



\$~2

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Decision : 12.12.2025

+

ITA 739/2025, CM APPL. 77781/2025

THE PR. COMMISSIONER OF INCOME TAX -7

.....Appellant

Through: Mr. Ruchir Bhatia, SSC with Mr.
Anant Mann, JSC, Mr. P. Gupta, JSC.

versus

STERIA INDIA PVT. LTD.

.....Respondent

Through: Mr. Ajay Vohra, Sr. Adv. with Mr.
Neeraj Jain and Mr. Aniket D.
Agrawal, Advs.**CORAM:****HON'BLE MR. JUSTICE V. KAMESWAR RAO****HON'BLE MR. JUSTICE VINOD KUMAR****V. KAMESWAR RAO , J. (ORAL)**

1. This appeal lays a challenge to order dated 17.11.2020 passed by the learned Income Tax Appellate Tribunal, Bench '1-2', New Delhi ("ITAT") deciding two ITA Nos. being 512 & 511/Del/2016 relating to Assessment Year ("AY") 2010-11 and 2011-12 respectively.

2. We have been informed by Mr. Ruchir Bhatia, learned Senior Standing Counsel for the appellant that this appeal is primarily relatable to ITA No. 512/Del/2016 concerning AY 2010-11 whereby the ITAT has upheld the order passed by the Dispute Resolution Panel.

3. We may state that the appellant/Revenue has proposed the following substantial questions of law for consideration:-

"2.1 Whether the Ld. ITAT erred in not appreciating that the Arm's Length Price of an



international transaction, as defined in Section 92F(ii) of the Income tax Act, 1961, is the price applied or proposed to be applied in an uncontrolled transaction, and consequently must remain uninfluenced by extraneous factors and post transaction events like foreign exchange fluctuation which are likely to materially affect the actual receipt or payment but do not impact the price intended to be charged or paid.?

2.2 Whether the Ld. ITAT erred in not appreciating the fact that the TPO followed the provisions of Rule 10B(3) by similarly treating foreign exchange fluctuation as non-operating cost/revenue of the tested party as well as of the comparables to eliminate the differences, thereby leading to a consistent and reliable basis for comparison?

2.3 Whether in the facts and circumstances of the case the Ld. ITAT was right in, law in considering Infosys RPO fit. Ltd. as functionally non comparable without considering the findings of the TPO w.r.t the fact that the assessee company is also enjoying brand name as in the case of the comparable i.e. BPO Infosys Pvt. Ltd.?

2.4 Whether in the facts and circumstances of the case the Ld ITAT was right in law in considering TCS E-Serve International Ltd as functionally non comparable without considering the findings of the TPO w.r.t the fact that the assessee company is also enjoying brand name as in the case of the comparable.?

2.5 Whether in the facts and circumstances of the case the Ld. ITAT was right in law in considering TCS E Serve. as functionally non comparable without considering the findings of the TPO with respect to the fact that the assessee company is also enjoying brand name as in the case of the comparable i.e. TCS E-Serve?

2.6 Whether in the facts and circumstances of the



case the Ld. ITAT was right in law in considering Accentia Technologies Ltd. as functionally non comparable on the ground of amalgamation. Whether amalgamation of companies should be treated as an extraordinary event for the purpose of comparable when functions of the company remain unchanged?

2.7 Whether in the facts and circumstances of the case the Ld., ITAT was right in law in considering Infinite Data System as functionally non comparable without considering the findings of the TPO w.r.t the fact that the comparable company has passed all the appropriate filters applied by the TPO?

2.8 Whether in the facts and circumstances of the case the Ld. ITAT was right in law in considering Persistent Systems as functionally non comparable on the ground that it is engaged in software product business and this segment of business is not the part of the software development services? Whether the exclusion of the comparable entities can be sustained as done by the Ld. ITAT without determining the specific characteristics of the transactions: FAR (functions performed, assets deployed and risk assumed) analysis; contractual terms and market conditions as prescribed in Rule 10B(2) of the I. T. Act, 1962?"

4. Mr. Bhatia fairly states that the issue, which arises for consideration in this appeal is covered against the Revenue and in favour of the assessee on all the proposed substantial questions of law except 2.2. The same are covered in terms of chart filed. The said chart is reproduced as under:-

| Q. No. | Exclusion of Comparable under challenge | Reason for uploading exclusion by ITAT in the Impugned Order dtd. 17.11.2020 (Annex 'I', pp. 37- | Covered by the following decisions |
|--------|---|--|------------------------------------|
| | | | |



| | | 102) | |
|---------------------|--------------------------------|---|---|
| ITEA Segment | | | |
| 2.3 | Infosys BPO Ltd. | <ul style="list-style-type: none">▪ Significant brand Value – following Assessee’s own case for AY 2015-16 Refer Paras 27-29 @ pp.50-51 | <ul style="list-style-type: none">▪ Revenue’s appeal bearing ITA 393/2024 for AY 2015-16 dismissed by this Hon’ble Court vide Order dated 29.07.2024▪ Oracle (OFSS) BPO Services Pvt. Ltd. [2019] 416 ITR 54 (Del)▪ Avaya India (P.) Ltd. [2019] 416 ITR 638 (Del) AY 2010-11▪ Evalueserve SEZ (Gurgaon) Pvt. Ltd. [ITA 241/2018; decided on 26.02.2018] (Del) [AY 2010-11]▪ Cadence Design Systems (India) [2025] 482 ITR (Del) [AY 2010-11] |
| 2.4 | TCS E-Serve International Ltd. | <ul style="list-style-type: none">▪ Significant brand Value – following Assessee’s own case for AY 2015-16 in respect of Infosys BPO & other decisions of this Hon’ble Court Refer Paras 33-34 @ pp.53-54 | <ul style="list-style-type: none">▪ Revenue’s appeal bearing ITA 393/2024 for AY 2015-16 dismissed by this Hon’ble Court vide Order dated 29.07.2024▪ Oracle (OFSS) BPO Services Pvt. Ltd. [2019] 416 ITR 54 (Del)▪ Avaya India (P.) Ltd. [2019] 416 ITR 638 (Del) AY 2010-11▪ Evalueserve SEZ (Gurgaon) Pvt. Ltd. [ITA 241/2018; decided on 26.02.2018] (Del) [AY 2010-11]▪ Cadence Design |



| | | | |
|-----|----------------------------|---|---|
| | | | <p>Systems (India) [2025] 482 ITR (Del) [AY 2010-11]</p> <ul style="list-style-type: none"> ▪ B.C. Management Services [2018] 403 ITR 45 (Del) |
| 2.5 | TCS E-Serve Ltd. | <ul style="list-style-type: none"> ▪ Significant brand Value – following Assessee’s own case for AY 2015-16 in respect of Infosys BPO & other decisions of this Hon’ble Court <p>Refer Paras 41-42 @ pp.57-58</p> | <ul style="list-style-type: none"> ▪ Revenue’s appeal bearing ITA 393/2024 for AY 2015-16 dismissed by this Hon’ble Court vide Order dated 29.07.2024 ▪ Oracle (OFSS) BPO Services Pvt. Ltd. [2019] 416 ITR 54 (Del) ▪ Avaya India (P.) Ltd. [2019] 416 ITR 638 (Del) AY 2010-11 ▪ Evalueserve SEZ (Gurgaon) Pvt. Ltd. [ITA 241/2018; decided on 26.02.2018] (Del) [AY 2010-11] ▪ Cadence Design Systems (India) [2025] 482 ITR (Del) [AY 2010-11] ▪ B.C. Management Services [2018] 403 ITR 45 (Del) |
| 2.6 | Accentia Technologies Ltd. | <ul style="list-style-type: none"> ▪ Extra-ordinary event (amalgamation) during the year ▪ Owns significant intangible assets ▪ Functional Profile: Medical Transcription Services and No Segmental Data <p>Refer: Paras 51-56</p> | <ul style="list-style-type: none"> ▪ Evalueserve SEZ (Gurgaon) Pvt. Ltd. [ITA 241/2018; decided on 26.02.2018] (Del) [AY 2010-11] ▪ Equant Solutions India (P.) Ltd. [2020] 113 taxmann.com 517 (P&H) [AY 2010-11] |



