

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'I-2' : NEW DELHI)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.6504/Del./2013
(ASSESSMENT YEAR : 2007-08)**

M/s. ChrysCapital Investment Advisors vs. Addl. CIT,
(India) Private Limited, Range 3,
Suite 101, The Oberoi, New Delhi.
Dr. Zakir Hussain Marg,
New Delhi – 110 003.

(PAN : AABCC4609H)

**ITA No.6510/Del./2013
(ASSESSMENT YEAR : 2007-08)**

Addl. CIT, vs. M/s. ChrysCapital Investment Advisors
Range 3, (India) Private Limited,
New Delhi. Suite 101, The Oberoi,
Dr. Zakir Hussain Marg,
New Delhi – 110 003.

(PAN : AABCC4609H)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Vikash Srivastava, Advocate
REVENUE BY : Shri H.K. Choudhary, CIT DR

Date of Hearing : 06.09.2017

Date of Order : 19.09.2017

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Since both the aforesaid appeals have been arisen out of the same order impugned by the assessee as well as the Revenue, both the appeals are being disposed off by way of consolidated order to avoid repetition of discussion.

2. Appellant, M/s. ChrysCapital Investment Advisors (India) Private Limited (hereinafter referred to as 'the assessee company'), by filing the present appeal sought to set aside the impugned order dated 17.09.2013 passed by the Commissioner of Income-tax (Appeals)-XX, New Delhi, for the Assessment Years 2007-08 on the grounds inter alia that :-

“10. The order passed by the Learned Commissioner of Income Tax (Appeals)-XXVIII, New Delhi ("Ld. CIT(A)") under section 250 of the Income Tax Act, 1961 ("the Act") is bad in law and an facts and circumstances of the case.

11. The Ld. CIT(A) as well as Learned Assessing Officer ("Ld. AO") and the Learned Transfer Pricing Officer ("Ld. TPO") have erred in law as well as facts of the case in not accepting the Arm's Length Price ("ALP") as determined by the appellant.

12. The Ld. CIT(A) / Ld. AO / Ld. TPO has erred in determining the ALP on the basis of data for financial year 2006-07 only and ignoring the data for two prior financial years i.e. FY 2004-05 and FY 2005-06.

13. The Ld. CIT(A) / Ld. AO / Ld. TPO has erred in introducing Brescon Corporate Advisors Limited as a comparable, ignoring the exceptionally high margins earned by it, while determining the ALP.

14. The Ld. CIT(A) / Ld. AO / Lei TPO has erred in not accepting a company i.e. IDFC Investment Advisors Limited as a comparable of the appellant and rejecting the same on the contention that it is the first year of operation of this company and it has a negative net worth.

15. Ld. CIT(A) has erred in not accepting Integrated Enterprises India Limited as a comparable of the appellant ignoring the fact that its financials are now available in public domain.

16. The Ld. CIT(A) / Ld. AO / Ld. TPO has erred in considering the amounts reimbursed by its associated enterprises (payments made by the assessee on behalf of its associated enterprises which were subsequently reimbursed to the appellant by the associated enterprises) as part of operating expenses and the corresponding reimbursement as part of operating revenue of the appellant while determining ALP.

17. Ld. CIT(A) / ld. AO has erred in disallowing the bonus amounting to Rs.23,340,000 paid by the appellant to its employees (who are also shareholders of the appellant) u/s 36(1)(ii) of the Act by holding that the same would have been payable by way of dividend. The Ld. CIT(A) / Ld. AO has ignored the fact that the ratio of bonus paid by the appellant is different from the ratio of the shareholding of the shareholders employee and thus, bonus paid cannot be disallowed u/s 36(1)(ii) of the Act.

18. The Ld. CIT(A) / Ld. AO has erred in not reducing the operating costs incurred by the appellant by the amount of bonus disallowed u/s 36(1)(ii) of the Act while computing the ALP for the international transaction.

19. The Ld. CIT(A) / Ld. AO / Ld. TPO has erred in law by ignoring several judicial precedents relied upon by the appellant including few decisions by the

jurisdictional bench of Income Tax Appellate Tribunal and High Court.

