

आयकर अपीलीय अधिकरण, मुंबई "के" खंडपीठ

Income-tax Appellate Tribunal "K" Bench Mumbai

सर्वश्री राजेन्द्र, लेखा सदस्य एवं रविश सूद, न्यायिक सदस्य

Before S/Sh. Rajendra, Accountant Member & Ravish Sood, Judicial Member

आयकर अपील सं./I.T.A./1546/Mum/2017, निर्धारण वर्ष /Assessment Year: 2012-13

First Advantage Quest Research Limited C/o., Interface Building No.7 1 st Floor, Link Road, Malad West Mumbai-400 064. PAN:AABCF 9162 A	Vs.	DCIT –(Intl. Taxn.)-2(3)(1) Air India Building, 17 th Floor, Room No.1702, Nariman Point, Mumbai-400 021
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

आयकर अपील सं./I.T.A./1547/Mum/2017, निर्धारण वर्ष /Assessment Year: 2012-13

First Advantage India Holdings LLC C/o., Interface Building No.7 1 st Floor, Link Road, Malad West Mumbai-400 064. PAN:	Vs.	DCIT –(Intl. Taxn.)-2(3)(1) Air India Building, 17 th Floor, Room No.1702, Nariman Point, Mumbai-400 021
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

Revenue by: S/Shri V. Jenardhanan, Saurabh Deshpande-DR

Assessee by: S/Shri Porus Kaka/Nishant Thakkar and Jasmin Amalsadvala

सुनवाई की तारीख / Date of Hearing: 09/10/2017

घोषणा की तारीख / Date of Pronouncement: 05/01/2018

आयकर अधिनियम, 1961 की धारा 254(1)के अन्तर्गत आदेश

Order u/s.254(1)of the Income-tax Act,1961(Act)

लेखा सदस्य, राजेन्द्र के अनुसार /PER RAJENDRA, AM-

Two entities of the First Advantage group- First Advantage Quest Research Limited and First Advantage India Holdings LLC-have filed appeals for the above mentioned Assessment Year (AY.)As the issue in both the appeals are similar,so,we are adjudicating them together. The First Advantage Group provides talent acquisition solutions for companies across the globe.

ITA/1546/Mum/2017-AY.2012-13:

Challenging the order of the Assessing Officer (AO),dated 30/01/2017,passed in pursuance of Dispute Resolution Panel(DRP),Mumbai directions,dated 28/12/2016,the assessee has filed the present appeal.The First Advantage Group's custom tailored solutions address recruiting, applicant-tracking,screening and assessment,on boarding, hiring tax credit and re-screening. Assessee is one of the entity of the Group.It filed its return of income on 29/12/ 2012, declaring total income of Rs.86.44 crores.The AO completed the assessment u/s.143(3) r.w.s.144C of the Act,determining its income at Rs.130.77 crores.

2. During the course of hearing before us the Authorised Representative (AR) stated that out of the 13 Grounds of appeal, effective Ground of appeal was Ground No.3 read with Ground No.6, that rest of the grounds were not to be adjudicated. Therefore, we would not decide other Grounds of appeal raised by the assessee.

3. Ground No.3 is about determining the price of shares of First Advantage Pvt.Ltd.(FAPL) at Rs.12,285.92 as against Rs.8,158.01, as shown by the assessee. During the assessment proceedings, the AO found that the assessee had entered into International Transaction with its Associated Enterprise(AE). He made a reference to Transfer Pricing Officer(TPO) to determine the Arm's Length Price (ALP) of the transaction.

3.1. During the transfer pricing(TP) proceedings, the TPO found that the assessee had sold shares of FAPL to its AE, namely First Advantage Pte Ltd.(FADV), that for the purpose of determining the FMV of the shares sold it had undertaken an exercise of valuing the shares of FAPL, that it had obtained a valuation report from an independent third party i.e. a valuation expert, M/s. Shrenik & Associates. The TPO directed it to file further details in that regard. After considering the submissions of the assessee, he suggested an upward adjustment of Rs.69.11 crores. Accordingly, the AO issued a draft order to the assessee .

3.2. Aggrieved by the order of the AO/TPO the assessee filed objections before DRP and made detailed submissions. It also filed additional evidences and more independent opinion of a valuation expert, namely Duff and Pheleps(D&P). To determine the ALP of the shares, sold by the assessee, the valuer considered appropriate perpetuity growth and weighted average cost (WAC) of the capital. The DRP called for comments of TPO about additional evidences, who filed his remand report on 16/12/2016. Vide its letter dt.23/12/2016, the assessee submitted arguments about the remand report of the TPO.

After considering the available material, the DRP held that the basic issue to be decided was as to whether the presumption made by the valuer, based on the information provided by the management of FAPL was justified. Referring to the report of M/s. Shrenik & Associates, the DRP observed that the valuer had clearly mentioned that a valuation of equity shares of FAPL was based on methodology provided in the foreign exchange management (Transfer or issue of security by a person resident outside India) Regulation 2000 and Financials and other information provided by the management, that the valuer had not conducted any independent audit, due diligence review or validation of such financial or other information, that all projections in the report had been provided by the management, that most of the

values adopted by the valuer were based on the projections provided by the management, that the value of authenticity of intra-group transfer of shares was not above board, that the assessee had not filed any evidence before TPO/DRP to show that projections provided by the management to the valuer were justified, that valuation was primarily based on future projection of growth rate.

