



IN THE INCOME TAX APPELLATE TRIBUNAL

"K" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND

SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

ITA no.1536/Mum./2015
(Assessment Year : 2010-11)

Khazanah India Advisors Pvt. Ltd.
17th Floor, Express Towers
Nariman Point, Mumbai 400 021
PAN – AADCK4538P

..... Appellant

v/s

Dy. Commissioner of Income Tax
Circle-3(2)(2), Mumbai

..... Respondent

Assessee by : Shri Arijit chakravarty a/w
Shri Abhishek Tilak
Revenue by : Shri Akhtar Husain Ansari

Date of Hearing – 30.01.2020

Date of Order – 13.03.2020

ORDER

PER SAKTIJIT DEY. J.M.

The captioned appeal has been filed by the assessee challenging the assessment order dated 14th January 2015, passed under section 143(3) r/w section 144C(13) of the Income Tax Act, 1961 (for short "*the Act*"), in pursuance to the directions of the Dispute Resolution Panel-1 (DRP), Mumbai, pertaining to the assessment year 2010-11.

2. The dispute in the present appeal hovers around the addition made of ₹ 3,23,85,404, on account of transfer pricing adjustment to the arm's length price of the services provided to the Associated Enterprises (AE).

3. Brief facts are, the assessee, a resident company, is a subsidiary of Khazanah National Berhad (KNB), Malaysia. As stated by the Transfer Pricing Officer, KNB is an investment holding arm of the Government of Malaysia and the assessee provides non-binding investment advisory services to KNB. During the year under consideration, the assessee earned revenue of ₹ 19.09 crore for provision of investment advisory services to the AE. The aforesaid transaction with the AE was benchmarked by the assessee adopting Transactional Net Margin Method (TNMM) as the most appropriate method with Operating Profit/Operating Cost (OP/OC) as the Profit Level Indicator (PLI). For comparability purpose, the assessee selected seven companies as a comparable with average weighted margin of 18.23%. Since, the PLI shown by the assessee at 23.16% was higher than the average PLI of the comparables, the transaction with the AE was claimed to be at arm's length. The Transfer Pricing Officer, though, accepted TNMM as the most appropriate method with PLI of OP/OC, however, he did not accept most of the comparables selected by the assessee. Except, Future Capital Investment Advisories Ltd.,

the Transfer Pricing Officer. Except Future Capital Investment Advisors Ltd., the Transfer Pricing Officer accepted all other comparables selected by the assessee. Having done so, he proceeded to select comparables independently and in the process shortlisted four companies as comparables which are as under:–

- i) Future Capital Holdings Ltd. (Investment Advisory Segment);*
- ii) ICRA Online Ltd. (Outsources Service Segment);*
- iii) Kshitij Investment Advisory Co. Ltd.; and*
- iv) Motilal Oswal Investment Advisories Pvt. Ltd.*
- v) IDFC Investment Advisors Ltd.*

4. Thus, finally, the Transfer Pricing Officer selected six companies as comparables with arithmetic mean of 42.66%. Applying arithmetic mean of the comparables to the operating cost, the Transfer Pricing Officer determined the arm's length price of the transaction with the AE at ₹ 22,14,08,143, as against the price charged by the assessee of ₹ 19,09,00,657. The resultant shortfall of ₹ 3,05,07,486, was added as transfer pricing adjustment to the arm's length price. On the basis of transfer pricing adjustment proposed by the Transfer Pricing Officer, the Assessing Officer framed the draft assessment order. While considering assessee's objections against the draft assessment order, learned DRP upheld the decision of the Transfer Pricing Officer.

5. The learned Authorised Representative submitted, the assessee is disputing only two comparables viz. Motilal Oswal Investment Advisories Pvt. Ltd. and ICRA Online Ltd. He submitted, if these two comparables, which in any case are not comparable to the assessee, are excluded, assessee's margin would be within the acceptable range. Hence, no further adjustment would be required to be made to the arm's length price.

6. In view of the aforesaid submissions of learned Authorised Representative, we proceed to deal with the comparables specifically disputed before us.

MOTILAL OSWAL INVESTMENT ADVISORIES PVT. LTD.

