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

% *Judgment reserved on: 20.11.2023*
Judgment pronounced on: 04.12.2023

\+ **ITA 175/2019**

PR. COMMISSIONER OF INCOME TAX-04, DELHI
..... Appellant
Through: Mr Prashant Meharchandani, Sr Standing Counsel.

versus

M/ S INDUCTIS INDIA PVT. LTD. ..... Respondent
Through: Mr Vishal Kalra and Mr S.S. Tomar, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE GIRISH KATHPALIA

GIRISH KATHPALIA, J.:

PREFACE

1. By way of this appeal brought under Section 260A of the Income Tax Act, revenue has assailed order dated 20.08.2018 passed by the Income Tax Appellate Tribunal in ITA1203/del/2017 pertaining to Assessment Year 2012-13. On advance notice, the respondent/assessee entered appearance through counsel. Having heard counsel for both sides, we are of the view that all issues raised in this appeal already stand covered by various judicial pronouncements and as such, there is no substantial question of law involved in this appeal, to be decided by us.

2. For the sake of convenience, the questions proposed as substantial questions of law in the appeal are extracted below:

> *"2.1 Whether earning/receipt of income exempt from tax is a necessary pre-requisite before making disallowance under Section 14A(1) of the Income Tax Act, 1961?*
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> *2.2 Whether the Ld. ITAT was justified in deleting the disallowance made under Section 14A of the Income-tax Act, 1961 read with Rule 8D(2)(iii) of the Income-tax Rules, 1962 of the Act, on the basis that the Assessee was a debt free company, ignoring the fact that the debt position of the Assessee is irrelevant with regard to expenditure calculated under Rule 8D(2)(iii)?*
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> *2.3 Whether the Ld. ITAT was erred in holding that receivables from the AE are not international transaction by ignoring sub-clause (c) of clause (i) of Explanation below Section 92B of the Act which clearly provides that receivables are international transactions?*
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> *2.4 Whether receivable beyond due date of payment as agreed under the contract with the AE is legally an international transaction under sub-clause (c) of clause (i) of Explanation below Section 92B of the Act requiring determination of Arm's Length Price?*
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> *2.5 Whether the Ld. ITAT erred in excluding TCS E-Serve Ltd. from the list of comparables especially when the authorities below had established functional similarity of the comparable?*
>
> *2.6 Whether the Ld. ITAT erred in excluding Accentia Technologies Ltd. from the list of comparables especially when the authorities below had established functional similarity of the comparable?"*

3. Succinctly stated, circumstances relevant for present purposes are as follows.

3.1 The respondent/assessee being a wholly owned subsidiary of ExlService Mauritius Ltd (*which in turn is a subsidiary of ExlServices holdings Inc. US*) was engaged in providing IT enabled back office research and data analytics services to its associated establishments (AE) and filed its return of income on 29.11.2012 declaring its total income as Rs.16,42,41,218/-.

3.2 The case of the respondent/assessee was selected for scrutiny assessment and notice under Section 143(2) of the Act was issued to it on 08.08.2013, which was followed by notice under Section 142(1) of the Act with a detailed questionnaire dated 06.11.2015, in response whereof the respondent/assessee attended the proceedings whenever called upon to do so.

3.3 On 22.02.2016, the respondent/assessee was called upon to show cause as to why a disallowance under Section 14A of the Act read with Rule 8D of the Rules be not made pertaining to the dividend income of Rs.30,15,872/- pertaining to which expenses were not declared during the relevant financial year. The respondent/assessee vide letter dated 29.02.2016 answered that it did not incur any direct or indirect expenditure in making the concerned investment.

3.4 Reference under Section 92CA of the Act was made to the Transfer Pricing Officer (TPO) for determination of Arms Length Price qua international transactions undertaken by the respondent/assessee during the relevant financial year. In the course of proceedings, the TPO issued a show cause notice to the respondent/assessee, calling upon it to explain as to why an upward adjustment be not made to the value of international transaction resulting in corresponding enhancement in the income of the respondent/assessee, and the TPO selected in the list of comparables, two entities namely Accentia Technologies Ltd and TCS E-Serve Ltd. Vide order dated 29.01.2016 the TPO added a sum of Rs13,20,31,648/- to the total income of the respondent/assessee on account of Arms Length Price (ALP) adjustment pertaining to IT enabled

services.

3.5 After issuance of show cause notice dated 03.03.2016 to the respondent/assessee qua upward adjustment, the Assessing Officer (AO) passed the Draft Assessment Order dated 14.03.2016, making an addition of Rs.13,25,22,487/- to the total income of the respondent/assessee, which amount included a sum of Rs.4,90,839/- towards disallowance under Section 14A of the Act.