The DRP directed the assessee to file the results of earlier years (from the date of filing of valuation report) to the year under consideration. As per the DRP the same were not furnished. The DRP further held that FAPL was engaged in providing pre employment background screening services in India, that business segments of FAPL included screening, HR outsourcing, verification, litigation, that assessee had filed valuation reports, that the reports mentioned that the real GDP growth of India during 2009-10 was 8%, that during 2010-11 it was 8.5%, that long term compounded annual growth of GDP was expected at 5.2% for the period 2040-50, that long term inflation was expected to 4.5% to 4.9% for the period 2015-2041, that long term GDP growth rate for India could be safely taken at 10%, that as per the report of the NASSCOM near term growth in IT and BPO Export sector was expected to be between 11 to 14%, that the domestic sector it was expected to be 13-16%, that long term GDP rate was expected to be 3% in real term, that in the valuation report submitted by the assessee it has been mentioned that revenue of the assessee had been declined from INR 469.5 million to INR 406.2 million for the period FY.2007-2010, that it was also mentioned that the decline was because of global slowdown, that FAPL had impacted heavily on account of the fact that more than 52% of revenue of FAPL were attributable to clients from financial services and IT sector, that another subsidiary of group having similar business as of FAPL was integrated into FAPL, that the process of revenue integration began in 2008, that FAPL witnessed its increase in head-counts from 551 as on 31/3/2009 to 1061 as on 31/3/2010, that as per the management operational income of the company grew from 406 million (March 2010) to Rs.713.2 million in March 2011 and to 356.8 million in September 2011, that there after it was expected to grow at a rate 4% till Sept. 2016, that compounded CAGR for revenue after this period was expected to be 2%, that on the above basis the valuer had arrived at a growth rate of 2% per annum based on same figures there terminal growth rate was estimated between 3.5% - 4.5% by D&P, that the TPO had adopted perpetual growth rate (PGR) of 7% based on a report prepared by PWC, that as per the PWC report the Long term growth rate of developed economies was 2%, that long term expected deflator based inflation rate was 5.5% in India, that the long term nominal growth rate for India was 7.5%, that the valuer Shrenik & Associates had ignored the factor of inflation in India economy in the

calculation, that D&P had factored it partly in its report, that terminal growth rate of 2% would mean that actually revenue of FAPL in real terms would be declining and that it would not keep pace with inflation factor, that the India economy was expected to grow at a rate of 5.2% in real terms, that same would result in better business for FAPL, that the PGR of 7.5% applied by TPO did not require any modification.

Referring to Beta factor, the DRP held that Shrenik & Associates arrived at average beta of 0.65 after making adjustment for capital structure, that D&P arrived at average Beta of 1.1, that the valuers considered companies engaged in services in BPO and IT segments, that the TPO considered 3 other comparables namely Crisil, USG tax Solutions and Shreejal Info, that he arrived at average Beta of 0.57. The DRP held that comparable selected by TPO were not good comparables, that comparable companies identified by D&P were also not valid comparables, that D&P had selected only those comparable which had Beta greater than or equal to 1, that majority of clients were from IT and Financial sectors, that most of the companies from IT sector were dependent on US for business, that Beta of most of IT companies were near to 0.6, that it did not show much co-relation with Indian economy that substantial portion of revenue was coming from Singapore based clients, that share price of FAPL, if listed on Indian Stock exchange, would be linked to the factors of those geographies, that share prices of most of companies registered on Indian stock exchanges would be affected by development in Indian economy, that Beta of FAPL should necessarily be less than 1. The DRP accordingly directed to adopt beta 0.61 in respect of FAPL. It further held that Shrenik & Associates had taken a specific company risk premium (CSRP) at 3% for arriving at Weighted Average Cost of Capital (WACC) of assessee company, that D&P had adopted risk premium at 0.5%. The DRP held that specific company risk premium should be taken at 0.5%, that assessee was always starting from low base due to sub-prime prices. Finally, the DRP confirmed the order of the AO/TPO.