20. The above grounds of appeals are independent and without prejudice to one another.

21. The appellant craves leave to add I withdraw or amend any ground of appeal at the time of hearing.”

Assessee stated to have assigned wrong numbers to the grounds raised in this appeal as Sl.Nos.10 to 21 instead of Sl.Nos.1 to 11, so the grounds raised by the assessee are being disposed off accordingly.

3. The assessee has also taken the following additional ground in the aforesaid appeal by moving application dated 22.09.2015 :-

“The Ld. CIT (A) has erred in accepting Brescon Corporate Advisors Ltd. (“Brescon”) as a comparable to the appellant by holding that the activities performed by Brescon are similar to the activities performed by the appellant.”

Keeping in view the fact that the additional ground sought to be raised by the assessee company, though not raised before the Id. CIT (A), is necessary for complete adjudication of the controversy at hand, the application for additional ground is hereby allowed.

4. Appellant, Addl. Commissioner of Income Tax, Range 3, New Delhi (hereinafter referred to as ‘the Revenue’), by filing the present appeal sought to set aside the impugned order dated

17.09.2013 passed by the Commissioner of Income-tax (Appeals)-XX, New Delhi, for the Assessment Years 2007-08 on the grounds inter alia that :-

“1. The Ld. CIT(A) has erred in law and on the facts in excluding M/s Keynote Corporate Services Ltd., as a comparable by ignoring that:

i. an entity can be excluded from list of comparables only on the ground of incomparability taking into account comparability factors as stipulated u/s 92C(1) of the Act and rule 10B(2) & (3) of the rule and not only on the basis of higher or lower profit rate.

ii. the decisive factors for determining exclusion or inclusion of any case from the list of comparables are the specific characteristics of services provided, assets employed, risks assumed, contractual terms and conditions including geographical location and size of markets, costs of labour and capital in market etc.

iii. the above principle is in accordance with the transfer pricing law in India as well as followed in UN and OECD TP guidelines.”

5. Briefly stated the facts necessary for adjudication of the controversy at hand are : assessee company stated to be into the business of providing advice to Chrysalis Management Companies in order to assess the investment decision. Assessee company reportedly carries out research work and scouting activities for Chrysalis Management Companies in order to identify entrepreneurs and portfolio companies requiring assistances for

capital infusion, strategic investment and financial advice. As per Form No.3CB, the assessee company entered into international transactions during the year under assessment as under :-

S.No.	Description of transaction	Method	Value
1	Advisory services to CMC-III	TNMM	111,160,500
2	Advisory services to CMC-IV	TNMM	229,143,997
3	Reimbursement of expenses by CMC-II	-	1,567,690
4	Reimbursement of expenses by CMC-III	-	10,308,214
5	Reimbursement of expenses by CMC-IV	-	32,262,336

6. Assessee company, after adopting Transactional Net Margin Method (TNMM) as the Most Appropriate Method (MAM) with Operating Profit / Operating Cost (OP/OC) as the Profit Level Indicator (PLI), benchmarked its international transactions relating to advisory services.

7. Assessee company in order to benchmark its international transaction chosen 4 comparables by using weighted average on the basis of data for AYs 2004-05, 2005-06 & 2006-07 and found its international transactions pertaining to advisory services at arms length.

8. However, Id. TPO introduced 2 new comparables and selected total 5 comparables for the purpose of benchmarking the

international transactions and worked out OP/OC of the comparable at 61.51% and thereby made an adjustment at ALP of Rs.14,38,63,970/- to the total income of the assessee.

9. Assessee carried the matter by way of filing appeal before the Id. CIT (A) who has partly allowed the appeal. Feeling aggrieved, both the assessee company as well as Revenue have come up before the Tribunal by way of challenging the impugned order passed by Id. CIT (A) by filing aforesaid cross appeals.

10. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

ASSESSEE'S APPEAL (ITA NO.6504/DEL/2013)

GROUND NO.10, 11, 12, 14 & 16

11. At the very outset, Id. AR for the assessee fairly conceded that he has no material to support Grounds No.10, 11, 12, 14 & 16 and as such, same may be taken as not pressed, so grounds no.10, 11, 12, 14 & 16 are decided against the assessee.

GROUND NO.13 & 15 AND ADDITIONAL GROUND

12. Assessee by filing the present appeal has challenged the inclusion of 2 comparables, namely, **Brescon Corporate Advisors Limited** and **Integrated Enterprises India Limited** by the Transfer Pricing Officer (TPO) for benchmarking the international transactions.

