



2024:DHC:8132-DB



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

% **Order reserved on: September 11, 2024**
Order pronounced on: October 22, 2024

+ ITA 592/2018
CADENCE DESIGN SYSTEMS (INDIA)Appellant
Through: Mr. Nageswar Rao & Mr. Parth,
Advs.
versus

DEPUTY COMMISSIONER OF INCOME TAX
.....Respondent

Through: Mr. Siddhartha Sinha, SSC with
Ms. Dacchita Shahi, Ms. Anuja
Pethia, JSCs, Mr. Nring
Chamwibo Zeliang & Ms. Anu
Priya Nisha Minz, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

YASHWANT VARMA, J.

1. Cadence Design Systems (India) Private Limited, the appellant herein, seeks to impugn the order of the **Income Tax Appellate Tribunal**¹ dated 05 January 2018. The appeal came to be admitted by us on 18 May 2018 on the following question of law:-

“Did the Income Tax Appellate Tribunal (ITAT) fall into error in holding that the M/s TCS E-Serve International Ltd.; M/s TCS E-Serve Ltd. and M/s Infosys BPO Limited could be taken into account as comparables in regard to ALP determination and the assessee’s international transaction reported during A.Y. 2010-11?”

¹ Tribunal



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2. The principal issue which arises is whether the Tribunal fell in error in upholding the inclusion of TCS E-serve International, TCS E-Serve Limited and Infosys BPO Limited as comparables in respect of the **Arm's Length Price**² determination pertaining to the appellant's international transactions for **Assessment Year**³ 2010-11. The Tribunal has in terms of the order impugned before us principally upheld the view expressed by the **Transfer Pricing Officer**⁴, as well as the **Dispute Resolution Panel**⁵ by holding as follows.

3. Insofar as TCS E-Serve International Ltd. is concerned, it has come to record the following conclusions:-

“6.5 Thus, it is evident from the Annual Report of the company for the year under consideration that primarily the company is not engaged in software development and it was engaged in providing IT enabled services (ITes) only. The technical services of software testing, verification and validation of the software were carried out at the time of implementation of software only and are in the nature of back-office support. On perusal of the service agreement between "CDS" and the assessee, we find that the assessee was also engaged in application development and support, web development etc. The relevant part of the agreement which is available on page 871 of the assessee's paper book is reproduced as under:

“Article II

SUBJECT MATTER OF THE CONTRACT

1. Authorization: Cadence India is authorized to provide the following services to the company and its affiliates: Back Office IT operations comprising of UNIX/ Windows Administration and Support; Internal Helpdesk Services: Application Development & Support; Web-Development & Support (collectively. 'IT Back Office Support') and Customer Support services.”

6.7 In view of the comparison of the services rendered by the assessee and the services rendered by the company, we are of the

² ALP

³ AY

⁴ TPO

⁵ DRP



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opinion that the company cannot be rejected on the ground of functional dissimilarity.

6.8 Further, the contention of Ld. counsel to exclude the company on the ground of non-availability of segment information is also not tenable as the company was functioning in one segment of ITES only.”

4. Proceeding then to evaluate the challenge to the inclusion of TCS

E-Serve, the Tribunal held:-

“7.1 The Ld. counsel submitted that pursuant to the acquisition by 'Tata' group, there is increase in revenue of 12.17% and growth in profit before tax of 226%. The reasons for excluding a company from set of comparables on the basis of turnover or profit has already been rejected by us while examining the comparability of TCS e-serve International Ltd. The Ld. counsel further submitted that the company is functionally dissimilar with the assessee company. The Ld. counsel submitted that the company was engaged in providing technical services like software testing, verification and validation of software. This contention is identical to the contention raised in the case of TCS e-serve International Ltd. On perusal of the Annual Report of the company, we find that it has rendered services identical to the services rendered by TCS e-serve International Ltd. In Schedule 'O' to the notes of account of the company, available on page 105 of the Annual Report, the principal activities of the company reported are as under:

“1. Background and principal activities

TCS e-Serve Limited is engaged in the business of providing Information Technology – Enables Services (ITes)/Business Process Outsourcing (BPO) service, primarily to Citigroup entities globally.

The company's operations broadly comprise of transaction processing and technical services. Transaction processing includes the broad spectrum of activities involving the processing, collections, customer care and payments in relation to the services offered by Citigroup to its corporate and retail clients. Technical service involves software testing, verification and validation of software at the time of implementation and data centre management activities.”

7.2 Thus, we find that the activities of the company are identical to the activities of TCS e-serve International Ltd., which are held to be in the nature of ITes and functionally similar to the assessee.



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Accordingly, we hold that the company cannot be excluded on the ground of functional dissimilarity.

7.3 The arguments of the Ld. counsel on the issue of non-availability of segment information, deemed related party transactions and entity having access to Tata brand are identical to the arguments taken in the case of TCS e-serve International Ltd. Thus following our finding in the case of comparable TCS e-serve International Ltd, we reject these arguments taken in respect of TCS e-serve Ltd also.

7.4 In view of the discussion, we uphold the direction of the Ld. ORP in retaining, TCS e-serve limited as a valid comparable.”

5. Insofar as Infosys BPO Ltd. was concerned, it has come to record the following conclusions:

“ 9.2 We have heard the rival submission and perused the relevant material on record. We note from page 7 of the Annual report of the company that it was established in April 2002 as the business process outsourcing subsidiary of Infosys Technologies Ltd. The Annual Report further mentioned that it is among the top 10 third-party BPO company in India according to the ranking of National Association of software and service companies (NAOOCOM). Thus, the contention of the Ld. counsel that the company provided wide array of the services, is not relevant as far as the function of BPO carried out by the company are similar to the functions carried out by the assessee. When, the assessee itself has characterized its activity as BPO, in such circumstances, the functions of the company cannot be held as the dissimilar.

