

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL  
'D' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं  
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.522/Mds/2017

निर्धारण वर्ष / Assessment Year : 2012-13

M/s Pari Washington Company  
Advisors Private Limited,  
18, Tiger Varadachari Road,  
1<sup>st</sup> Street, Besant Nagar,  
Chennai - 600 090.

v. The Deputy Commissioner of  
Income Tax,  
Corporate Circle 5(1),  
Chennai - 600 034.

PAN : AAACP 0955 E  
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Sh. Raghunathan Sampath, Advocate  
प्रत्यर्थी की ओर से/Respondent by : Smt. T.H. Vijayalakshmi, CIT

सुनवाई की तारीख/Date of Hearing : 19.09.2017

घोषणा की तारीख/Date of Pronouncement : 27.09.2017

### **आदेश /O R D E R**

**PER N.R.S. GANESAN, JUDICIAL MEMBER:**

This appeal of the assessee is directed against the assessment order dated 27.12.2016, passed consequent to the direction of the DRP under Section 144C(5) of the Income-tax Act, 1961 (in short 'the Act') for the assessment year 2012-13.

2. Shri Raghunathan Sampath, the Ld.counsel for the assessee, submitted that the assessee is engaged in the business of non-binding investment advisory services to its Associated Enterprise at Mauritius. According to the Ld. counsel, the assessee received more than 90% of its remuneration from such advisory services. The Transfer Pricing Officer admitted that it is a non-binding advisory services with regard to Indian securities. According to the Ld. counsel, the assessee analyses the marketing condition in India and advises the Associated Enterprise at Mauritius for making investment. The advice rendered by the assessee is not binding on the Associated Enterprise. It is for the Associated Enterprise to take its own decision after considering the suggestion/advice given by the assessee-company.

3. Referring to the direction of DRP, the Ld. counsel for the assessee submitted that the DRP admitted that if the assessee is providing only non-binding services, the case laws relied on by the assessee are squarely applicable. However, according to the Ld. counsel, the DRP found that the assessee has not furnished the details of non-binding advisory services provided to its Associated Enterprise, therefore, the DRP on ad hoc basis adopted the profit at

26.58%. For adopting 26.58%, the DRP took the profit of merchant banker at 41.58%. The Ld.counsel further submitted that merchant banking company cannot be compared with the services of the assessee. The assessee is not holding any investment. The business of the assessee is only to provide non-binding advisory service to its Associated Enterprise. According to the Ld. counsel, in the case of merchant banking, they are holding investment, therefore, the DRP cannot take 41.58% for determining arm's length price as in the case of merchant banker. Apart from that, according to the Ld. counsel, the DRP has also, on ad hoc basis, found that the mutual funds normally give annual yield of 10-12% and by giving further margin of 3% in investment, the deduction was given at 15% and the balance 26.58% was considered to advisory services. According to the Ld. counsel, this ad hoc computation is not permissible under the scheme of transfer pricing. The service rendered by the assessee-company has to be compared with similar services rendered by other companies in the uncontrolled transaction. Moreover, according to the Ld. counsel, Export Earnings Filter was not taken into consideration either by the TPO or DRP. In all the comparable cases, the comparable companies

have not done any export service. Therefore, according to the Ld. counsel, Export Earnings Filter has to be adopted.

4. Referring to the direction of DRP, the Ld.counsel for the assessee submitted that the DRP itself found that 41.58% ALP margin adopted in merchant banking cannot be adopted to the service rendered by the assessee which is an advisory character. The Ld.counsel further submitted that the assessee is only an adviser to the Associated Enterprise at Mauritius and not acting as investment manager, therefore, the estimation of 15% of margin on ad hoc basis is not correct. The Ld.counsel further submitted that without reference to any comparable data, the DRP determined the ALP at 26.58%. The Ld.counsel further submitted that the margin attributable to investment adviser has to be necessarily lower than that of investment manager. The investment manager takes more risk in making investment. However, the adviser is not taking any such risk. The main contention of the Ld.counsel is that adoption of 15% for the investment adviser is highly arbitrary. It needs to be taken into consideration the data available on record.