3.6 The objections filed by the respondent/assessee before the Dispute Resolution Panel (DRP) were disposed of vide order dated 18.11.2016, wherein the DRP upheld the selection of Accentia Technologies Ltd and TCS E-Serve Ltd as comparables and also held that deferred receivables from AE being an international transaction, the respondent/assessee had failed to establish that adjustment towards overdue receivables was not justified. On these grounds, the DRP upheld the view of the Assessing Officer and upheld the disallowance of expenses under Section 14A of the Act.

3.7 Accordingly, the Assessing Officer passed Final Assessment Order dated 28.12.2016, thereby making an addition of Rs.16,79,45,649/- to the income of the respondent/assessee.

3.8 On 11.01.2017, the TPO passed rectification order under Section 154 of the Act correcting the adjustment on account of provisions of IT enabled services, thereby bringing down the TP adjustment on ALP to Rs.8,61,13,970/-.

3.9 The respondent/assessee filed appeal before the Tribunal, which was allowed, holding that the respondent/assessee being a debt free company, adjustment on account of interest on receivables was not sustainable in the eyes of law; that since segmental data pertaining to Accentia Technologies Ltd was not available and the other company TCS E-Serve Ltd had earlier also been excluded on account of high turnover, large scale operations, high brand value and the nature of services, both comparables were liable to be rejected from list of comparables chosen by TPO; and that for the year under consideration, the respondent/assessee was a debt free company, so no interest bearing borrowed funds were utilized for making investments in exempt securities, as such addition made on account of disallowed expenses under Section 14A of the Act was liable to be deleted.

3.10 Hence, the present appeal.

DISCUSSION & ANALYSIS

4. In support of his contention that no substantial question of law is involved in this appeal as all questions proposed by the appellant/revenue already stand covered by the judicial precedents, the learned counsel for respondent/assessee referred to the said precedents, cited hereafter. Learned counsel for appellant/revenue, though tried to justify a fresh analysis, but could not refute the binding applicability of the said judicial precedents.

5. As regards the proposed questions no. 2.1 and 2.2 dealing with disallowance under Section 14A of the Act, in the case of ***PCIT vs***

Security Printing and Mining Corporation of India Ltd, (2023) 154 taxmann.com 554 (Delhi) this court, placing reliance on various judicial precedents including ***Coforge Ltd (formerly known as NIIT Technologies Ltd) vs ACIT***, (ITA No. 213/2021 decided on 09.04.2021) held that in order to ascertain the causal connection between the subject expenditure and the exempt income, the Assessing Officer has to mandatorily scan and scrutinize the accounts of the assessee.

5.1 But in the present case, the Assessing Officer proceeded on a mere assumption that interest bearing funds could also have been utilized for making the investment in question, because the respondent/assessee had failed to establish that source of investments was its own funds. In view of the stand taken by the respondent/assessee that the investments were made in the mutual funds in ICICI Liquidity Plan wherein the dividend was automatically reinvested with weekly frequency without any efforts for earning dividend income and that it did not have any borrowings, the Tribunal examined the balance sheets of the respondent/assessee from which it came to a definite conclusion that there were no borrowed funds in the books of the respondent/assessee pertaining to the relevant year, therefore there was no question of using borrowed funds for investments in mutual funds and consequently the impugned disallowance under Section 14A of the Act was unwarranted.

5.2 That being so, in our view the questions 2.1 and 2.2 proposed by the appellant/revenue cannot be treated as substantial question of law for present purposes.

6. As regards the proposed questions 2.3 and 2.4 pertaining to adjustments on account of delay in realization of receivables, the DRP held that in view of explanation (i)(c) to Section 92B of the Act, deferred receivables from AE is an international transaction and that aggregation of transaction is possible only when the transactions are continuous and closed linked but the respondent/assessee had failed to discharge its onus to establish that the transaction of outstanding receivables was not a separate transactions and no separate adjustment on that account was warranted; and that the respondent/assessee had failed to establish that delay in payment of receivables was compensated by AE through a set off.

6.1 In the impugned order, the Tribunal accepted the claim of the respondent/assessee that it being a debt free company, no adjustment on account of notional interest on receivables was warranted in view of an earlier decision of a coordinate bench of the Tribunal. On this aspect, learned counsel for appellant/revenue contended that the Tribunal fell in error by blindly following the decision of the its coordinate bench in the respondent/assessee's case for Assessment Year 2010-11 by holding that the respondent/assessee was a debt free company and there was no need to impute notional interest on outstanding receivables.

6.2 The fact that the respondent/assessee is debt free is not contested. Given this position, the question is as to whether adjustment on account of notional interest on receivables could have been made.

