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**\*IN THE HIGH COURT OF DELHI AT NEW DELHI**Date of decision: 27<sup>th</sup> November, 2013

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**INCOME TAX APPEAL 527/2013**

COMMISSIONER OF INCOME TAX-IV ..... Appellant  
Through Mr. Kamal Sawhney, Sr. Standing  
Counsel.

versus

M/S GLOBAL VANTEDGE PVT. LTD ..... Respondent  
Through

**CORAM:****HON'BLE MR. JUSTICE SANJIV KHANNA****HON'BLE MR. JUSTICE SANJEEV SACHDEVA****ORDER**

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**27.11.2013**

We have heard counsel for the appellant, who submits that the present appeal has been filed because the Revenue has not accepted the decision dated 14<sup>th</sup> March, 2013, of this Court in ITA 1828/2010 and other connected appeals and SLP has been preferred. He also submits that a fresh issue has been raised in view of the findings of the tribunal in paragraph 4.8.

2. The facts of the present case reveal that the Revenue and the Dispute Resolution Panel (DRP) in their order under Section 144C did not reflect upon the factual position and the addition made was exorbitant and spacious.



3. The respondent-assessee is an Indian company incorporated under the Companies Act, 1956 and a subsidiary of Global Vantage (Mauritius) Limited. The respondent-assessee operated through their centre at Gurgaon, Haryana and undertook back office operations.

4. Global Vantage Inc. an associated enterprise was engaged in marketing and business development of the back office processing services in USA. Global Vantage Inc. Procured business, raised invoices on foreign clients, collected money and subsequently had remitted 90.60% of the said collections to the respondent-assessee, retaining their share of 9.40%.

5. Total revenue or orders received by Global Vantage Inc. during the assessment year in question i.e. 2006-07 was USD 1,37,59,885/-, which when converted into Indian rupee @ 44.2872 i.e. the average exchange rate during the financial year, comes to Rs.60,93,86,735/-. The respondent-assessee had actually received and was paid Rs.53,57,68,717/- and the balance amount of about Rs.7,36,18,018/- was retained by the American company Global Vantage Inc.

6. As per the directions of the DRP, the respondent-assessee's income in view of the arms length



price was determined at Rs.10,94,86,650/-, though the operating profit as declared by the assessee was Rs.22,06,355/-. Accordingly, an addition of Rs.10,72,80,295/- was made in the assessment order. Thus, the addition made, if accepted, is more than the total amount received by Global Vantage Inc. from third party i.e. the clients. In other words, Global Vantage Inc. would or should have paid from their own pocket or resources an amount of Rs.3,58,68,632/- because they had transferred or passed on back office operations to the respondent assessee in India. Thus, the addition suggested by the Transfer Pricing Officer, directed by DRP and in the assessment order is *per se* unsustainable and cannot be accepted. The addition made of Rs.10,72,80,295/- does not take notice of the fact that the total amount retained by Global Vantage Inc. was only 9.40% of the total receipts i.e. Rs.7,36,18,018/-, a position which is not disputed and denied.

7. We find that the tribunal has passed an order of remand after rejecting several contentions of the respondent-assessee. It has been also noticed that in the assessment years 2003-04 to 2005-06, the tribunal had held that the maximum arms' length price should be restricted to 98.60% i.e. the adjustment in arms' length price cannot exceed 98.60% and, therefore,



1.40% of the amount received should be allowed to be retained by Global Vantage Inc. and should not be taxed in India. The fact that Global Vantage Inc. had performed services and had to be paid commensurate with the functions performed, assets utilised, risk undertaken etc. is not disputed and challenged by the Revenue.

8. With regard to paragraph 4.8, the tribunal has recorded as under:-

“4.8 The issue that comparable should not be rejected only on the ground of persistent losses, raised in ground no.11, the Id. Counsel submitted that this issue was not in earlier years and is fresh ground. Assessee’s five comparable have been rejected on the ground that in those there were persistent losses. Id. Counsel submitted that this issue has been dealt by the ITAT Delhi Bench ‘H’ vide order dated 23-9-2008 in the case of M/s Sony India (P) Ltd. for A.Y. 2001-02 to 2003-04 (2008-TIOL-439-ITAT-Del). The TPO and the DRP have not adverted to this issue. Therefore, this issue may be accordingly decided.”

9. We do not think that the tribunal has decided any material issue in the aforesaid paragraph. The tribunal has referred to their earlier decision in the case of Sony India (P) Ltd. and have observed that TPO and DRP had not adverted to the said aspect. The claim of the assessee was that there were five other comparable, which had suffered losses, though they were engaged in the same business. The claim of the Revenue was



that the said comparables were suffering persistent losses. W  
do not think that any direction has been given by the tribunal  
except reference to their order in the case of Sony India (P) Ltd.

10. Having gone through the decision in *Sony India (P) Ltd. Vs. Deputy Commissioner of Income Tax*, reported in (2009) 315 ITR (A.T.) 150 (ITAT, Del.) (Paragraphs 117 to 119), we do not think that any observation made therein requires or mandates issue of notice.

11. We are not inclined to interfere with the order of the tribunal and the appeal is dismissed.

  
SANJIV KHANNA, J.

  
SANJEEV SACHDEVA, J.

NOVEMBER 27, 2013

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