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

+ ITA 127/2022

THE PR. COMMISSIONER OF INCOME TAX -3 Appellant

Through: Mr.Ruchir Bhatia, standing counsel.

versus

EVALUESERVE.COM PVT. LTD. Respondent

Through: Ms.Ananya Kapoor with Mr.Salil Kapoor and Mr.Sumit Lalchandani, Advocates.

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Date of Decision: 26th April, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

MANMOHAN, J (Oral):

1. Present Income Tax Appeal has been filed challenging the Order dated 01st November, 2019 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 1814/Del./2017 for the Assessment Year 2012-13.
2. Learned counsel for the Appellant states that the ITAT has erred in excluding M/s Eclerx Services Pvt. Ltd, TCS E-Serve Ltd, BNR Udyog Ltd. and Excel Infoways Ltd as comparables for determining arm's length price in the case of the respondent.
3. It is settled law that exclusion or inclusion of one or other comparable would by itself not constitute a question of law unless it is shown that there are important functional dissimilarities or vital material facts which go to the



root of profitability or where other material circumstances are involved. [See: *Principal Commissioner of Income Tax-9 vs. WSP Consultants India (P.) Ltd., (2017) 87 taxmann.com 266 (Delhi)* and *Principal Commissioner of Income Tax -2 vs. Becton Dickinson India (P) Ltd., (2018) 92 taxmann.com 45 (Delhi)*].

4. A perusal of the impugned order reveals that the ITAT has given cogent reasons for excluding the aforesaid four companies as comparables. The relevant portion of the impugned order is reproduced hereinbelow:-

“Eclerx Services Ltd.

7.5 When on similar facts and circumstances, Eclerx has been found to be incomparable with the assessee, which finding has been affirmed by Hon’ble Delhi High Court and there is no change in the material facts and circumstances in this year, then we do not find any reason to deviate from such finding. Accordingly, respectfully following the same, we direct the TPO/AO to exclude Eclerx from comparability list.

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TCS E-Serve Ltd.

18. Respectfully following the aforesaid principle of Hon’ble Jurisdictional High Court which applies in the present case also we direct the TPO to exclude the said comparable.

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BNR Udyog Ltd.

11. After considering the aforesaid submissions, we find that, first of all, on perusal of the annual report it is seen that apart from medical transcription activities, it is also into medical billing and coding services. The functional profile of the medical transcription segment is almost akin to functions of Accentia Technologies Ltd. and again for the various activities of medical transcription, medical billing and coding services there is no separate segment. In the case of Evalueserve SEZ, the Tribunal after detail analysis has excluded the said comparable. The finding of the Tribunal now stands confirmed



by the Hon'ble Delhi High Court (supra). Accordingly, respectfully following the same, this comparable is also directed to be excluded.

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Excel Infoways Ltd.

13. After considering aforesaid submissions, we find that apart from ITeS-BPO segment, this company is also carrying business of infrastructure facility which almost constitutes 49% of the revenue. There are no segmental details for these two activities. The profit margin on such activity of development of infrastructure facility cannot be identified and therefore, it cannot be held that such a huge margin reported by the said company is on account of ITeS/BPO segment or development of infrastructure facility. On this ground alone, we do not find it to be fit comparable. Other aspect of employee cost filter and diminishing revenues and profits are not being considered.”

5. The aforesaid reasoning is factual and discloses the functional and other reasons to elucidate, dissimilarities between the four entities and the Respondent/Assessee. Keeping in view the aforesaid factual background, which is neither doubted nor challenged on the ground of perversity, we do not find any substantial question of law for consideration in this appeal. The appeal is accordingly dismissed.

MANMOHAN, J

DINESH KUMAR SHARMA, J

APRIL 26, 2022
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