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

\+ ITA 219/2023

PR. COMMISSIONER OF INCOME TAX, BENGALURU-2, BENGALURU ..... Appellant

Through: Mr. Puneet Rai, SSC along with Mr. Ashvini Kumar and Mr. Rishabh Nangia, SCs.

versus

EDS ELECTRONICS DATA SYSTEM INDIA PVT. LTD. (NOW MERGED WITH MPHASIS LIMITED) ..... Respondent

Through: Mr. T. Surya Narayan, Sr. Adv. with Ms. Mahima Goud, Mr. Kunal Verma, Ms. Y. Pawar Jha, Mr. Ritik Gupta, Ms. Lavanya Dhawan and Mr. Shivraj Pawar, Advs.

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

O R D E R

% **01.05.2024**

CM APPL 18257/2023 (delay of 235 days in filing appeal)

Bearing in mind the disclosures made, the delay of 235 days in filing the appeal is condoned.

The application shall stand disposed of.

ITA 219/2023

1. The Principal Commissioner questions the correctness of the judgment rendered by the Income Tax Appellate Tribunal ['**ITAT**'] dated 30 July 2021 and has principally assailed the exclusion of

Vishal Information Technologies Ltd. and Nucleus Netsoft & GIS (India) Ltd. Dealing with the aforesaid two comparables and the justification for their exclusion, the ITAT has in terms of the impugned order rendered the following conclusions:-

> "7. We have heard both the parties and perused the material on record. As far as Vishal Information Technologies Ltd. is concerned, on the business mode, we find that the employee cost of this company is 47.39% as against 47.39% of the assessee as per the following details:-

Particulars	Assessee (Amt. in Rs.)	Comparable (Amt. in Rs.)
Employee Cost	13,26,998	32,01,756
Total Cost	28,00,186	17,41,957
Employee Cost/ Total Cost	47.39%	1.84%

> 8. The assessee does not outsource the work, while Vishal Information Technologies Ltd. has major operating expenses of Rs.11.49 crores towards Data entry charges and Vendor payments which comes to 75% of the total expenses as under:-

Particulars	Comparable (Amt. in Rs.)
Data entry charges and vendor payments	11,49,14,563
Total operating expenses	15,35,64,263
Data entry charge / Total expenses	75%

> 9. The services rendered by the assessee and the comparables are functionally different. The assessee provides services including voice and communication, data entry and financial management. On other hand, Vishal Information Technologies Ltd. is engaged in data conversion and digitization of documents i.e., text conversion and e-publishing which is functional different.

> 10. The onsite expenses of the comparable company is substantial as follows:-

Particulars	Comparable (Amt. in Rs.)
Onsite expenditure	14,42,81,708
Total expenditure	17,41,71,957
Onsite expenditure / Total expenditure	83%

11. As against the above, the assessee is mainly engaged in offshore activities and does not have any onsite expenditure.

12. The comparability of this company also came up for consideration before the Mumbai Tribunal in the case of ACIT v. Maersk Global Service Center (India) (P.), 14 ITR (Trib.) 541 (Mumbai) and the Tribunal upheld the exclusion of Vishal Information Technologies Ltd. observing as under:-

> "**48.** Insofar as the cases of Tulsyan Technologies Limited and Vishal Information Technologies Limited are concerned, it is noticed from their annual accounts that these companies outsourced a considerable portion of their business. As the assessee carried out entire operations by itself, in our considered opinion, these two cases were rightly excluded. Coming to the cases of Cepha Imaging Private Limited and Asian Cerc Information Technology Ltd. (Seg.), we find that these companies are engaged in providing software development services as is evident from their annual reports available on pages 52 onwards and 64 onwards of the paper book. Thus these companies become functionally different. Insofar as WIPRO BPO Solutions Limited is concerned, we find that their turnover is eleven times greater than that of the assessee. This company having such a high brand value along with much higher turnover, in our considered opinion, has been rightly excluded by the ld. CIT(A). The last case being that of Airline Financial Support Services (I) Ltd. has 31.76% of the total service fees received from the controlled transactions with the related parties. This fact is evident from pages 62 of the paper book, which makes it incomparable with the assessee"

13. In view of the above reasons, Vishal Information Technologies Ltd. is directed to be excluded from the list of comparables.

14. The next comparable for consideration is Nucleus Netsoft & GIS Ltd. We are of the opinion that this company is also to be excluded on account of different business model, export revenue filter, extra ordinary events and segmental details. The assessee does not outsource work. Whereas this company has outsourced most of its business activities. Major operating expenses of Rs.1.04 crores are with regard to data processing charges. The company has a different business model than that of assessee. The details of the company in this regard are as follows:-

Particulars	Comparable (Amt. in Rs.)
Data processing charges	1,04,65,002
Total operating expense	2,41,72,840

Data processing charge / Total operating expense	43.29%

15. The export revenue of this company is at 67.32% which is less than 75%, compared to the assessee's 92.35 as can be seen from the following:

Particulars	Assessee (Amt. in Rs.)	Comparable (Amt. in Rs.)
Export revenues	29,73,183	3,70,99,448
Total ITeS revenue	32,19,408	5,51,06,523
Data process charge/Total operating expense	92.35%	67.32%

16. Further there is no extra ordinary event of amalgamation in the case of assessee. But this company had extra ordinary events. The scheme of amalgamation was approved by the Bombay High Court on 22.2.2006 without appointed date 01.04.2005. The financial results of the transferor company have been incorporated as per the disclosure given by the company. The figures given in the annual report are not comparable with those of the previous year.

17. The segmental details of the assessee company are available and the TPO has made adjustment to the arm's length price in the ITeS segment. In the case of the comparable, the company has both IT and ITeS segments which are considered by the company as one segment and the segmental details are not available. Therefore, this company is not comparable with assessee on this count also.

18. Accordingly, the above two comparables i.e., Nucleus NetSoft & GIS Ltd. and Vishal Information Technologies Ltd. cannot be compared to the assessee company and be excluded from the list of comparables for determination of the arm's length price of international transactions."

2. In view of the aforesaid, we find that no substantial question of law can be said to arise. Consequently, we see no reason to interfere with the findings rendered by the ITAT.

3. The appeal fails and shall stand dismissed on the aforesaid terms.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MAY 01, 2024/RW