13. Undisputedly, the Id. TPO has accepted TNMM as the most appropriate method for benchmarking the international transactions; that there is no change of business activities of the assessee during the year under assessment; that search for comparables already conducted in the immediately preceding years have been considered by TPO for the year under assessment and no fresh search for comparables has been done.

14. In the backdrop of the aforesaid undisputed facts, the Id. TPO has worked out the capital adjusted margin of the comparables as under :-

S.No.	Company Name	Margins	WC Adjusted margins
1.	Khandwala Securities Ltd.	38.14	81.37
2.	Keynote Corporate Services Ltd.	145.83	158.30
3.	Sumedha Fiscal Services Ltd.	36.67	53.77
4.	KJMC Global Market (India) Ltd.	13.89	-56.62
5.	Brescon Corporate Advisors Ltd.	75.32	70.73
	Arithmetic Mean	61.97%	61.51%

15. On the basis of aforesaid computation after working capital adjustment margin, TPO worked out the arms length price of international transactions in question as under :-

Total Cost of provision of services by the assessee : (As calculated in Para 6 above)	329,581,269
Margin (OP/OC) @ 61.51% of the above	202,725,438
Arm's length price	532,306,707
Price charged by the assessee (Rs.340,340,497 + Rs.48,138,240)	388,442,737
Difference	143,863,970

16. Firstly, assessee has challenged the inclusion of **Brescon Corporate Advisors Limited** as comparable by the Id. TPO on the grounds inter alia that this comparable company is a merchant banking company having main source of income from recapitalization advisory and debt syndication; that the comparable company is not a simple advisory services as in the case of assessee company and relied upon the decision rendered by the *coordinate Bench of the Tribunal in assessee's own case in ITA No.3288/Del/2012 for AY 2006-07 dated 09.02.2017.*

17. However, on the other hand, the Id. DR to repel the arguments addressed by the Id. AR for the assessee contended that suitability of the comparable for the purpose of benchmarking the international transaction is to be seen on the basis of functionality of the comparable company and referred to page 129 of the paper

book wherein profile of the assessee company is given. The ld. DR further contended that when we see the international transactions entered into between the assessee company and CMC-II, it is not clear as to what services are being rendered by the assessee company to its Associated Enterprises (AE).

18. So far as, this contention by the ld. DR is concerned, it is apparently not tenable because functionality of the comparable company vis-à-vis assessee company has been examined at length by the coordinate Bench of the Tribunal in assessee's own case for AY 2006-07 (supra) and the said decision has already been affirmed by the Hon'ble jurisdictional High Court.

19. Secondly, the TPO has unequivocally admitted that there is no change in the business activities of the assessee company during the year under assessment when compared to the earlier years. Even otherwise, negligible amount of Rs.15,67,690/- has been determined as ALP in case of services rendered by the assessee company to CMC-II and this fact has been fairly conceded by ld. DR.

20. Ld. DR for the Revenue further contended that for providing services by the assessee company to CMC-III and CMC-IV, there is an agreement entered into between the parties, available at page

104 of the Agreement then modified agreement at page 109 and again modified Agreement at page 107, and when we peruse the Agreement, the assessee company is not providing simple advisory services rather performing complicated functions like managing the company and maintaining books of account. The ld. DR for the Revenue further contended that there is a variation of cost of services to be paid by the AE to the assessee company in all the Agreements entered into between them without highlighting what additional function is being performed by the assessee and further contended that the assessee company is a financial company.

21. However, we are of the considered view that again the contentions raised by the ld. DR are not sustainable for 3 reasons:-

- (i) that the ld. DR is not empowered to improve upon the case made out by the ld. TPO;
- (ii) that all these arguments have already been entertained and decided by the coordinate Bench of the Tribunal in assessee's own case and then findings of the Tribunal has been affirmed by the Hon'ble jurisdictional High Court; and
- (iii) that the quantum of the services is to be determined on the basis of function rendered by the assessee

company. In case more services are rendered by the assessee company, certainly it will charge more in accordance with Agreement and in case some limited services have been rendered then certainly the cost of services will come down.