7. Objecting to the selection of this company, learned Authorised Representative submitted, this company being a merchant banker is not functionally similar to the assessee, hence, cannot be comparable. Thus, he submitted, this has to be excluded as a comparable. In support of his contention, he relied upon a number of decisions as under:—

- i) *PCIT v/s Arisaig Partner India Pvt. Ltd., ITA no.609 of 2016, dated 10.10.2018;*
- ii) *PCIT v/s NVP Venture Capital India Pvt. Ltd., ITA(IT) no.406 of 2016, dated 18.09.2018;*

- iii) *CIT v/s Cartyle India Advisors Pvt. Ltd., [2013] 32 taxmann. com 23 (Bom.);*
- iv) *ACIT v/s Blackstone Advisors India Pvt. Ltd., etc., ITA no.928/Mum./2016, etc., dated 30.11.2018;*
- v) *ACIT v/s Sandstone Capital Advisors Pvt. Ltd., ITA no.7867/Mum./2016, dated 31.08.2018;*
- vi) *DCIT v/s General Atlantic Pvt. Ltd., etc., ITA no.1717/Mum./2016, etc., dated 21.02.2018;*
- vii) *Lehman Brothers Advisers Pvt. Ltd. v/s DCIT, ITA no.595/Mum./2014, dated 25.10.2017; and*
- viii) *AGM India Advisors Pvt. Ltd. v/s DCIT, ITA no.4801/Mum./2015, dated 18.05.2016.*

8. The learned Departmental Representative relied upon the observations of the Transfer Pricing Officer.

9. We have considered the rival submissions and perused the material on record. From the material placed on record it is very much clear that this company is engaged in the business of investment banking, merchant banking, merger and acquisition, private equity, syndication, etc. Whereas, the assessee has only one segment of providing non-binding investment advisory services to the AE. Looking at the functional profile of this company, not only different benches of the Tribunal, but even different High Courts including Hon'ble Jurisdictional High Court have consistently held that this company cannot be a comparable to a non-binding investment advisory service provider. In fact, it has come to our notice that even in case of a

number of investment advisory service providers, the Revenue authorities themselves viz. learned DRP and the first appellate authority have excluded this company as a comparable. Therefore, following the consistent view of the Tribunal as well as the Hon'ble Jurisdictional High Court in the catena of decisions, as cited before us by the learned Authorised Representative, we hold that this company cannot be a comparable to the assessee, hence, to be excluded.

ICRA ONLINE LIMITED

10. Objecting to the selection of this company, the learned Authorised Representative submitted, this company has three segments, such as, outsourced service, information service and software products and service. Further, he submitted, as per the information contained in the website of the company, it has two strategic lines of business i.e., knowledge process outsourcing and information and technology service. He submitted, the company is engaged in data extraction, electronic conversion of financial statements, accounting and finance, etc. He submitted, the aforesaid activities carried out by the company are not at all comparable to the non-binding investment advisory service provided by the assessee. Thus, he submitted, the company being functionally different cannot be treated as comparable. Further, he submitted, accepting the

aforesaid factual position the Transfer Pricing Officer himself has rejected this company as a comparable in assessee's own case for the assessment year 2012-13. Thus, he submitted, the company should be excluded as a comparable. In support, he relied upon the decision of the Tribunal in *AGM India Advisors Pvt. Ltd. vs/ DCIT, ITA no.4757/Mum./2015*, dated 18th May 2016.

11. The learned Departmental Representative strongly relied upon the observations of learned DRP and Transfer Pricing Officer.

12. We have considered rival submissions and perused the material on record. On a perusal of the materials available on record it is noticed that this company has multiple segments, such as, outsourcing service, information service and software products & service. None of these segments are comparable to the non-binding investment advisory service provided by the assessee. Finding functional dissimilarity between this company and a simple advisory service provider the Tribunal in *AGM India Advisors Pvt. Ltd. (supra)*, has held that this company cannot be a comparable to an investment advisory service provider. In fact, while considering the comparability of this company in assessee's own case for the assessment year 2012-13, the Transfer Pricing Officer himself has categorically stated that none of the segments of ICRA Online Ltd. are comparable to investment

advisory services rendered by the assessee and accordingly rejected it as a comparable. In our considered opinion, facts are not different in the impugned assessment year as well. That being the case, we hold that this company cannot be treated as comparable to the assessee. Hence, should be excluded.

13. In course of hearing, it has been submitted before us by the learned Authorised Representative that on exclusion of these two companies, arithmetic mean of the rest of the comparables would work out to 26.57% and assessee's margin shown at 23.16% would be within the acceptable range, requiring no further adjustment. Keeping in view the aforesaid submission, we do not intend to deliberate further on any other comparable at this stage and leave the issues relating to the comparability of the other comparables open for adjudication if they arise in assessee's case in any other assessment year in future. The Assessing Officer is directed to determine the arm's length price of the international transaction with the AEs keeping in view our observations herein above. Grounds are partly allowed.

14. In the result, appeal is partly allowed.

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

		Date	Initial	
1.	Draft dictated on	04.02.2020	}	Sr.PS
2.	Draft placed before author	07.02.2020		Sr.PS
3.	Draft proposed & placed before the second member	- -		JM/AM
4.	Draft discussed/approved by Second Member	- -		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	13.03.2020	}	Sr.PS
6.	Date of pronouncement	13.03.2020		Sr.PS
7.	File sent to the Bench Clerk	13.03.2020		Sr.PS
8.	Date on which file goes to the Head Clerk			
9.	Date of dispatch of Order			