



IN THE INCOME TAX APPELLATE TRIBUNAL

"K" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND

SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

ITA no.4851/Mum./2015
(Assessment Year : 2009-10)

Clearwater Capital
Partners India Pvt. Ltd.
(Earlier known as Altico Capital
India Pvt. Ltd.) 7th Floor
Mudra House, Opp. Grand Hyatt
Santacruz (E) Mumbai 400 055
PAN – AACCC3064F

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Range-3(1), Mumbai

..... Respondent

Assessee by : Shri Farookh V. Irani
Revenue by : Shri Akhtar Hussain Ansari

Date of Hearing – 29.01.2020

Date of Order – 13.03.2020

ORDER

PER SAKTIJIT DEY. J.M.

The captioned appeal has been filed by the assessee challenging the order dated 30th April 2015, passed by the learned Commissioner of Income Tax (Appeals)-55, Mumbai, pertaining to the assessment year 2009-10.

2. Though, the assessee has raised as many as eight grounds of appeal contesting the addition made of ₹ 77.09.785 on account of transfer pricing adjustment, however, the dispute is basically confined to selection/rejection of certain comparables. Before we proceed to deal with the specific dispute raised before us, it is necessary to briefly narrate the relevant facts relating to the issue in dispute.

3. Brief facts are, the assessee is a resident company and part of Clearwater Capital Partners (CCP Group), which is an investment firm founded in the year 2001. The assessee is a subsidiary of CCP Cyprus and is basically engaged in providing investment sub advisory services to its Associated Enterprises (AE) CCP, Singapore. During the year under consideration the assessee provided non-binding investment advisory services to its AE and received an amount of ₹ 4,44,15,472. In the transfer pricing study report, the assessee benchmarked the aforesaid transaction with the AE by adopting Transactional Net Margin Method (TNMM) as the most appropriate method. The assessee selected ten companies as comparables with average margin of 16.19% as against its own margin of 20%. Thus, the transaction with AE was claimed to be at arm's length. The Transfer Pricing Officer, however, pointed out various defects and deficiency in the transfer pricing study report as well as selection of comparables. After rejecting

the transfer pricing study report as well as most of the comparables selected by the assessee, the Transfer Pricing Officer proceeded to select fresh comparables. Though, of-course, he accepted TNMM as the most appropriate method. In the process, the Transfer Pricing Officer selected three comparables viz. (i) ICRA Online Ltd., (ii) IDC India Ltd. and (iii) Integrated Capital Services Ltd., with arithmetic mean of 40.83%. Applying the arithmetic mean of the comparables to the operating cost, he determined the arm's length price of the service provided at ₹ 5,21,25,257, as against the amount received by the assessee of ₹ 4,44,15,472. Due to the difference in operating income, an upward adjustment of ₹ 77,09,785, was made to the arm's length price of international transaction with the AE. The adjustment proposed by the Transfer Pricing Officer was added to the income of the assessee while framing the assessment order. The assessee contested the aforesaid addition by filing the appeal before the first appellate authority.

4. Learned Commissioner (Appeals), however, upheld the adjustment made by the Transfer Pricing Officer.

5. Shri Farookh V. Irani, learned Counsel for the assessee confined his submissions to selection/rejection of three comparables. Hereafter, we will be dealing with these comparables.

i) ICRA MANAGEMENT CONSULTING SERVICES LTD.

6. Objecting to the rejection of this company, the learned Counsel submitted, the company is functionally similar to the assessee, hence, there is no reason to reject this company. He submitted, 75% of the Revenue earned by the company is from consulting fees which is suggestive of the fact that it is providing advisory services, hence, is functionally similar to the assessee. Thus, he submitted, this company should be included as a comparable. In support, he relied upon the following decisions:-

i) Altico Capital India Pvt. Ltd. v/s DCIT, ITA no.5142/Mum./2017, dated 10.01.2020;

ii) Warburg Pincus India Pvt. Ltd. v/s ACIT, ITA no.6981/Mum./2012, dated 13.01.2017;

iii) 3i India Pvt. Ltd. v/s DCIT, IT(TP)A no.1292/Mum./2014, dated 30.09.2019;

iv) TPG Capital India Pvt. Ltd. v/s DCIT, [2017] 79 taxmann.com 101 (Mum.)(Trib.);

v) CIT v/s Temasek Holdings Advisors India Pvt. Ltd., ITA no. 359 of 2015, dated 11.07.2017;

vi) DCIT v/s Temasek Holding Advisors Pvt. Ltd., ITA no. 968/Mum./2014, dated 27.06.2014;

vii) CIT v/s Temasek Holdings Advisors India Pvt. Ltd., ITA no. 1051 of 2014, dated 17.11.2016;

viii) Temasek Holdings Advisors India Pvt. Ltd. v/s DCIT, [2013] 38 taxmann.com 80 (Mum.)(Trib.);

ix) Tamasek Holdings Advisors India Pvt. Ltd. v/s DCIT, ITA no.776/Mum./2015, dated 25.02.2016.

7. The learned Departmental Representative strongly relied upon the observations of the Transfer Pricing Officer and learned Commissioner (Appeals).

8. We have considered rival submissions in the light of the decisions relied upon and perused the material on record. It is observed, the comparability of this company with a non binding investment advisory service provider has come up for consideration not only before the Tribunal, but even before the Hon'ble Jurisdictional High Court. After analyzing the function, asset and risk (FAR) of this company, the Tribunal found that the service provided by this company is akin to the service provided by an investment advisory service provider. Therefore, this company has been found to be a good comparable. The decisions relied upon by the learned Counsel for the assessee, as referred to above, clearly support this view. In fact, in assessee's own case in Assessment Year 2010-11, though this company was rejected by the TPO, however, learned Commissioner (Appeals) having found this company to be functionally similar, accepted it as a comparable. This is evident from the order passed by the Tribunal in ITA no.5142/Mum./2017, dated 10th January 2010. Therefore, respectfully following the observations made in the judicial precedents referred to

above, we hold that this company being a good comparable has to be retained.

ii) INFORMED TECHNOLOGIES LTD.