9.3 With regard to the contention of the Ld. counsel of high brand value expenses on brand building and advertising amounting to Rs.69, 16, 780/, we find that the total expenses on brand building in advertisement constituted 0.1 % of the total turnover and which is insignificant. Further we agree with the contention of the Ld. CIT(OR) that the assessee has not brought on record any evidence that such expenditure has resulted into higher profit to the comparable company. Thus we reject the contention of the Ld. counsel of having impact of higher brand value expenses on the profitability of the company.

9.4 On the issue of large-scale operations of the company, we find that company was having turnover of Rs.1,126.63 crores as against Revenue of Rs.42.70 crores reported by the assessee from provision of IT back office support services. The turnover of the companies 26.38 times the turnover of the assessee. In our opinion, turnover of the company cannot be a ground for rejecting a comparable until and unless, there is wide variation. Accordingly, this contention of the



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Ld. counsel of the assessee for excluding the company as comparable, is also rejected.

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9.7 In view of the above discussion, we uphold the direction of the Ld. ORP to retain the 'Infosys BPO Ltd.' as a valid comparable for back office support service transaction.”

6. Mr. Nageswar Rao, learned counsel appearing for the appellant, has taken us through the record in order to establish that undisputedly Cadence Design was principally engaged in providing IT Software Development Services, Information Technology back office support services together with pre-sales marketing and post-sales technical support services to its group entities.

7. It was the case of the appellant that Cadence Design was being remunerated for those services on a cost-plus mark-up basis. Out of the ten comparable companies that came to be included by the TPO for the purposes of ALP, an objection appears to have been raised with respect to TCS E-Serve International Ltd., TCS E-Serve and Infosys BPO Limited. It was the view as taken in the final assessment order as affirmed by the DRP which came to be questioned before the Tribunal.

8. The appellant had asserted that it was a captive contract service provider, that is compensated on a cost-plus mark-up basis for services provided to its **Associated Enterprise**⁶ and that no cost is incurred for promoting the brand of its AE. The inclusion of TCS E-Serve International Ltd., TCS E-Serve and Infosys BPO Limited was essentially raised on the ground of the huge expenditure incurred by those entities in brand building and advertisement as also on account of

⁶ AE



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the reputed brand value and profile of those entities which clearly resulted in higher profitability.

9. We find that insofar as TCS E-Serve and Infosys BPO Limited are concerned, the Tribunal had in the appellant's own case pertaining to AY 2011-12 excluded those two entities from the list of comparables following the decision rendered by this Court in **Pr. Commissioner of Income Tax v BC Management Services Pvt. Ltd.**⁷. In AY 2011-12, TCS E-Serve International had been excluded from consideration by the TPO itself.

10. The exclusion of the three comparables in question would clearly merit acceptance bearing in mind a subsequent decision rendered by this Court in **PCIT v. Evalueserve Sez (Gurgaon) Pvt. Ltd.**⁸. Dealing with the aforementioned comparables, the Court in *Evalueserve Sez* had held as follows:

“ 5. This Court notices that as far as the exclusion of three comparables – M/s. TCS E-Serve Limited; M/s. TCS E-Serve International Limited and M/s. Infosys BPO Ltd. is concerned, the ITAT was cognizant of and took note of the circumstances that these entities had a high brand value and, therefore, were able to command greater profits; besides, they operated on economic upscale. This approach cannot be faulted having regard to the decision of this Court in *Pr. Commissioner of Income Tax v. B.C. Management Services Pvt. Ltd.* 2018 (89) Taxman.com 68 (Del), which reads as follows:

“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 ITAT are reasonable and based on record. The third comparable that the AO/TPO excluded is

⁷2017:DHC:7305-DB.

⁸ ITA 241/2018 decided on 26 February 2018.



TCS E-serve. The ITAT 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 ITAT 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 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 TP analysis. The DRP had directed its deletion. We observe that the ITAT has noticed the unavailability of the segmental data so far as these comparables are concerned. Furthermore, 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.

14. In view of the above findings, this Court is of the opinion that no substantial question of law arises. The appeals are dismissed."

6. The ITAT noted that M/s. Accentia Technologies Ltd. was mainly performing medical transcription services. It was of the opinion that its service was similar to the one that the assessee was engaged in. However, it also noted that there was no segmented data and on that account, directed the exclusion of that entity from the list of comparables. Likewise, in the case of M/s. ICRA Techno Analysis Ltd., it was found that the said entity was engaged in business intelligence and analytics supplies, software development, consultancy services, engineering services, web development and hosting services. Besides functional dissimilarity, the ITAT also noted that there was no segmented data to compare its activity with the assessee. Likewise, in the M/s. eClarx Services, the ITAT noted that its activity was functionally dissimilar because it performed KPO function whereas the assessee was classifiable as BPO.

7. All the reasons given by the ITAT, in the opinion of the Court, are justified and supported by the judgment in B.C. Management (supra). In the case of M/s. eClarx Services, the findings of fact with respect to dissimilarity binds the Revenue."

11. In view of the aforesaid undisputed facts which emerge from the record, we find ourselves unable to sustain the order of the Tribunal impugned before us.



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12. The appeal shall consequently stand allowed. The question as framed is answered in the affirmative and in favour of the appellant assessee.

13. The Court consequently directs the exclusion of TCS E-Serve International Ltd., TCS E-Serve and Infosys BPO Limited from the list of comparables for the purposes of undertaking the ALP for AY 2010-11.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

OCTOBER 22, 2024/DR