

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "K" MUMBAI**

**BEFORE SHRI MAHAVIR SINGH (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 977/MUM/2015
Assessment Year: 2010-11**

WL Ross India Pvt. Ltd.
Suite 117, Maker
Chambers III, Nariman
Point
Mumbai-400021.

DCIT-3(3)
C-10/703, Pratyakshakar
vs. Bhavan, BKC
Mumbai-400051.

PAN No. AAACW6399M

Appellant

Respondent

Assessee by : Mr. M.P. Lohia, AR
Revenue by : Mr. V. Jenardhanan, DR

Date of Hearing : 07/08/2017
Date of pronouncement : 03/11/2017

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the assessee. The relevant assessment year is 2010-11. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-15, Mumbai and arises out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act').

2. Before us, the Ld. counsel of the assessee submits that he would not press grounds of appeal no. 2(a), 2(b) and 2(e). Also it is stated by him that the 1st ground of appeal is general in nature.

3. Thus the remaining grounds of appeal raised by the assessee are as under:

Aggrieved by the order passed by the CIT(A) u/s 250, the appellant respectfully submits that the Ld. CIT(A) erred in disposing the appeal and in passing the order on the following grounds.

2. In making an upward transfer pricing adjustment and in determining the ALP of the International transaction pertaining to provision of investment advisory services on following grounds:

c). In arbitrarily selecting a company, namely Motilal Oswal Investment Advisors Private Limited, without following a scientific search process, which is *inter alia* engaged in investment banking activities, functionally not comparable to the investment advisory services rendered by the Assessee and has earned super normal profits;

d). Computing the operating margin at 69.31 percent of a comparable company, namely, Integrated Capital Services Limited as against an operating margin of -2.92 percent computed by the Appellant, by incorrectly considering interest income as an operating income.

3. Granting less credit towards advance tax amounting to Rs.5,05,000/-.

4. We begin with the ground of appeal no. 2(c). The assessee is engaged in investment advisory services. During the course of assessment proceedings, the Assessing Officer (AO) noticed that as per the Transfer Pricing Study Report (TPSR), the assessee has provided

sub-advisory services to its Associated Enterprise (AE) during the FY 2009-10. It has earned a mark-up of 20% on provision of investment advisory services. It has adopted Transactional Net Margin Method (TNMM). The AO, after examination, considered the following companies for benchmarking the international transactions of the assessee:

Sno.	Name	OP/OC
1.	Motilal Oswal Investment Advisors Pvt. Ltd.	97.89
2.	Future Capital Investment Advisors Ltd.	15.71
3.	Integrated Capital Services Ltd.	69.31
	Arithmetical Mean	60.97

The AO observed that the NCP margin of the assessee is 20% which is lower than that of the comparables which is 60.97%. Thus he made an adjustment of Rs.2,10,08,700/- u/s 92C(3) in respect of provision of investment advisory services.

4.1 Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). As regards Motilal Oswal Investment Advisors Pvt. Ltd. (MOIAPL), the Ld. CIT(A) held that (i) as found by the AO, the nature of activities of the above company is same as that performed by Future Capita Investment Advisors Ltd. which has been accepted by the assessee, (ii) in the Director's Report of MOIAPL, it is mentioned that 'the company continues to perform well on advising Indian Corporates', from which it is clear that its function is that of investment advisory, (iii) in Schedule-J, appended to the profit and loss account, the income of the above company has been shown exclusively from advisory fees.

Accordingly, the Ld. CIT(A) held that the AO has rightly selected the above company as comparable and made adjustment.

4.2 Before us, the Ld. counsel of the assessee submits that MOIAPL operates in four different business verticals as (i) Equity Capital Markets, (ii) Mergers and Acquisition, (iii) Private Equity Syndications and (iv) Structured Debt.

It is stated by him that the annual report for FY 2009-10 indicates that MOIAPL has earned its income evenly from all this four business verticals.

The Ld. counsel relies on the following decisions stating that MOIAPL has been rejected as comparable therein:

- i. *M/s singular Guff India Advisers Pvt. Ltd. v. DCIT, Circle (3)(3)* [ITA No.403/Mum/2015] [ITA No.1581/Mum/2014] dated 21 April 2017.
- ii. *FIL Capital Advisors India Pvt. Ltd. v. DCIT* [ITA No.7403/Mum/2014] dated 25th October 2016.
- iii. *3i India Pvt. Ltd. v. DCIT 8(3)(1)* (ITA No. 581/Mum/2015) dated 16 September 2016.
- iv. *AGM India Advisors Pvt. Ltd. v. DCIT, 10-(1)* [ITA No. 4757/Mum/2015 and ITA No. 4801/Mum/2015] dated 18 May 2016.
- v. *Temasek Holdings Advisors India Pvt. Ltd. v. DCIT 14(3)1* [ITA No. 776/Mum/2015] dated 25 February 2016.
- vi. *Q-India Investment Advisors Pvt. Ltd.* (ITA No. 923/Mum/2015) dated 24 April 2015.

