appellant/revenue centres around the erroneous exclusion of the following four comparables:
 - (i) First, Accentia Technologies Ltd. [in short, "Accentia"]
 - (ii) Eclerx Services Ltd. [in short, "Eclerx"]
 - (iii) Mold-Tek Technologies Limited [in short, "Mold-Tek"]
 - (iv) TSR Darashaw Ltd [in short, "TSR"].



4. To adjudicate the instant appeal, the following broad facts are required to be noticed.

4.1 The record discloses that the respondent/assessee provides back-office support services i.e., call centre services to its Associated Enterprises (AEs).

4.2 Besides this, the respondent/assessee also renders basic liaison and market support services to its AEs; hereafter referred to as the “Corporate Service Segment” [in short, “CSS”].

4.3 The record also discloses that the matter was referred by the Assessing Officer (AO) to the Transfer Pricing Officer (TPO). The TPO directed an upward adjustment amounting to Rs.1,14,92,874/- in the Information Technology Enabled Services (ITES) Segment.

4.4 Likewise, the TPO also ordered an upward adjustment amounting to Rs. 31,329,348/- in CSS.

5. Being aggrieved, the respondent/assessee carried the matter in appeal to the Commissioner of Income Tax (Appeals) [in short, “CIT(A)”].

5.1 *Via* order dated 31.01.2014, the CIT(A) allowed the appeal and directed the exclusion of Accentia, Eclerx, Mold-Tek, and TSR as there was functional dissimilarity between them and the respondent/assessee.

5.2 Resultantly, the upward adjustment made by the TPO stood deleted. The aforementioned order passed by the CIT(A) impelled the appellant/revenue to prefer an appeal to the Tribunal. The Tribunal *via* the impugned order, sustained the order dated 31.01.2014 passed by the CIT(A).

6. Mr Bhatia, in support of his plea, has relied upon the order dated 28.10.2010 passed by the TPO.

7. In rebuttal, Mr Nageshwar Rao, learned counsel, who appears on behalf of respondents/assessee, has however, drawn our attention to the



finding of fact returned by the CIT(A), which, as noted above, was sustained by the Tribunal. According to Mr Rao, since each of the companies that were taken up for benchmarking were functionally dissimilar, the CIT(A) and Tribunal have reached the correct conclusion, which was to exclude the said comparables.

7.1 It is Mr Rao's contention that therefore, no substantial question of law arises for consideration of this court.

8. Having heard learned counsel for the parties and perused the record, we may note that insofar as each of the comparables are concerned, the Tribunal has indeed reached a conclusion, *albeit* on facts, that there is functional dissimilarity between the respondent/assessee and the comparables. The finding of fact with regard to each of the comparables has been returned in the following paragraphs of the impugned order i.e., (a) Paragraphs 9 to 11 (Accentia), (b) Paragraphs 12 to 14 (E-clerk), (c) Paragraphs 15 and 16 (Mold-Tek) and (d) Paragraphs 17 and 18 (TSR).

8.1 Briefly, the functional dissimilarities pointed out by the CIT(A) and the Tribunal with regard to each of the comparables were the following:

(i) Accentia:

It was found that it had encountered an extraordinary circumstance in the form of amalgamation during the Financial Year (FY) 2006-07 (AY 2007-08).

(ii) Eclerx and Mold-Tek:

The finding returned was that these entities were in the business of Knowledge Process Outsourcing (KPO) and in particular, were providing services concerning data analytics, data process solutions, and other high end services. It was found that these entities had a dedicated team that



developed automation tools and thus, were not comparable with companies providing low end services, like that of the assessee.

(iii) TSR:

The finding of fact was returned that during the period under consideration, i.e., AY 2007-08, TSR merged with Tata Share Registry. Evidently, TSR was operating in the Business Process Outsourcing (BPO)/ KPO sector with an emphasis on financial services. Furthermore, in the period in issue, TSR had registered unusually high margins. The main source of revenue for TSR was the software it developed for payroll processing.

9. In order to avoid prolixity, we do not intend to extract the paragraphs referred to hereinabove.

10. We find that in the instant appeal, the appellant/revenue has not proposed any question which would suggest that the findings returned by the Tribunal are perverse.

11. Given the aforesaid position, we are not inclined to interfere with the impugned order.

12. The appeal is accordingly closed, as no substantial question of law arises for our consideration.

13. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER
JUDGE

GIRISH KATHPALIA
JUDGE

DECEMBER 18, 2023/RV