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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ITA 219/2023**

PR. COMMISSIONER OF INCOME TAX, BENGALURU-2,
BENGALURU

..... Appellant

Through: Mr Puneet Rai, Sr. Standing Counsel
with Mr Ashvini Kumar, Ms Madhavi
Shukla and Mr Nikhil Jain,
Advocates.

versus

EDS ELECTRONICS DATE SYSTEM INDIA PVT. LTD. (NOW
MERGED WITH MPHASIS LIMITED)

..... Respondent

Through: None.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

ORDER

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17.04.2023

[Physical Hearing/Hybrid Hearing (as per request)]

CM APPL. 18256/2023

1. Allowed, subject to just exceptions.

CM APPL. 18257/2023

2. This is an application moved on behalf of the appellant/revenue,
seeking condonation of delay in filing the appeal.

2.1 According to the appellant/revenue, there is a delay of 235 days.

3. Issue notice to the respondent/assessee *via* all modes, including e-mail.

4. List the above-captioned application on 05.10.2023.

ITA 219/2023

page 1 of 2



ITA 219/2023

5. This appeal concerns Assessment Year (AY) 2006-2007, and is directed against the order dated 30.07.2021 passed by the Income Tax Appellate Tribunal [in short, “Tribunal”].

6. We may note, that the appellant/revenue has proposed the following questions of law:

“A. Whether the Ld. ITAT is correct in holding that M/s Vishal Information Technologies Ltd. And M/s Nucleus NetSoft & GIS Ltd. cannot be taken as comparables by holding that these companies are functionally dissimilar to the assessee company?

B. Whether the Ld. ITAT is correct in facts and in law in seeking exact comparability while searching for comparable companies of the assessee under TNMM whereas the requirement of law and international jurisprudence requires seeking similar comparable companies?

C. Whether while seeking the exact comparability the Ld. Tribunal was right in fact and in law in imposing condition beyond the requirement under law when the requirement under law is to acknowledge only those differences that are likely to materially affect the margin?

D. Whether the Ld. Tribunal is correct in fact and in law in not acknowledging that determination of ALP by carrying out comparability analysis of comparable companies is an art and not exact science as no two companies are exactly the same?

E. Whether the Ld. Tribunal is correct in fact and in law in demanding comparability standards that may itself defeat the purpose of law relating to determination of ALP under the Income Tax Act?”

7. List the above-captioned appeal on 05.10.2023.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

APRIL 17, 2023 / tr

ITA 219/2023

[Click here to check corrigendum, if any](#)
page 1 of 2