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

\+ ITA 336/2022

PR. COMMISSIONER OF INCOME TAX, DELHI- 4 ..... Appellant

Through: Mr. Sanjeev Menon, Sr.SC for Mr. Zoheb Hossain, Sr.SC.

Versus

M/S INTEGREON INDIA PVT. LTD. ..... Respondent

Through: Mr. Vishal Kalra and Mr. S. S. Tomar, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

% **26.02.2024**

1. The Commissioner impugns the judgment rendered by the Income Tax Appellate Tribunal ["**ITAT**"] dated 02 April 2019 and has suggested the following questions for our consideration:

> "A. Is ITAT justified in deleting the comparable TCS e-Serve on the basis of the said comparable having a high profitability and brand when TNMM [Transactional Net Margin Method] as an appropriate method is deployed to iron out the differences among the comparables for the sake of a broad comparison?
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> B. Whether the ITAT has rightly deleted the addition made by the Assessing Officer while computing book

profit under Section 115 JB of the Income Tax Act, 1961."

2. Having heard learned counsel appearing for parties, we find that the issue of TCS e-Serve being used as a comparable, came up for consideration in **PCIT v. B.C. Management Services Pvt. Ltd**. [2017 SCC OnLine Del 12050], where the Court had held as follows:

> "**12.** The assessee provides IT enabled services in infrastructure development and testing, system and performance operations management and support etc. The Income-Tax Appellate Tribunal excluded E-clerx as comparable after noticing that it provided high value financial services relating to consultancy business and solution testing besides the web content management merchandising execution, web analytics, etc. This functional dissimilarity and absence of segmental data led to its exclusion as a comparable. Those are findings of facts based upon record. Consequently, exclusion of E-clerx was in order and cannot be interfered with.
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> **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 exclusion were functional dissimilarities and that segmental data were unavailable. Again, the findings of the Income-Tax Appellate Tribunal are reasonable and based on record. The third comparable that the Assessing Officer/Transfer Pricing Officer excluded is TCS E- serve. The Income-tax Appellate Tribunal 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 Income-tax Appellate Tribunal recorded that the brand value associated with TCS Consultancy reflected/impacted TCS E- serve profitability in a very positive manner. This inference too in the opinion of the court, cannot be termed as unreasonable. The rationale for exclusion is therefore upheld. The assessee was aggrieved by the inclusion of Accentia, a software development company. The Revenue is aggrieved by the exclusion of Accentia from the transfer pricing analysis. The DRP had directed its deletion. We observe that the Income-tax Appellate Tribunal has noticed the unavailability of the segmental data so far as these comparables are concerned. Furthermore, as far as 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.
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> **14.** In view of the above findings, this court is of the opinion that no substantial question of law arises. The appeals are dismissed."

3. We also take into consideration the contention of Mr. Kalra who draws our attention to the judgement rendered by the Supreme Court in **Apollo Tyres Ltd. v. CIT** [(2002) 9 SCC 1] and in terms whereof, question B as proposed would have to be answered in favour of the assessee.

4. In view of the aforesaid and since the view taken by the ITAT which is in accord with the legal position noticed above, we find that the appeal raises no substantial question of law.

5. The appeal shall stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

FEBRUARY 26, 2024/p