4.3 On the other hand, the Ld. DR supports the order passed by the Ld. CIT(A). He submits that in Schedule-J appended to the profit and loss account, the income of MOIAPL has been shown exclusively from

advisory fees. Also it is mentioned in the Director's Report of MOIAPL that 'the company continues to perform well on advising Indian Corporates'. It is stated by him that the function of MOIAPL is that of investment advisory. Thus the Ld. DR submits that the Ld. CIT(A) has rightly rejected the contentions of the assessee.

4.4 We have heard the rival submissions and perused the relevant materials on record. We find from the Director's Report (page 314 of the Paper Book) the following observation:

"The company derives its business income from four different business verticals viz. Equity Capital Markets, Mergers & Acquisitions, Private Equity Syndications and Structured Debt. The income source across the four products was more or less evenly balanced."

4.4.1 At this moment, let us discuss the decisions relied on by the Ld. counsel. In *M/s singular Guff India Advisers Pvt. Ltd.* (supra), the assessee-company was engaged in the business of providing investment advisory services. The relevant assessment year was 2010-11. The Tribunal followed the order in the case of *Temasek Holdings Advisors India Pvt. Ltd.* (supra), wherein MOIAPL was excluded on the ground that its merchant banking function is entirely different from investment advisory services. Therefore, the Tribunal excluded MOIAPL from the list of comparables as the assessee was only offering non-binding investment advisory services.

In *FIL Capital Advisors India Pvt. Ltd.* (supra), the assessee was a wholly owned subsidiary of FIL Mauritius engaged in providing non-binding investment advisory services to its overseas AE. The assessment

year was 2010-11. The Tribunal followed the decision in *Temasek Holdings Advisors India Pvt. Ltd.* (supra) and excluded MOIAPL from the list of comparables.

In *3i India Pvt. Ltd.* (supra), the assessee was providing investment advisory services. The relevant assessment year was 2010-11. The Tribunal followed the decision in *Temasek Holdings Advisors India Pvt. Ltd.* (supra) and excluded MOIAPL from the list of comparables.

In *AGM India Advisors Pvt. Ltd.* (supra) the assessee was engaged in providing non-binding investment advisory services to its AE. The relevant assessment year was 2010-11. The Tribunal followed the decision in *Temasek Holdings Advisors India Pvt. Ltd.* (supra) and excluded MOIAPL from the list of comparables.

In *Temasek Holdings Advisors India Pvt. Ltd.* (supra), the assessee was providing investment advisory services. The relevant assessment year was 2010-11. The Tribunal held MOIAPL as not comparable to the functions performed by the assessee.

In *Q-India Investment Advisors Pvt. Ltd.* (supra) the assessee was engaged in providing non-binding investment advisory support services to its AE. The relevant assessment year was 2010-11. The Tribunal held that “in addition to investment advisory services in which the assessee was involved, MOIAPL was engaged in diversified activities and registered with SEBI as a merchant banker”. Thus the Tribunal held that MOIAPL is functionally different from the assessee and therefore, directed the AO to exclude MOIAPL from the list of comparables.

4.4.2 Facts being similar and even the assessment year being same, we follow the decisions mentioned at para 4.4.1 hereinbefore and direct the AO to exclude MOIAPL from the list of comparables.

5. Thus ground no. 2 (c) is allowed.

6. We now turn to ground no. 2(d). The Ld. counsel of the assessee submits that in the case of Integrated Capital Services Ltd. (ICSL), the AO has erred in considering interest income as operating income and has computed the operating margin at 69.31%. Interest income from fixed deposits and other lending, being a finance income is non-operating in nature and ought to be excluded. Reliance is placed by him on the decision in the case of *Sumitomo Corporation India Pvt. Ltd. vs. DCIT, Range-9* (ITA No. 2307/Del/2009) for AY 2003-04.

6.1 We have perused the relevant materials on record. As per profit and loss account for the year ended March 31, 2010, the other income of Rs.62,56,408.23/- consists of interest on FDR and others. We find from the 'Cash Flow Statement for the year ended March 31, 2010' of ICSL (Page 360 of the P/B) that interest on FDR and others of Rs. 61,21,999.23/- has been shown as a part of 'Operating Activities' as well as 'Investing Activities'. It is not a part of 'Financing Activities'. Therefore, we direct the AO to verify it and frame a consequential order after giving reasonable opportunity of being heard to the assessee. We also direct the assessee to file the relevant documents/ evidence before the AO. Thus ground no 2(d) is allowed for statistical purposes.

7. Finally we come to the 3rd ground of appeal. The Ld. counsel submits that in its return of income for the AY 2010-11, the assessee had claimed credit for advance tax amounting to Rs.31,10,000/-. However, in the assessment order, the AO has granted advance tax credit of Rs.26,05,000/- only, thereby leading to a short credit of Rs.5,05,000/-.

7.1 We have perused the relevant materials on record. We direct the AO to verify the above contentions of the assessee and take remedial measures after due verification of the relevant records. We also direct the assessee to file the relevant documents/evidence before the AO. Thus ground no 3 is allowed for statistical purposes.

8. In the result the appeal is partly allowed.

Order pronounced in the open Court on 03/11/2017.

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 03/11/2017

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai