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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 15.10.2024*+ **ITA 877/2018****THE PR. COMMISSIONER OF INCOME TAX-3.....Appellant****Through: Mr Vipul Aggarwal, Advocate.****versus****ESYS INFORMATION TECHNOLOGIES LTDRespondent****Through: Ms Prem Lata Bansal, Sr. Advocate
with Mr Sumit Batra, Mr Manish
Khurana, Mr Shivang Bansal and Ms
Priyanka Jindal, Advocates.****CORAM:****HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****VIBHU BAKHRU, J. (Oral)**

1. The Revenue has filed the present appeal impugning a common order dated 09.03.2018 passed by the learned Income Tax Appellate Tribunal (hereafter ITAT) in ITA 3378/Del/2010 and 3514/Del/2010 in respect of the assessment years (AYs) 2004-05 and 2005-06, whereby the Revenue's respective appeals against the orders dated 30.04.2010 and 18.05.2010 passed by the learned Commissioner of Income Tax (Appeals) [CIT (A)], were rejected. The present appeal relates to the Revenue's appeal (being ITA 3514/Del/2010) in respect of the AY 2005-06.

2. The Revenue has impugned the order dated 18.05.2010 passed by the



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learned CIT (A) in respect of AY 2005-06, essentially, in respect of deletion of an addition of a sum of ₹14,29,21,585/- made on account of arm's length price (ALP) adjustment as directed by the Transfer Pricing Officer.

3. The assessee is a subsidiary of eSys Technologies Pvt. Ltd, Singapore (ESYS Singapore) and is engaged in the business of manufacturing and trading of computer hardware and peripherals and distribution of mobiles.

During the financial year 2004-05, the assessee had purchased computer hardware components and peripherals from its associated enterprise (AE) for a value of ₹4,13,31,00,539/-. The assessee had also exported certain houseware products for a value of ₹1,47,65,697/- as well as computer hardware components for a value of ₹1,79,00,172/-. Additionally, the assessee had also entered into transaction for IT support services for a value of ₹1,61,29,274/- in respect of purchase of computer hardware components.

4. The Assessing Officer made a reference to the TPO for determining/verifying the ALP of the aforesaid international transactions. The assessee also furnished its transfer pricing studies in respect of international transactions.

5. In respect of purchase of hardware, the assessee selected Resale Price Method (RPM) as the most appropriate method and adopted the ratio of gross profit to sales as the profit level indicator (PLI). In respect of other transactions, the assessee used transactional net marginal method (TNMM) as the most appropriate method.



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6. The dispute, essentially, relates to the benchmarking of international transactions relating to purchase of computer hardware components from its AE for a value of ₹4,13,31,00,539/-.

7. The transfer pricing report furnished by the assessee indicated the computation of the PLI in respect of such transactions as 5.43% and the PLI of comparables selected by the assessee as 1.17%. Therefore, the assessee contended that the transactions with its AE were at ALP.

8. The TPO did not accept RPM as the most appropriate method to benchmark the international transaction and proposed TNMM as the most appropriate method for benchmarking those transactions. The TPO also selected operating profit/sales as the PLI. The operating profit being the gross profit less selling, administrative and financial expenses.

9. During the proceedings, the TPO had selected certain comparables, which included two comparable entities as suggested by the assessee and computed the average PLI at 3.11%. The TPO calculated the assessee's PLI at 0.479% and on the said basis made an upward ALP adjustment of ₹14,29,21,585/-.

10. The assessee being aggrieved by the said addition of ₹14,29,25,585/- to its income on account of ALP adjustment, preferred an appeal before the learned CIT (Appeals).

11. The learned CIT(A) confirmed that TNMM was the most appropriate method, however, held that only those entities engaged in trading of



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hardware, which were similar to the assessee ought to be taken as comparables. The learned CIT(A) then adopted the comparables as used in the previous assessment year (AY) 2004-05. It is material to note that the same also included two comparables that were suggested by the TPO. The learned CIT(A) also adopted OP/TC as the PLI and the computed the mean PLI of the comparables at 1.52% after considering a tolerance limit of plus/minus 5% and found that the PLI computed for the assessee fell within the said acceptable range.

12. The Revenue appealed the said decision of the learned CIT(A) before the learned ITAT.

13. The learned ITAT considered the appeals preferred by the Revenue for AY 2004-05 as well as AY 2005-06 and disposed of the said appeals by the impugned common order. The learned ITAT rejected the Revenue's contentions in regard to the transfer pricing adjustment for the AY 2004-05.

14. The Revenue's appeal for the AY 2005-06 for which the present appeal arises was also dismissed following the decision in respect of AY 2004-05.

15. Aggrieved by the decision, the Revenue has filed the present appeal and has projected the following question for consideration:

“i) Whether the Ld. ITAT was correct in deleting the transfer pricing adjustment and summarily rejecting TPO's approach without giving any concrete finding and without appreciating that the facts of the case for AY 2004-05 and AY 2005-06 are



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different?”

16. It is material to note that the Revenue had also filed an appeal against the ITAT's order in respect of AY 2004-05 (ITA No.898/2018), which was dismissed by this Court by the order dated 08.10.2024.

17. As noted above, the Revenue seeks to fault the decision of the learned ITAT on the ground that the facts as obtaining in respect of AY 2004-05 are materially different from the facts obtaining in AY 2005-06. Therefore, the Revenue's appeal could not have been rejected by following the decision in respect of AY 2004-05. However, the learned counsel for the Revenue is unable to point out any material difference in the facts obtaining in two years that would have a material bearing on the issue of transfer pricing adjustment.

18. The learned ITAT had produced the grounds as urged by the Revenue in its appeal against the order of the learned CIT(A). The principal ground urged by the Revenue was that the learned CIT(A) had erred in deleting the addition of ₹14,29,21,585/- (Ground no.2). The learned ITAT expressly noted in the impugned order that the submissions advanced by the learned DRP in respect of AY 2005-06 were reiteration of the submissions made in respect of its appeal in respect of AY 2004-05. This observation is not countered by the learned counsel for the Revenue.

19. We are also unable to ascertain as to how the facts obtaining in AY 2004-05 are materially different from the facts as obtaining in the year 2005-06. One of the differences as mentioned in the appeal is that in AY 2004-05,



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the assessee had used TNMM with OP/OC as the PLI for benchmarking the international transaction. The assessee had also used its foreign associated enterprise (ESYS Singapore) as a tested party. In variance to the said method, the assessee had used RPM as the most appropriate method with PLI of GP/Sales for benchmarking the transactions in AY 2005-06. However, we find that the said fact would be of little relevance considering that the TPO had rejected RPM as the most appropriate method and had used TNMM as the most appropriate method in both the years – AY 2004-05 and 2005-06. And, the learned CIT(A) had concurred with the TPO's decision to use TNMM as the most appropriate method. The TPO had also rejected the use of foreign AE as a tested party and thus, in both the years, the assessee's foreign AE was not used as the tested party.

20. No contention has been canvassed on behalf of the Revenue regarding the rejection of the comparable entities.

21. In view of the above, no substantial question of law arises in the present appeal.

22. The appeal is, accordingly, dismissed.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

OCTOBER 15, 2024
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Click here to check corrigendum, if any