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**(2013) 07 DEL CK 0456**  
**In the Delhi High Court**  
**Case No : ITA 1204 of 2011**

CIT

APPELLANT

Vs

Agnity India Technologies Pvt. Ltd.

RESPONDENT

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**Date of Decision :** 10-07-2013

**Acts Referred:**

**Citation :** (2013) 6 AD 53 : (2013) 262 CTR 291 : (2013) 219 TAXMAN 26

**Hon'ble Judges :** Sanjiv Khanna, J; Sanjeev Sachdeva, J

**Bench :** Division Bench

**Advocate :** Suruchi Aggarwal, for the Appellant; G.C. Srivastava and Ms. Preeti Bhardwaj, for the Respondent

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## **Judgement**

Sanjiv Khanna, J.—This appeal by the Revenue, which pertains to the assessment year 2006-07, in the case of Agnity India Technologies Pvt. Ltd. raises a short issue. The respondent-assessee is a wholly owned subsidiary of Bay Packets Inc., USA and was/is engaged in the business of development of software for the parent company in the field of telecommunication. The respondent had filed return of income on 30th November, 2006 declaring total income of Rs. 8,31,720/-. As respondent-assessee had undertaken international transactions with "Associated Enterprise" details of which were mentioned in the tax audit report, the matter was referred to Transfer Pricing Officer (TPO) to determine the fair market value of the international transactions. TPO opined that adjustment of Rs. 3,73,74,985/- would be justified to bring it in line with arm's length value. Addition of the aforesaid amount was suggested in the draft assessment order which was examined by the Dispute Resolution Panel before whom the respondent-assessee had filed objections. Dispute Resolution Panel vide order dated 17th June, 2010 directed the Assessing Officer to recompute the arm's length value by taking the ratio of operating profit to the total cost at 25.6%. This resulted in an addition of Rs. 1,24,01,451/-.

Before the TPO, the respondent-assessee was asked to re-work the list of comparables and the same was reduced to 20. TPO also directed inclusion of

Infosys Technologies Ltd. in the said list. The TPO in the final analysis has taken the comparables as under:-

2. One of the companies which was included by the TPO was Satyam Computer Services Ltd. Dispute Resolution Panel excluded the said company from the comparables for obvious reasons.

3. The tribunal has observed that the assessee was not comparable with Infosys Technologies Ltd., as Infosys Technologies Ltd. was a large and bigger company in the area of development of software and, therefore, the profits earned cannot be a bench marked or equated with the respondent, to determine the results declared by the respondent-assessee. In paragraph 3.3 the tribunal has referred to the difference between the respondent-assessee and Infosys Technologies Ltd. For the sake of convenience, we are reproducing the same:-

4. Learned counsel for the Revenue has submitted that the tribunal after recording the aforesaid table has not affirmed or given any finding on the differences. This is partly correct as the tribunal has stated that Infosys Technologies Ltd. should be excluded from the list of comparables for the reason latter was a giant company in the area of development of software and it assumed all risks leading to higher profits, whereas the respondent-assessee was a captive unit of the parent company and assumed only a limited risk. It has also stated that Infosys Technologies Ltd. cannot be compared with the respondent-assessee as seen from the financial data etc. to the two companies mentioned earlier in the order i.e. the chart. In the grounds of appeal the Revenue has not been able to controvert or deny the data and differences mentioned in the tabulated form. The chart has not been controverted.

5. Learned counsel for the appellant Revenue during the course of hearing, drew our attention to the order passed by the TPO and it is pointed out that based upon the figures and data made available, the TPO had treated a third company as comparable when the wage and sale ratio was between 30% to 60%. By applying this filter, several companies were excluded. This is correct as it is recorded in para 3.1.2 of the order passed by the TPO. TPO, as noted above, however had taken three companies, namely, Satyam Computer Service Ltd., L&T Infotech Ltd. and Infosys Technologies as comparable to work out the mean.

6. It is a common case that Satyam Computer Services Ltd. should not be taken into consideration. The tribunal for valid and good reasons has pointed out that Infosys Technologies Ltd. cannot be taken as a comparable in the present case. This leaves L&T Infotech Ltd. which gives us the figure of 11.11 %, which is less than the figure of 17% margin as declared by the respondent-assessee. This is the finding recorded by the tribunal. The tribunal in the impugned order has also observed that the assessee had furnished details of workable in respect of 23 companies and the mean of the comparables worked out to 10%, as against the margin of 17% shown by the assessee. Details of these companies are mentioned in para 5 of the impugned order. In view of the aforesaid position, we

do not think that any substantial question of law arises for consideration. The appeal is dismissed.