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

\+ ITA 624/2018

PR.COMMISSIONER OF INCOME TAX-6 ..... Appellant

Through: Mr. Ruchir Bhatia, Sr. Standing Counsel along with Ms. Deeksha Gupta, Adv.

versus

NEC TECHNOLOGIES INDIA LTD ..... Respondent

Through: Mr. Neeraj Jain, Mr. Aniket D. Agrawal and Mr. Abhishek Singhvi, Advs.

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

O R D E R

% **05.03.2024**

1. The Commissioner impugns the order of the Income Tax Appellate Tribunal [**'ITAT'**] dated 27 October 2017 and has proposed the following questions for our consideration:-

> "(i) Whether on the facts and circumstances of the case, the Tribunal is legally justified in deleting the disallowance of Rs.12,11,000/- under Section 10A of the Act on account of unbilled revenue without considering the fact that such unbilled revenue pertained to the immediately succeeding Assessment Year for which deduction under section 10A of the Act was not available.
>
> ii) Whether the Tribunal erred in law and on facts in rejecting the comparables selected by the Assessee itself as a comparable in its own Transfer Pricing Report.
>
> iii) Whether on the facts and circumstances of the case, the Tribunal was correct in rejecting Infosys Ltd as a comparable by placing reliance on the decision of this Hon'ble Court in the case of the CIT v. Agnity India Technologies Pvt. Ltd.; [2013] 262 CTR

291 (Delhi) without appreciating the relevant facts and ignoring that this comparable was selected by the Assessee itself in its transfer pricing report.

iv) Whether on the facts and circumstances of the case, the Tribunal was justified in rejecting Persistent Systems Private Limited, which was selected by Assessee in its transfer pricing report as a suitable comparable on the account of functional similarity and had also not raised any objections before Transfer Pricing Officer and/or Dispute Resolution Panel.

v) Whether on the facts and circumstances of the case, the Tribunal was justified in rejecting Tata Elxsi as comparable without examining its FAR Analysis.

vi) Whether the Tribunal erred in law and on the fact in rejecting Thirdware Solutions as a comparable by relying upon the decisions of its coordinate benches, without appreciating that the exercise of selecting comparables is specific to an Assessee Company and to the Assessment Year in dispute.

vii) Whether on the facts and circumstances of the case, the Tribunal was justified in rejecting Thirdware Solutions Ltd as a comparable on account of functional dissimilarity without considering the fact that 95.49% of its Revenue was from software development?"

2. Insofar as the issue of comparables is concerned, upon going through the findings which came to be returned by the ITAT, we find that the same raises no substantial question of law. Similarly, while dealing with the Section 10A of the Income Tax Act, 1961 ['**Act**'] question, the ITAT has observed as follows:-

"**39.** Section 10A(4) is categoric enough to explain that *"profits derived from export of articles or things or computer software shall be the amount which bears to the profits of the business of the undertaking, the same proportion as the export turnover in respect of such articles or things or computer software bears to the total turnover of the business carried on by the undertaking."* This issue has been decided by the coordinate Bench of the Tribunal in Sonata Software (supra) in favour of the assessee.

40. <u>The assessee has also proved before AO the date on which the invoices relating to such unbilled revenue is raised as well as date of realization of such invoices and this fact is not disputed by the AO and is otherwise in accordance with the Accounting Standard-09. Moreover when assessee has produced relevant' documents viz. copies of FIRC before the AO to prove the fact that the export</u>

proceeds were realized from the six months of the export, disallowance of the deduction u/s 10A of the Act on unbilled revenue and relatable foreign exchange gain is not sustainable in the eyes of law. Consequently, we are of the considered view that the assessee is entitled for deduction of Rs.12,11,000/- u/s 10A of the Act. Hence, grounds no. 5 & 6 are determined in favour of the assessee."

3. In view of the aforesaid, we find no justification to interfere with the view as taken by the ITAT. The appeal fails and shall stand dismissed on the aforesaid terms.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MARCH 05, 2024

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