5. On the contrary, Smt. T.H. Vijayalakshmi, the Ld. Departmental Representative, submitted that there was difference

between the study made by the TPO and the assessee. According to the Ld. D.R., the claim of the assessee that it is providing only non-binding advisory service is not substantiated by necessary material. Referring to the direction of the DRP, more particularly para 2.20.7, the Ld. D.R. submitted that the DRP found that the assessee is providing advice to its Associated Enterprise at Mauritius which is investing in the capital. Therefore, according to the Ld. D.R., comparing the activity of the assessee and with that of its Associated Enterprise was in the nature of investment banker, hence, the TPO as well as the DRP have selected the comparable companies which are engaged in the investment banking and segregation was made with regard to advisory services. Therefore, according to the Ld. D.R., it is not correct to say that the DRP made transfer pricing adjustment on ad hoc basis without comparing the available data. According to the Ld. D.R., the data was not provided by the assessee, therefore, the DRP has taken the available data on record.

6. We have considered the rival submissions on either side and perused the relevant material available on record. A bare reading of the order of the TPO and the direction of the DRP shows that the

assessee is providing advisory service to its Associated Enterprise which is in the business of investment. In other words, the Associated Enterprise at Mauritius is making investments in Indian securities after considering the advice rendered by the assessee-company. The assessee-company is only rendering its advice after analyzing the market / economic scenario in India. The Associated Enterprise at Mauritius takes decision after considering the advice rendered by the assessee-company whether to invest in securities or not. These facts are not in dispute. Therefore, this Tribunal is of the considered opinion that the service of the assessee-company is non-binding advisory service. For the purpose of analyzing or providing advisory services, the assessee-company has to necessarily scrutinize the financials and other relevant material of the respective companies before offering its advice to its Associated Enterprise. Similarly, the investing company also analyzes the financials of the respective companies before making any decision to invest in the securities of those particular companies. In the case of the assessee-company, after making analysis, its activity ends immediately after providing its advice to its Associated Enterprise. The Associated Enterprise after receiving advice from the assessee-company, re-examines / reviews the entire matter in the

light of the advice given by the assessee-company and thereafter takes a decision whether to invest in those companies or not.

7. If the Associated Enterprise decides to make investment, then they are making investment after taking a risk. There is a distinction between the activity carried on by the investment manager and the company which is offering advisory services. In the case of the company, which is offering advisory service, it does not take any risk. It simply renders its advisory service. However, the investment manager is taking entire risk in making investment. Therefore, this Tribunal is of the considered opinion that the data which pertains to the advisory service companies has to be compared with that of profit of the assessee-company. In the case before us, the DRP has taken 15% on ad hoc basis without comparing with any of the data of the other companies which provide similar advisory service. It is nobody's case that no such similar company is available in India. The DRP found fault with the assessee for not providing comparables. This Tribunal is of the considered opinion that it cannot be a reason for making adjustment on ad hoc basis.

8. Under the scheme of transfer pricing, the adjustment has to be made after comparing the transaction of similarly placed companies in respect of similar business. Therefore, we are unable to uphold the adjustment made by the DRP on ad hoc basis with regard to mutual funds. Accordingly, the orders of the lower authorities are set aside and the entire issue is remitted back to the file of the Assessing Officer. The Assessing Officer shall refer the matter once again to the TPO. The TPO shall re-examine the matter afresh in the light of the material / data available on record. It is also open to the assessee to file fresh data to the TPO in respect of other companies providing advisory services. It is open to the TPO to compare some more data from public domain. Thereafter the TPO shall decide the issue in accordance with law, after giving a reasonable opportunity to the assessee.

9. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on 27<sup>th</sup> September, 2017 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 27<sup>th</sup> September, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. Principal CIT-5, Bangalore
4. CIT(TP-2), Bangalore
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.