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

\+ ITA 48/2020

THE PR. COMMISSIONER OF INCOME TAX -6

..... Appellant

Through: Mr. Aseem Chawla, Sr. SC alongwith Ms. Pratishtha Chaudhary, Advocate

Versus

NOKIA SEIMENS NETWORKS INDIA P. LTD.

..... Respondent

Through: Mr. Deepak Chopra and Mr. Ankul Goyal, Advocates

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

O R D E R

% **21.03.2024**

1. The Revenue questions the judgment rendered by the Income Tax Appellate Tribunal ["**ITAT**"] dated 1 October 2018 and has proposed the following questions of law for our consideration:-

> "2.1 Whether ld. ITAT erred in deleting the addition of Rs.19,33,295/- made by Assessing officer by holding that the equipment forms integral part of the computer systems and the assessee is entitled to the claim of depreciation at 60% by treating the peripherals as part of block of computers?
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> 2.2 Whether ld. ITAT erred in remanding the matter to the file of Assessing officer in relation with the disallowance of Rs.9,81,15,000/- towards depreciation at 25% on goodwill acquired from purchase of network business ignoring the fact that Assessee has made fresh claim and as per the scheme of Income tax Act,1961 such claim can be made only by the way of filing of revise return and such claim cannot be entertaining during the Assessment proceedings?

> 2.3 Whether the order of the ld. ITAT was perverse on facts directing to exclude Bodhtree Consulting Ltd., Cat Technologies Ltd, E-Infochips-Bangalore, E-Infochips Ltd, FCS Software Solutions Ltd., Helios &Mathorson Information Technologies Ltd, Igate Global Solutions Ltd, Infosys Ltd, Kals Information System Ltd. LGS Global Ltd., Larsen & Toubro Infotech Ltd., Mindtree Ltd. Persistent System Ltd, Quintegra Solution Ltd. R System International Ltd and Tata Elxsi Ltd even though these companies performs similar functions as that to Assessee?
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> 2.4 Whether the order of the ld. ITAT was perverse on facts directing to include SIP technologies Ltd. as comparables even though this company had failed diminishing revenue filter applied by TPO?
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> 2.5 Whether the order of the ld. ITAT was perverse on the facts directing to exclude Apitco Ltd. IDC (India) Ltd, RITES (Seg) WPCOS Ltd in support services segment even though these companies performs similar functions as that to Assessee?"

2. We note that insofar as the issue of depreciation is concerned, the same would have to be answered against the appellant bearing in mind the judgment rendered in **CIT v. BSES Yamuna Power Ltd.** [2010 SCC OnLine Del 2960].

3. In so far as question 2.2 is concerned, bearing in mind the fact that the ITAT has merely remitted the matter, we find no substantial issue which would warrant entertainment of the appeal on the aforesaid score.

4. That only leaves us with questions 2.3, 2.4 and 2.5. Pursuant to the last order passed, Mr. Chawla, learned counsel for the appellant, has drawn up a tabular statement in respect of the excluded comparables and the decisions rendered in that context. The chart is reproduced hereinbelow:-

S.No.	Comparable(s)	Remarks
1.	Bodhtree Consulting Ltd	Refer **Principal Commissioner of Income Tax-1 v. Barclays Technology Centre India**

		(P.) Ltd [2018] 95 taxmann.com 170 (Bombay) [Refer para 4 (iii)]
2.	E-Info chips-Bangalore	Refer **Principal Commissioner of Income tax, Vadodara-1 v. Allscripts (India) (P.) Ltd [2016] 72 taxmann.com 305 (Gujarat)** [Refer para 10-11]
3.	E-Infochips Ltd	Refer **Principal Commissioner of Income-tax, Delhi v. Saxo India (P.) Ltd [2016] 74 taxmann.com 88 (Delhi**) [Refer para 5]
4.	FCS Software Solutions Ltd	Refer **Principal Commissioner of Income Tax-1 v. Barclays Technology Centre India (P.) Ltd [2018] 95 taxmann.com 170 (Bombay)** [Refer para 4 (iv)
5.	Infosys Ltd	Refer **Commissioner of Income-tax v. Agnity India Technologies (P.) Ltd, [2013] 36 taxmann.com 289 (Delhi)** [Refer para 5 @ Pg 52] "5. The Tribunal has observed that the assessee was not comparable with Infosys Technologies Ltd., as Infosys Technologies Ltd. was a large and bigger company in the area of development of software and, therefore, the profits earned cannot be a benchmarked or equated with the respondent, to determine the results declared by the respondent assessee. In paragraph 3.3 the

		Tribunal has referred to the difference between the respondent-assessee and Infosys Technologies Ltd.……"
6.	Kals Information System Ltd.	Refer **Principal Commissioner of Income Tax-1 v. Barclays Technology Centre India (P.) Ltd [2018] 95 taxmann.com 170 (Bombay)** [Refer para 4 (ii)]
7.	Larsen & Toubro Infotech Ltd.,	Refer **Principal Commissioner of Income-tax, Delhi v. Saxo India (P.) Ltd [2016] 74 taxmann.com 88 (Delhi**) [Refer para 5]
8.	Mindtree Ltd	Refer Principal **Commissioner of Income-tax v. GXS India Technology Centre (P.) Ltd [2019] 111 taxmann.com 271 (Karnataka)** [Refer para 3]
9.	Persistent System Ltd,	Refer **Principal Commissioner of Income-tax, Delhi v. Saxo India (P.) Ltd [2016] 74 taxmann.com 88 (Delhi**) [Refer para 5]
10.	Quintegra Solution Ltd.	Refer **Steria India Ltd. v. Deputy Commissioner of Income-tax [2018] 92 taxmann.com 120 (Delhi)** [Refer para 17]
11.	Tata Elxsi Ltd	Refer **DE Shaw India Software (P.) Ltd. v. Assistant Commissioner of Income-tax, Circle - 1(2), Hyderabad [2014] 42 taxmann.com 74 (Hyderabad - Trib.)** [Refer para 32 @ Pg 70] "………Respectfully following the decision of

		the co-ordinate bench as aforesaid, we also remit this issue to the Assessing Officer/TPO for considering it afresh after affording a reasonable opportunity of being heard to the assessee.”
12.	IDC (India) Ltd.	Refer **Principal Commissioner of Income-tax v. Warburg Pincus India (P.) Ltd. [2022] 144 taxmann.com 160 (Bombay)** [Refer para 16 – 20]

5. Bearing in mind the views expressed in the aforenoted decisions, we find no ground to interfere with the view as ultimately taken by the ITAT.

6. The appeal raises no substantial question of law. Consequently, the appeal fails and shall stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MARCH 21, 2024

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