



\$~7 of 08.09.2023

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

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*Date of Decision: 11.09.2023*

+ **ITA 461/2019**

THE PR. COMMISSIONER OF INCOME TAX-4..... Appellant

Through: Mr Ruchir Bhatia, Sr Standing  
Counsel with Ms Deeksha Gupta,  
Adv.

versus

GLOBAL LOGIC INDIA LIMITED ..... Respondent

Through: Mr Neeraj Jain with Mr. Aniket D.  
Agrawal, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SHAKDHER**

**HON'BLE MR. JUSTICE GIRISH KATHPALIA**

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

*[This matter is being taken up today on account of the holiday declared on  
08.09.2023]*

1. This appeal concerns Assessment Year (AY) 2011-12.
2. *Via* the instant appeal, the appellant/revenue seeks to assail the order dated 30.10.2018, passed by the Income Tax Appellate Tribunal [in short, "Tribunal"].
3. Mr Ruchir Bhatia, learned senior standing counsel, who appears on behalf of the appellant/revenue, submits that broadly two issues arise for consideration in the present appeal:

(i) Whether the Tribunal has erred in law in the treatment of foreign exchange gain/loss by categorizing it as operating income/



operating loss?

(ii) Whether the Tribunal has erred in law while excluding two comparables i.e., Wipro Technologies Services Ltd. and Infosys Ltd?

4. Insofar as the first issue is concerned, Mr Bhatia cannot but accept that it stands covered against the appellant/revenue by a decision dated 06.01.2016, rendered in ITA 17/2016, titled ***Pr. Commissioner of Income Tax-3 v. Fiserv India Pvt. Ltd.***

5. The second issue, as noticed above, concerns the exclusion of comparables.

6. Insofar as exclusion of Infosys Ltd. is concerned, we have queried Mr Bhatia as to whether any appeal has been preferred vis-à-vis Tribunal's decision qua AYs 2007-08 and 2008-09.

6.1 Mr Bhatia informs us that the Tribunal has ruled in favour of the respondent/assessee in AYs 2007-08 and 2008-09. However, Mr Neeraj Jain, counsel for the respondent/assessee, says that no appeal has been preferred.

7. As regards exclusion of Wipro Technologies Services Ltd. as comparable is concerned, the Tribunal has relied upon its decision in ***Microsoft India (R&D) (P.) Ltd. vs. Deputy Commissioner of Income-tax, Circle-16(2), New Delhi*** [2018] 97 taxmann.com 360 (Delhi-Trib.).

7.1 This decision of the Tribunal was carried in appeal to this court. Via decision dated 04.01.2021 passed in a bunch of appeals, which includes ITA 247/2019, this court, while rejecting the same has made the following observations:

*“7. We notice that insofar as Infosys Technology Limited and Persistent*



*Systems Limited are concerned, the learned ITAT observed that while the profit of the aforesaid three comparables is derived from both software development services as well as software products, however there is no precise information about the contribution made from the income derived from the sale of software to the total income of the companies. Thus, in the absence of segmental information provided by the companies in respect of the software services, the aforesaid companies have been excluded from the list of the comparables. We do not find any perversity in the approach adopted by the learned ITAT which would call for our inference. **The third comparable viz Wipro Technology Services Limited has been held to be disqualified under Rule 10B(1)(e)(ii), to become a comparable for uncontrolled transaction for the purposes of inclusion in the final list of comparables.** The rationale for exclusion has been upheld by this court in *Principal Commissioner of Income Tax-7 v. Open Solutions Software Services Pvt. Ltd.*”*

7.2 Mr Bhatia does not dispute the fact that the respondent/assessee is in the business of providing software development services. The two comparables i.e., Wipro Technologies Services Ltd. and Infosys Ltd. are in the business of not only software development services but also in the sale of software products.

8. Clearly, since according to the Tribunal the segmental information was not available, the comparables were ordered to be excluded.

9. We are of the opinion that there is no error in the approach adopted by the Tribunal, which is otherwise in line with the view taken by the coordinate bench.

10. Before we conclude, we may note that the Tribunal has adverted to the notification dated 18.09.2013. This notification, on the face of it, can have no application in the instant case, as the period in issue is AY 2011-12.

11. We may note that the guidelines issued by the CBDT dated 20.12.2013 made it clear that safe harbour rates and margins would apply



only if an assessee has opted for them.

11.1 This aspect of the matter need not detain us in view of the fact that the safe harbour rules don't have retrospective application.

12. The appeal is closed as no substantial question of law arises for consideration.

**RAJIV SHAKDHER, J**

**GIRISH KATHPALIA, J**

**SEPTEMBER 11, 2023/pmc**