All these facts will not change the profile of a company which is otherwise not disputed. A professional is empowered to charge his fee as per the nature and quantum of services to be rendered by him and no uniform policy can be adopted. Even otherwise, issue of commercial expediency cannot be interfered with by the Revenue as this is the prerogative of the businessman as to how and what services are required to run the business.

22. Now we shall examine the suitability of comparable, namely, Brescon Corporate Advisors Limited which the assessee has sought to excluded and Integrated Enterprises India Limited which the assessee has sought to be included as a comparable in the final list of comparables for benchmarking the international transactions one by one.

BRESCON CORPORATE ADVISORS LIMITED :

23. When it is not in dispute that there is no change in the business activity of the assessee and the search for comparable

already done by the assessee during the immediately preceding year has been accepted, the suitability of Brescon Corporate Advisors Ltd. is required to be accepted by this Bench as this issue has already been examined by the coordinate Bench of the Tribunal in assessee's own case (supra) by returning the following findings:-

“34. Now, in the present appeal, the assessee's main grievance vide ground no. 5 is as regards inclusion of Brescon Corporate Advisors Limited mainly relying on the decision in the case of Temasek Holdings Advisors India (P.) Ltd vs. Deputy Commissioner of Income Tax, Circle 3(3) and the decision of ITAT Delhi Bench in the case of Xander Advisors India (P.) Ltd vs. Assistant Commissioner of Income Tax, Circle-18(1), New Delhi. Learned counsel pointed out that in both these decisions this company had been considered and it was held that this was a merchant banking company with its main source of income from recapitalization advisory and debt syndications and, thus, it was not a simple investment advisory services as the assessee is. Learned CIT (DR) submitted that the decision in the case of Xander Advisors India (P.) Ltd vs. Assistant Commissioner of Income Tax, Circle-18(1), New Delhi pertains to assessment year 2008-09 and not to assessment year 2006-07 which is before us. In this regard, he relied on Rule on 10B(4), wherein, it has been mandated that the data to be used in analyzing the comparability with an international transaction shall be the data of the financial year in which the international transaction has been entered into. As regards, the Temasek Holdings Advisors India (P.) Ltd., also learned CIT(DR) pointed out that the same dealt with assessment year 2005-06 and not for assessment year 2006-07. He, therefore, submitted that both these case relied by learned counsel are not relevant and since in earlier year this comparable was used for determining arms price length price of international transaction therefore it was rightly included by learned TPO.

35. We have considered the submissions of both the parties and perused the record of the case. We are not

inclined accept the submission of learned CIT (DR) that a decision can be applied in transfer pricing cases only if it pertains to the same assessment year because ultimately it is the FAR analysis which is relevant of the tested party as well as of comparable for selecting/rejecting a comparable. If the functional profit of a comparable vis-à-vis the tested party remains the same over the years then there is no reason as to why the decision rendered in regard to one assessment year may not be applied for any other year unless it is demonstrated with facts and figures that the said decision was rendered in entirely different set of facts. In the present case, the assessee has referred to para 10 of Xander Advisors India (P.) Ltd vs. Assistant Commissioner of Income Tax, Circle-18(1), New Delhi, which is as follows:

“We have perused the Annual accounts of this company, a copy of which has been placed on /record. This company is engaged in carrying on merchant banking and investment activities along with providing project advisory services. A look at the Annual accounts of Brescon Corporate Advisors Ltd. indicates that it has two streams of income, namely, Tee based financial services' and 'Other income'¹. Details of the revenue under 'Fee based financial services' is given at page 324 of the paper book, which is as under: —

<i>Financial Restructuring & Recapitalisation</i>	<i>Rs.10,00 crore</i>
<i>Syndication of Debt</i>	<i>Rs. 2.18 crore</i>
<i>Equity Related Advisory/M&A Advisory</i>	<i>Rs. 2.03 crore</i>
<i>Due diligence advisory to Arcil</i>	<i>Nil</i>
<i>Total</i>	<i>Rs. 14.23 crore</i>