9. Objecting to rejection of this company, the learned Counsel for the assessee submitted, this company provides services relating to analysis of data on financials, fundamentals, corporate governance, director / executive compensation and capital market. In other words, it offers a range of data management services to the financial sector. Therefore, it is comparable to an investment advisory service provider. In support of such contention, he relied upon the following decisions: –

i) J.P. Morgan Advisors India Pvt. Ltd. v/s DCIT, ITA no. 990/Mum./2014, dated 19.06.2019;

ii) PCIT v/s Temasek Holdings Advisors India Pvt. Ltd., ITA no. 304/2017, dated 16.04.2019;

iii) FIL Capital Advisors India P. Ltd. v/s DCIT, ITA no. 7403/Mum./2014, dated 25.10.2016

iv) M/s. Guggenheim Capital Management (Asia) Pvt. Ltd. v/s ACIT, ITA no.423/Mum./2016, etc., dated 20.02.2019.

10. The learned Departmental Representative relied upon the observations of learned Commissioner (Appeals).

11. We have considered rival submissions and perused the material on record. From the material placed before us, it appears that the

services provided by this company are in the nature of advisory services. The assessee is also providing advisory services to its AE. That being the case, the company appears to be functionally similar to the assessee. In fact, in various decisions cited before us, some of which relate to the impugned assessment year, the Tribunal as well as the Hon'ble Jurisdictional High Court has held that this company is functionally similar to an investment advisory service provider. Therefore, following the consistent view expressed in relation to this company in the judicial precedents referred to above, we direct the Assessing Officer to include this company as a comparable.

iii) INTEGRATED CAPITAL SERVICES LTD.

12. Objecting to selection of this company, the learned Authorised Representative submitted, though, in the transfer pricing study report, the assessee due to lack of proper information/availability of data in the public domain relating to this company had included it as a comparable, however, the Transfer Pricing Officer in the show cause notice issued by him in the course of proceedings has stated that this company not being functionally similar cannot be considered as a comparable. He submitted, in various decisions also this company having been found to be functional dissimilar has been rejected. Thus, he submitted, the company cannot be treated as comparable. The

learned Counsel for the assessee submitted, even in assessee's own case, the Transfer Pricing Officer has rejected this company as a comparable in assessment years 2010-11 and 2011-12. Further, he submitted, even if the assessee had selected this company as a comparable due to insufficient data available, however, subsequently, if it is found that the company is not functionally similar the assessee cannot be debarred from objecting to the comparable. In this context, he relied upon the following decisions:-

- i) Warburg Pincus India Pvt. Ltd. v/s ACIT, ITA no.6981/Mum./2012, dated 13.01.2017;*
- ii) PCIT v/s Goldman Sachs (I) Securities Pvt. Ltd., ITA no.30 of 2017, dated 10.06.2019;*
- iii) Goldman Sachs (I) Securities Pvt. Ltd. v/s DCIT, ITA no. 222/Mum./2014, dated 30.11.2015;*
- iv) New Silk Route Advisors Pvt. Ltd. v/s DCIT, [2015] 55 taxmann.com 540 (Mum.)(Trib.);*
- v) Tamasek Holdings Advisors India Pvt. Ltd. v/s DCIT, ITA no. 776/Mum./2015, dated 25.02.2016;*
- vi) Q-India Investment Advisors Pvt. Ltd. v/s DCIT, ITA no. 923/Mum./2015, dated 24.04.2015.*

13. The learned Departmental Representative relied upon the observations of the Transfer Pricing Officer and learned Commissioner (Appeals).

14. We have considered rival submissions and perused the material on record. No doubt, the assessee had selected this company as a comparable. However, from the show cause notice issued by the Transfer Pricing Officer himself, it becomes very clear that he himself considers the company as functionally dissimilar to the assessee, hence, not comparable, though, in the final analysis he had selected the company as a comparable. It is further relevant to observe, in assessee's own case in assessment year 2010-11 and 2011-12, the Transfer Pricing Officer has rejected this company as a comparable. In fact, in case of Warburg Pincus India Pvt. Ltd. (supra), the Tribunal, Mumbai Bench, has rejected this company from being treated as a comparable to an investment advisory service provider. The other decisions relied upon by the learned Authorised Representative also clearly hold that this company cannot be treated as a comparable to investment advisory service provider. In view of the aforesaid, we direct the Assessing Officer to exclude this company.

15. In the course of hearing, it was submitted before us by the learned Counsel for the assessee that with the inclusion of the ICRA Management Consultancy Services Pvt. Ltd., and Information Technologies Pvt. Ltd. and exclusion of Integrated Technologies Ltd., assessee's margin would be within the $\pm 5\%$ range of the raised of the

comparable requiring no further adjustment. In view of the aforesaid, we do not intend to deal with any other issue raised in the present appeal, save and except, the issue relating to the comparables dealt by us herein before.

16. In the result, appeal is partly allowed as indicated above.

Order pronounced in the open Court on 13.03.2020

**Sd/-
G. MANJUNATHA
ACCOUNTANT MEMBER**

**Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER**

MUMBAI, DATED: 13.03.2020

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

*Pradeep J. Chowdhury
Sr. Private Secretary*

True Copy
By Order

Assistant Registrar
ITAT, Mumbai