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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ ITA 477/2024

PR. COMMISSIONER OF INCOME TAX -7 .....Appellant  
Through: Mr. Ruchir Bhatia, SSC, Mr.  
Anant Mann, JSC, Mr.  
Abhishek Anand and Mr.  
Pranjal Singh, Advocates.  
versus

ST MICRO ELECTRONICS PVT. LTD. ....Respondent  
Through: Mr. Neeraj Jain, Mr. Aditya  
Vohra and Mr. Shashvat  
Dhamija, Advocates.

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

**ORDER**

% **03.09.2024**  
**CM APPL. 50805/2024 (819 Days Delay in Refiling)**

Bearing in the mind the disclosures made, the delay of 819 days in refiling the appeal is condoned.

The application shall stand disposed of.

**ITA 477/2024**

1. The Principal Commissioner impugns the order of the **Income Tax Appellate Tribunal**<sup>1</sup> dated 18 August 2021 and posits the following questions of law for our consideration:-

“2.1 Whether in the facts and circumstances of the case, Ld. ITAT is correct in holding that M/s Exensys Software Solutions Ltd., Thirdware Solutions Ltd., VisualSoft Technologies LTd.(Seg) and SankhyaInfotech Ltd. cannot be taken as comparable being functionally different when these companies have passed all the

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<sup>1</sup> Tribunal



qualitative and quantitative filters adopted by the TPO?

2.2 Whether in the facts and circumstances of the case, Ld. ITAT's decision with respect of trading M/s Exensys Software Solutions Ltd., Thirdware Solutions Ltd., VisualSoft Technologies (Seg) and SankhyaInfotech Ltd as non-comparable is not perverse when these comparables satisfy all the qualitative and quantitative filters adopted by the TPO?

2.3 Whether in the facts and circumstances of the case and in law Ld. ITAT has not erred in relying on the Judgment of Hon'ble High Court in the case of Colt Technology Service Pvt. Ltd. (CTSIPL) even through CTSIPL is functionally different compared to Assessee. CTSIPL is in software development while the Assessee is engaged in Integrated Circuit Design, CAD tools and computer software Development service as well as in ITES?

2.4 Whether in the facts and circumstances of the case and in law Ld. ITAT is justified by treating high profit margin companies, M/s Exensys Software Solutions Ltd., Thirdware Solutions Ltd., Visualsoft Teclinologies ( Seg) and SankhyaInfotech Ltd., as non-comparable and considering low profit margin companies as suitable comparables whereas if the decision of the Ld. ITAT is taken into account, these companies are also not acutely similar to the Assessee's functional profile. Thus Ld. ITAT's decision is perverse on the ground that while rejecting comparables of High profit margin low profit margin companies continue to be included in the list of comparables such as Akshay Software Technologies, Lanco Global System Ltd. and VJIL Consulting Ltd, which should also be excluded by itself for proper comparability analysis as these companies are also not exactly similar to the assessee's functional profile?

2.5 Whether on the facts and circumstances of the case and in law Ld. ITAT has erred in not appreciating the facts in TNMM a broad functional similarity is seen. If strict functional comparison is made then other comparables with low margin also needs to be examined and would fails the test;

(a) Akshay Software Technologies can also said to be functionally different as more than 60% of its expenditure is in foreign currency indicating most of the software development work is being done in offshore location indicating a totally different cost base?

(b) VJIL Consulting Ltd. can also be said to be functionally different as more than 60% of its expenditure is in foreign currency indicating most of the software development work is being done in offshore location a totally different cost base?



(c) Lanco Global System Ltd. can also be said to be functionally un comparable as with turnover of 6 crores it is very small and start-up company compared to assessee with a turnover of Rs.222 crores. Further Laneo Global is substantially operating in BPO Segment?”

2. We note that the issue of exclusion of the four comparables was one which was answered in favour of the respondent-assessee by the **Commissioner of Income Tax (Appeals)**<sup>2</sup> in its order dated 19 May 2017. It was the view expressed by that authority which has ultimately come to be affirmed by the Tribunal in terms of paragraph 9 of the order impugned before us and which is extracted hereinbelow:-

“9. We have heard the rival contentions and perused the material available on record. The Revenue is aggrieved by the exclusion of following comparables by the Ld. CIT(A):-

- [1] Exensys Software Solutions Ltd;
- [2] Thirdware Solutions Ltd.;
- [3] Visualsoft Technologies (Seg); and
- [4] Sankhya Infotech Ltd.

By excluding these comparables, Ld.CIT(A) placed reliance upon the judgement of the Hon'ble Delhi High Court and the decision of Tribunal in the case of *Colt Technology Services India Pvt.Ltd. (ITA No.609/Del/2011)*. We find that the Ld.CIT(A) after considering the material placed on records and has given finding on facts in respect of the functional comparability of the comparables selected by the TPO. The Revenue has failed to effectively rebut the finding of Ld.CIT(A). Moreover, this issue has already been examined in the case of *Colt Technology Services India Pvt. Ltd.(supra)* by the Tribunal as well as Hon'ble Jurisdictional High Court. Therefore, we do not see any reason to interfere in the findings of Ld. CIT(A). Thus, order of Ld. CIT(A) is hereby affirmed. The Ground of appeal No.1 raised by the Revenue is dismissed.”

3. Bearing in mind the aforesaid findings of fact, we find no justification to entertain the instant appeal.

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<sup>2</sup> CIT(A)



4. The appeal shall accordingly stand dismissed.

**YASHWANT VARMA, J.**

**RAVINDER DUDEJA, J.**

**SEPTEMBER 3, 2024/ib**