The second stream of its income totaling Rs.6.04 crore includes Dividend, Interest received, Profit/loss on sale of investments and Profit/loss arising out of dealing in shares and securities. A close look at the composition of the gross revenue from Tee based financial services' transpires that some component of 'Equity related advisory/M&A advisory' prima facie partly resembles with the services rendered by the assessee. The Id. DR himself candidly accepted, and rightly so, that the other components of this stream of the revenue are of no match with that of the assessee. Now, the question arises as to whether Brescon Corporate Advisors Ltd., under these circumstances can

be considered as comparable? At this stage, it is pertinent to mention that the gross revenue of this company amounts to Rs.20.27 crore and there is no segmental data available either in respect of net profit from 'Fee based financial services' or 'Other income'. As 'Other income' also includes income from Investment activity, being profit/loss on sale of investment and dealing in shares and securities, the impact of such profit/loss on the overall net profit of the company on entity level, cannot be determined. Even though some component of 'Equity related advisory/M&A Advisory', with the gross revenue of Rs.2.03 crore, partly resembles with the assessee, still in the absence of any segmental data of such composition, there can be no valid comparison. Revenue from this component accounts for around 10% of the total gross revenue of this company and if we further examine this 10% component in itself, it turns out that the same also includes M&A advisory, which is obviously not akin to the services rendered by the assessee. The assessee's activity, in a nutshell, is to tender advice to the Manager about the avenues for making investment in real estate, and, if the Manger agrees to go ahead with such investment opportunity, then, to get involved in the process of finalization of the deal and then provide support services, including maintenance of books of account etc., on the clicking of the deal. Taking a holistic view of the factual matrix, we do not find any rationality in including this company in the list of comparables since no segmental data of the advisory services by this company is available, which component is very small vis-a-vis the entity level operations. Availability of separate data of this segment could have possibly made it comparable with the assessee. This company is, therefore, directed to be excluded from the list of comparables.”

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37. From the above it is evident that there is no change in functional profile of Brescon in assessment year 2006-07 as computed to assessment year 2005-06 except that in the assessment year 2006-07 due diligence advisory to advisory to Arcil/M&A advisory fees was also there. Therefore, there is no change in functional profile as regards the advisory services given by assessee as compared to Brescon, therefore,

the decision relied upon by learned counsel is applicable to the present set of facts.

38. As far as ld. CIT(DR)'s contention regarding inclusion of this comparable by assessee in earlier year is concerned, it would suffice to observe that there is no estoppel against the assessee from demonstrating that a particular comparable was wrongly included in earlier year and, therefore, it should be excluded in this year. We find that both the decisions referred before us clearly supports the assessee's contention and, therefore, we direct for excluding Brescon Corporate Advisors Limited from the list of comparables. As far as the inclusion of ICDS securities is concerned, the same was not pressed at the item of hearing and, therefore, the same will remain in the list of comparables. In the result, ground no. 5 is partly allowed."

24. So, following the decision rendered by the coordinate Bench of the Tribunal in assessee's own case for AY 2006-07 (supra), we are of the considered view that Brescon Corporate Advisors Ltd. introduced by the TPO and retained by ld. CIT (A) in the final list of comparables is not a suitable comparable, hence ordered to be excluded from the list of comparables.

INTEGRATED ENTERPRISES INDIA LIMITED :

25. Assessee by moving an application dated 15.06.2012 before ld. CIT (A) under Rule 46A of the Income-tax Rules 1962 sought to bring on record the financial data of Integrated Enterprises India Limited to be selected as a suitable comparable on the ground that during transfer pricing proceedings before ld. TPO, the financial

data was not available in the public domain and as such could not be furnished.

26. Undisputedly, TPO has rejected this comparable for want of financial data available in the public domain. However, perusal of the impugned order passed by Id. CIT (A) goes to prove that this comparable company, Integrated Enterprises India Limited, has not found any place for discussion and might be overlooked by the Id. CIT (A) due to mistake.

27. We are of the considered view that when a specific prayer has been made by the assessee to admit additional evidences in the form of financial data which was not available in the public domain during the TP proceedings before TPO, it was imperative on the part of Id. CIT (A) to pass an order on the application for additional evidence and to examine the suitability of comparable sought to be included by the assessee for benchmarking its international transaction. In view of the matter, we set aside this issue to the Id. CIT (A) to decide afresh the suitability of the comparability of the Integrated Enterprises India Limited after allowing the application for additional evidence. So, grounds no.13 & 15 and also the additional ground is determined in favour of the assessee.

