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

\+ ITA 20/2024 & CM APPL 854/2024

PRINCIPAL COMMISSION OF INCOME TAX- DELHI 1
..... Appellant

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

Versus

M/S CONVERGYS INDIA SERVICES PVT. LTD
..... Respondent

Through: Dr. Shashwat Bajpai and Mr. Mahir Khanna, Advocates

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

**<u>O R D E R</u>**

**% 05.04.2024**

1. Having heard Mr. Menon, learned counsel appearing on behalf of the appellant and Dr. Bajpai, who represents the respondent-assessee, we note that the appeal is essentially in respect of an exclusion of Acropetal Technologies Ltd. and Eclerx Services Ltd. as comparables.

2. We are informed that in the order passed by the Commissioner of Income Tax (Appeals) ["**CIT(A)**"] for Assessment Year 2008-09 the aforenoted two entities have been excluded as comparables for the following reasons:

> "16……Acropetal Technologies Ltd. (Engineering Design services Segment): <u>The appellant has argued that Acropetal is mainly engaged in the area of services (which comprise application, system and web development) and engineering design services. The</u>

appellant has explained that it has adapted its engineering design skills to suit a wide spectrum of industries which are related to Architectural, Structural, Heating, Ventilating and Air Conditioning (HVAC), Electrical, Plumbing, Steel Detailing, External Utilities and Building Information Modeling, (BIM). The Appellant has also explained that the engineering design services are functionally very different from the back office functions performed by the Appellant. Thus, it is submitted that Acropetal is not comparable with the Appellant. The appellant has also relied on the decision of the Hon'ble ITAT Bangalore in the case of Symphony- Marketing Solutions India Pvt Ltd (presently merged with Genpact India) [2013] 38 taxmann.com 55. Respectfully following the decision of the Hon'ble ITAT Bangalore in the case of Symphony Marketing Solutions India Pvt Ltd, I am of the view that Acropetal Technologies Ltd. (Engineering Design services Segment) is a KPO and functionally different from the appellant. Accordingly, the AO /TPO is directed to exclude it from the list of final comparables.

xxxx xxxx xxxx

Eclerx Services Ltd. ('Eclerx'): The Appellant has informed that Eclerx provides Sales & Marketing Services (comprising Online Operations Support, Offline Operations & Data Management and Competitive Pricing & Catalog Analytics) and Financial Services (comprising Back Office Services, Reference Data Management, Finance and Accounting, Risk Management and Ancillary Services) which are high end in nature as compared to the routine outsourced service customer care and employee care functions being performed by the appellant. The appellant has submitted that the aforesaid services performed by Eclerx are functionally different from the functions performed by the Appellant under IT enabled services segment. The appellant has further submitted that that the concerned company is engaged in providing Knowledge Process Outsourcing (KPO) Services. The appellant has relied on the decision of the Hyderabad Bench of Hon'ble ITAT in the case of Zavata India Private Limited [2013] 35 taxmann.com 423 wherein it has been held that "..... *It* is *seen that* in *case of Capital IQ Information Systems (supra), the co-ordinate bench* accepted *the objection of the assessee with regard to the aforesaid company being treated as a comparable by holding that not only the said company* is *functionally different being engaged* in *providing KPO services but* it *has also shown extraordinary high profits. Following the aforesaid decision of co-ordinate bench of Tribunal* in *case of Capital IQ information Systems, we hold that this company cannot be treated as comparable. .....*" Respectfully following the decision of the Hon'ble ITAT in the case of Zavata India Private Limited [2013] 35 taxmann.com 423, I am of the view that Eclerx Services Ltd. is a KPO and functionally different from the appellant.

Accordingly, the AO/TPO is directed to exclude it from the list of final comparables."

3. The aforesaid exclusion as set out by CIT(A) for AY 2008-09 was upheld by the Income Tax Appellate Tribunal ["**ITAT**"]. Although an appeal was brought against that decision of ITAT, the matter ultimately came to be settled between the parties in terms of the Mutual Agreement Procedure which applies.

4. Bearing in mind the undisputed fact that the respondent-assessee is principally engaged in the business of client services like customer care services and employee care support services and the two comparables which are sought to be excluded were in the business of audit processing, we find that there was no illegality committed in the exclusions as made.

5. We consequently dismiss the instant appeal alongwith pending application.

**YASHWANT VARMA, J.**

**PURUSHAINDRA KUMAR KAURAV, J.**

**APRIL 5, 2024**
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