| | | | |
|---------------------------------------|----------------------------|--|---|
| | | @ pp. 62-65 | |
| Software / IT Services Segment | | | |
| 2.7 | Infinite Data Systems Ltd. | <ul style="list-style-type: none"> ▪ Functional Profile: Development of Software, provision of technical services, ▪ Extra-ordinary event (amalgamation) during the year ▪ Significant related party transactions <p>Refer: Paras 92-96 @ pp. 83-87</p> | <ul style="list-style-type: none"> ▪ Xchanging Technology Services India Pvt. Ltd. [ITA 553/2019; decoded pm 03.07.2019] (Del) [AY 2010-11] ▪ Mentor Graphics (India) Pvt. Ltd. [ITA 126/2022; decided on 26.04.2022] (Del) [AY 2010-11] |
| 2.8 | Infosys Technologies Ltd. | <ul style="list-style-type: none"> ▪ Significant brand value ▪ Functional Profile: Engaged Development of Software products <p>Refer: Paras 115-117 @ pp. 96-97</p> | <ul style="list-style-type: none"> ▪ Revenue's appeal bearing ITA 393/2024 for AY 2015-16 dismissed by this Hon'ble Court vide Order dated 29.07.2024 on the similar issue of Infosys BPO ▪ Open Solutions Software Services (P) Ltd. [2020] 315 CTR 497 (Del) [AY 2010-11] ▪ Cashedge India Pvt. Ltd. [ITA 279/2016; decided on 04.05.2016] (Del) [AY 2010-11] ▪ Microsoft India (R&D) (P.) Ltd. [2021] 431 ITR 483 (Del) [AY 2010-11] |
| 2.8 | Wipro Technologies Ltd. | | |
| 2.9 | Persistent Systems Ltd. | <ul style="list-style-type: none"> ▪ Functional Profile: R&D, engineering services – No Segmental Data ▪ Outsourcing of work | <ul style="list-style-type: none"> ▪ Open Solutions Software Services (P) Ltd. [2020] 315 CTR 497 (Del) [AY 2010-11] ▪ Cashedge India Pvt. |



| | | | |
|--|--|---------------------------------|--|
| | | Refer: Paras 122-123 @ pp.98-99 | Ltd. [ITA 279/2016; decided on 04.05.2016] (Del) [AY 2010-11] ▪ Microsoft India (R&D) (P.) Ltd. [2021] 431 ITR 483 (Del) [AY 2010-11] ▪ Mentor Graphics (India) Pvt. Ltd. [ITA 126/2022; decided on 26.04.2022] (Del) [AY 2010-11] |
|--|--|---------------------------------|--|

5. Insofar as question no. 2.2 is concerned, the same is covered by the judgment of this Court in ***Pr. Commissioner of Income Tax Delhi-I v. Ameriprise India Pvt. Ltd., ITA No. 206/2016 decided on 23.03.2016.***

6. According to Mr. Vohra, the same relates to treating foreign exchange fluctuation as operating cost/revenue. It is his submission that even the TPO has considered the same as operating cost/revenue. This Court in the aforesaid judgment has stated as under:-

“2. This appeal by the Revenue is directed against the order dated 14th August, 2015 passed by the Income Tax Appellate Tribunal (ITAT) in ITA No.2010/Del/2014 for the Assessment Year (‘AY’) 2009-10.

3. The question sought to be urged by the Revenue is whether the ITAT was correct in directing the foreign exchange gain/loss to be considered as an item of operating revenue/cost?

4. The ITAT has in the impugned order noted the fact that the foreign exchange gain earned by the Assessee is in relation to the trading items emanating from the international transactions. Since the foreign exchange loss directly resulted from trading items, it could not be considered as a non-operating loss. Further, it is noted by the



Dispute Resolution Panel that the service agreement between the Associated Enterprise (AE) and the Assessee stated that for the specified products and services provided by the Assessee, it "shall raise invoices on Ameriprise USA on the basis of a cost plus pricing methodology." The ITAT was therefore right in holding that the AO was not justified in considering the foreign exchange loss as a non-operating cost.

5. Additionally, it is pointed out by Mr Deepak Chopra, learned counsel for the Assessee, that for the subsequent AYs an Advance Pricing Agreement has been entered into between the Assessee and the Central Board of Direct Taxes under Section 92CC of the Act on 22nd January 2016 whereunder the aforementioned 'cost plus pricing methodology' has been implicitly accepted. Therefore, in the facts of the present case, the Court is of the view that no substantial question of law arises.

6. The appeal is dismissed."

7. For parity of reasons, even this question would not arise for consideration in this appeal.

8. Additionally, we find that there is a delay of 1265 days in re-filing the appeal. We are also not inclined to interfere with the order of the ITAT on this ground as well.

9. The appeal along with pending application is, accordingly, dismissed.

V. KAMESWAR RAO, J

VINOD KUMAR, J

DECEMBER 12, 2025/sr