GROUND NO.17 & 18

28. AO disallowed an amount of Rs.2,33,40,000/- on account of bonus paid to the employees by invoking provisions contained u/s 36(1)(ii) of the Income-tax Act, 1961 (for short 'the Act'). The ld. CIT (A) by relying upon the decision rendered by ITAT in assessee's own case for AY 2006-07 (supra) confirmed the disallowance of Rs.2,33,40,000/- on account of bonus paid to Shri Ashish Dhawan, Managing Director and Shri Kunal Shroff, Director.

29. However, the coordinate Bench of the Tribunal in assessee's own case for AY 2006-07 (supra) decided the identical issue as to making payment of bonus to Shri Ashish Dhawan and Shri Kunal Shroff aforesaid in favour of the assessee by following decision of Hon'ble Delhi High Court in case of *Chryscapital Investment Advisors (India) Pvt. Ltd. vs. DCIT in ITA 417/2004 dated 27.04.2015*.

30. For ready perusal, findings returned by the coordinate Bench of the Tribunal in assessee's own case for AY 2006-07 (supra) are reproduced as under :-

“41. Now, we come to the grounds relating to corporate issues. The assessee has primarily pressed ground nos. 10 and 11 in this regard. Brief facts of the case qua ground no.10 are that during the year under consideration, the

assessee company had paid salary and other allowances to its directors. The payment also included bonus to its Managing Director and Directors namely Sri. Ashish Dhawan and Sri. Kunal Shroff at Rs.1,89,75,000/- and 1,06,18,000/- who are also major shareholders in the company with 50% shareholding of each. Assessing Officer observed that as per the provision of section 36(I)(ii) bonus and/or commission paid to an employee is allowable as deduction, if and only if, it is not payable as profit or dividend. Assessing Officer pointed out that in the case of assessee company, profit of Rs.5,06,14,970/- had been declared, however, no dividend had been proposed or distributed among the shareholders which also included the directors of the company. Thus, he concluded that in case of directors of the company, the sum paid as commission and bonus could have been paid as profit or dividend which is not the case here. After considering the assessee's detailed reply he made an addition of Rs. 2,95,93,000/-. At the time of hearing, ld. counsel pointed out that this issue is covered in favour of assessee by the decision of Hon'ble Delhi High Court in assessee's own case for the assessment year 2008-09. Having heard both the parties, we find that Hon'ble Delhi High Court vide ITA No.417/2014 dated 27th April, 2015, has observed as under:

“The final question that arises for this Courts determination in the present appeal is the assessee's claim for deduction under Section 36(1)(ii) of the Act in respect of the bonus paid by it to its two shareholders - Ashish Dhawan and Kunal Shroff. The lower authorities denied such claim, holding that the bonus was paid to the shareholders in lieu of dividend with the objective of avoiding tax. Such inference was drawn from two facts: a) the bonus paid was in proportion of their shareholding in the assessee company, i.e. 2:1; and b) no dividend had been declared by the assessee. However, a perusal of an excerpt from the DRP's order dated 21.09.2012 quoted by the AO in his order dated 19.10.2012 contradicts both these facts: a) bonus was not paid in the ratio of 2:1 and b) the assessee had declared interim dividend ITA 417/2014 Page 52 of ` 5,47,47,000/-. Further, the bonuses paid to the two shareholder-directors in the preceding two financial years were in the ratio of 60-65%:40-35%, even though their shareholding was 1:1. The balance sheet of

the assessee placed on record also indicates that the two shareholders also hold directorial positions in the assessee. Therefore, the assessee's contention that the bonus was paid to the shareholders in their managerial capacity, like in the case of other managers, cannot be questioned merely on the basis of a speculation by the revenue that such payment was to avoid tax. In such circumstances, the deduction under Section 36(1)(ii) in respect of payment of bonus to the two shareholder-directors is allowed. The assessee has relied upon a number of judicial pronouncements to support its contention. However, we do not consider it necessary to discuss those decisions for ruling in its favour. Therefore, this question is answered in favour of the assessee."