6.3 This issue stands clearly covered by the decision of a coordinate

bench of this court in the case of ***PCIT vs Boeing India (P) Ltd,*** (2023) 146 taxmann.com 131 Delhi, in which after traversing through various judicial precedents, the court held that the assessee company being a debt free company the question of receiving any interest on receivables did not arise so the adjustment made by the Assessing Officer on account of interest on outstanding receivables was liable to be deleted.

6.4 Earlier, in similar circumstances, the issue came up before the Income Tax Appellate Tribunal in the case of ***Bechtel India (P) Ltd. vs DCIT,*** (2016) 66 taxmann.com 6 and the Tribunal held that the assessee being a debt free company, it would not be justifiable to presume that the borrowed funds have been utilized to pass on the facilities to its AEs and the revenue also had not brought on record that the assessee had been found paying interest to its creditors or suppliers on delayed payments. This view of the Income Tax Appellate Tribunal was upheld by a coordinate bench of this court in appeal titled ***PCIT vs Bechtel India (P) Ltd,*** ITA 379/2016 decided on 21.07.2016, observing that no substantial question of law arose as the Tribunal had returned a finding of fact to the effect that the assessee was a debt free company and a question of receiving any interest on receivable did not arise. Against the said judgment, Special Leave Petition No. CC4956/2017 preferred by the revenue was dismissed vide order dated 21.07.2017.

6.5 In the case of ***PCIT vs Kusum Healthcare Pvt. Ltd.,*** (2018) 99 taxmann.com 431, a coordinate bench of this court also dealt with the amendment brought in Section 92B of the Act by way of insertion of an explanation and held thus:

> *"8. Aggrieved by the said order, the assessee filed an appeal before the Income-tax Appellate Tribunal. By the impugned order dated March 31, 2015, the Income-tax Appellate Tribunal set aside the assessment order. The Income-tax Appellate Tribunal noted that the assessee had undertaken working capital adjustment for the comparable companies selected in its transfer pricing report. It was further noted that "the differential impact of working capital of the assessee vis-a-vis its comparables had already been factored in the pricing/profitability" which was more than the working capital adjusted margin of the comparables and, therefore, "any further adjustment to the margins of the assessee on the pretext of outstanding receivables is unwarranted and wholly unjustified".*
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> *10.* ***The court is unable to agree with the above submissions. The inclusion in the Explanation to section 92B of the Act of the expression "receivables" does not mean that dehors the context every item of "receivables" appearing in the accounts of an entity, which may have dealings with foreign associated enterprises would automatically be characterised as an international transaction. There may be a delay in collection of monies for supplies made, even beyond the agreed limit, due to a variety of factors which will have to be investigated on a case to case basis. Importantly, the impact this would have on the working capital of the assessee will have to be studied. In other words, there has to be a proper inquiry by the Transfer Pricing Officer by analysing the statistics over a period of time to discern a pattern which would indicate that vis-a-vis the receivables for the supplies made to an associated enterprise, the arrangement reflects an international transaction intended to benefit the associated enterprise in some way****."*
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> *(emphasis is ours)*

6.6 That being so, in our view the questions 2.3 and 2.4 proposed by the appellant/revenue cannot be treated as substantial question of law for present purposes.

7. As regards the proposed questions 2.5 and 2.6 pertaining to rejection of Accentia Technologies Ltd and TCS E-Serve Ltd, the issue stands covered by earlier decisions of this court in the cases ***PCIT vs Inductis India (P) Ltd,*** ITA 144/2019 decided on 12.02.2019 and ***PCIT***

vs B.C. Management (P) Ltd, (2018) 403 ITR 45 (Delhi). In the case of ***Industis India*** (supra) pertaining to the present respondent/assessee, this court held thus:

> *"4. The last issue urged is with respect to the issue of comparables. The first comparable excluded by ITAT's order i.e. Accentia Technologies Ltd., was excluded on the basis that the company was functionally dissimilar and that the segmental data for the assessment year with regard to the comparable segment was not available. The second comparable directed to be excluded i.e. TCS E-Serve Ltd., was on the ground that the concern provided high end online software solutions unlike the assessee, which provided internet based medical health related services. The real services, therefore, were entirely dissimilar. We are of the opinion that this aspect is not a question of law, rather a factual one and does not call for any interference."*

7.1 That being so, in our view the questions 2.5 and 2.6 proposed by the appellant/revenue cannot be treated as substantial questions of law for present purposes.

8. Thence, the present appeal fails to raise any substantial question of law. Therefore, the appeal is dismissed.

(GIRISH KATHPALIA)
JUDGE

(RAJIV SHAKDHER)
JUDGE

DECEMBER 04, 2023
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