42. Respectfully following aforementioned decision, the ground raised by the assessee is allowed."

31. Following the aforesaid decision rendered by coordinate Bench of the Tribunal which is based on the Hon'ble High Court judgment in case of *Chryscapital Investment Advisors (India) Pvt. Ltd. vs. DCIT* (supra), we are of the considered view that the deduction u/s 36(1)(ii) in respect of payment of bonus to the aforesaid shareholder/Director who are also major shareholder in the company with 50% shareholding of each is allowable deduction as there is no change in the shareholding pattern during the year under assessment, hence grounds no.17 & 18 are determined in favour of the assessee.

32. Grounds No.19, 20 & 21 are general in nature and do not require any specific adjudication.

REVENUE'S APPEAL (ITA NO.6510/DEL/2013 :**M/S. KEYNOTE CORPORATE SERVICES LTD.**

33. The Revenue by filing the present appeal has sought inclusion of M/s. Keynote Corporate Services Ltd. as a suitable comparable by challenging the findings of Id. CIT (A) who has excluded this company as comparable for benchmarking the international transaction.

34. M/s. Keynote Corporate Services Ltd. is selected by Id. TPO as a suitable comparable having margin of 139.00%. The Id. CIT (A) by taking into account volatile profit of the company to the tune of 145% due to the alliances formed with a Middle East based consulting companies and Swiss based consulting companies and has also launched ESOP Division which focused on designing and implementing stock option schemes for corporate. Ld. CIT (A) also relied upon the decision rendered by DRP in assessee's own case for AY 2006-07 wherein M/s. Keynote Corporate Services Ltd. is held to be not a robust comparable.

35. Undisputedly, business model of M/s. Keynote Corporate Services Ltd. was restructured during the year ending 31.03.2007 which is reproduced from page 8 of the annual report of 2006-07 for ready reference as under :-

“Business Restructuring

During the year ended 31ST March, 2007, the Scheme of Amalgamation of group companies viz Cobal Investment Company limited, West Coast Lighterage Company Private Limited, Starline Ispat and Alloys Limited, Galaxy leasing Limited, Keynote Finstock Limited, Plethora Investments Company Limited (“the transferor companies”) with Keynote Corporate Services Limited (“the transferee company”) have been approved by Hon'ble High Courts, at Allahabad, Bombay and Guwahati vide their orders dated 21ST December, 2006, 9th March 2007 and 19th March, 2007 respectively and effected. During this financial year, in terms of the Scheme of Amalgamation 77,170 new Equity Shares were issued to the shareholders of transferor companies and 14,51,702 Equity Shares have been transferred to "Keynote Trust." All the relevant formalities/procedures relating to the said orders have been completed.

16. Pursuant to the scheme of Amalgamation between Cobal Investment Company Limited, West Coast Lighterage Company Private Limited, Starline Ispat And Alloys Limited. Galaxy Leasing Limited, Keynote Finstock Limited and Plethora Investments Company Limited (hereinafter known as Transferor companies) and Keynote Corporate Services Limited (hereinafter known as Transferee company) approved by shareholders and then approved by the Honorable High Court of Allahabad, Bombay, Guwahali vide their orders dated 21st December, 2006, 9th March, 2007 & 19th March, 2007 respectively. The assets and liabilities of the Transferor companies are vested in the Transferee Company with retrospective effect from 1st April, 2005, the appointed date under the scheme. The accounts of the Transferee Company for the period ended 31st March, 2007 are drawn up to give effect to the scheme.”

36. Ld. DR for the Revenue contended that issue of amalgamation has not been considered by the Id. CIT (A). Only the shareholding pattern of M/s. Keynote Corporate Services Ltd. is changed with amalgamation which has not affected the profit. However, this contention is not tenable in the face of uncontroverted fact that the profit margin of assessee company has raised up to 145% during the year under assessment which is extremely volatile and abnormal and is due to the amalgamation and merger. Moreover, launch of ESOP Division which focused on designing and implementing stock option scheme for corporate, the business model of comparable company has undergone a change. So, we are of the considered view that the Id. CIT (A) has rightly excluded M/s. Keynote Corporate Services Ltd. as unsuitable comparable.

37. Resultantly, the appeal of the assessee is partly allowed for statistical purposes and the appeal of the Revenue is dismissed.

Order pronounced in open court on this 19th day of September, 2017.

**Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 19th day of September, 2017
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-XX, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.