3.3. Before us, the AR argued that the TPO had erroneously taken the PGR of 7% as against the PGR of 2% indicated in the valuation report, that the AO/TPO had not provided any cogent reason for rejecting the PGR of the assessee, that the TPO did not give due consideration to the past growth trend of the assessee in determining the PGR, that he did not appreciate the long term growth rate (LTGR) of matured markets, that estimate of Long Term economic growth rate would necessarily be a growth rate of Indian economy as a whole and would unlikely be representative of LTGR for individual company, that it was important to consider the industry and company specific parameter and not just economic growth rate for

county as a whole to determine the PGR of a company. He referred to the report of PWC and argued that in the report it was mentioned that considering the LTGR of developed economies the IT substantiable real GDP growth rate had to be estimated at 2%, that in conjunction with inflation it could be estimated at 7.5%, that in the report it was specifically mentioned that estimated LTGR for the economy did not represent the LTGR of individual company. He further argued that the compounded annual growth rate (CAGR) of the earning and free cash flow of FAPL for the immediately preceding 5 years was minus 16%, that it was wholly unreasonable at the time of valuation to consider the PGR of 7% based on generic report when company had shown CAGR of minus 16%, that TPO had not brought any evidence on record that would suggest that the assessee would be able to achieve such a high growth rate in perpetuity, that initially the TPO had suggested PGR of 4%, that later on it revised to 7% relying on a report of PWC, that he had adopted an inflation based growth rate, that there was no direct linkage rate between inflation rate in India and company's performance, that FAPL had shown negative growth in some years where inflation continued to exist, that there was heavy competition and constant pricing pressure in the industry in which FAPL operated, that customer pricing was not subject to inflationary growth, that revenue of the company had grown at average CAGR of minus 8.4% for the period from AY 2011-12 to 2014-15, that it was inappropriate on part of TPO to consider PGR of 7% of FAPL when the other companies-considered as comparable-had shown CAGR of minus 8.4%, that the TPO/DRP did not deal with the said objection of the assessee though the same was specifically raised, that there was no justification to compare the service sector company FAPL to generic report of PWC. Referring to the finding of IBIS World, an independent third party researcher, he stated that the annual industry growth rate of companies operating in the background-service-industry in the US was 2.2%, that PGR shown by the assessee was reasonable and was in line with how industry was expected to grow in long term period, that TPO had not provided any reason for not accepting the reason for finding the IBIS World report, that CRISIL had considered the PGR in one of the reports prepared for an IT company and that the assessee had filed that report, that during the year under appeal two transactions of sale of shares of Indian subsidiaries within the group had taken place, that the first transaction was of sale of shares by assessee to the parent company and the second transaction was about sale of shares of First Advantage Offshore Services Ltd. (FAOSL) by First Advantage India Holding LLC to the Singapore parent company, that the business activities undertaken by FAPL and FAOSL were not similar in nature, that the FAPL was engaged in business of pre-employment screening services to third party customers in India, that FAOSL would provide a range of

information technology enabled services (ITEs) to fellow group companies across the world, that the TPO had ignored the basic principles of computation of Beta, that he had not considered the length of estimation period, return interval and market index, that a wide set of companies engaged in IT enabled services were considered as comparables for the purpose of Beta computation, that the TPO rejected the comparables by observing that they were engaged in low-end-IT-enabled services, that the comparables selected by the assessee were not engaged in such services, that the TPO without giving any cogent reasons had considered companies engaged in software-development-services as compared to FAPL for determining the Beta for the valuation-working, that the TPO had considered the cost of equity for FAPL at 12.57% by adjusting the Beta factor and the risk premium, that approximate cost of that during the year was 14.75% which was substantially higher than cost of equity considered by the TPO in valuation model, that a high PGR warranted proportionately higher cost of equity, that he did not factor in increased uncertainties over achieving cash flow which would warrant a cash flow in cost of equity, that each of factors considered in valuation exercise were dependent on each other, that looking at them in isolation without considering an impact of an increase/reduction in one of the variable on others was against the principles of valuation exercise, that where the PGR of 7% was considered the cost of equity should have also been increased proportionately, that cost of equity would be at minimum of 17.57% for 7% PGR, that if cost of equity was taken at 17.57% the value of a share of FAPL would be of Rs.7648.5 which was lower than value determined by the independent valuer. He referred to Pages 46,49,79, 117 and 99 of the PB. He relied upon the cases of Anup Kumar Sheth (ITA Nos.463-68 of 2009) and Titan Time Products Limited (273 CTR 479).

The DR contended that shares were sold by one entity of group to another entity, that the first valuer Shrenik & Associates did not do their home work properly, that they blindly followed the figures provided by the management, that D&P report projected growth at 16%, that for determining PGR general GDP was considered by PWC, that there was only one transaction of share transfer and not two, as claimed by the assessee, that the TPO had given discount of 15%, that the discount had taken care of all possible adjustments.

In his rejoinder, the AR stated that Global economy crashed in 2011, that hiring of personnel started one year later, that resulted in abnormal growth, that if the period of 5-10 years was taken a clear picture would emerge, that the discount argument was not relevant for determining the ALP of the shares sold.

3.4. We have heard the rival submissions and perused the material on record. We find that the assessee had sold 1,07,290 shares of FAPL to its AE, that it had obtained a valuation report from Shrenik Associates to prove that price paid by the AE to it was at arm's length, that the TPO did not agree with the valuation made by the assessee, that adopting PGR of 4%, he suggested upward adjustment to the value of shares sold by the assessee, that before the DRP it filed another valuation report and certain other documents, that a remand report was called for by the DRP, that the TPO relied upon a report of PWC and adopted PGR of 7%, that the assessee, in its objections, before the DRP, had further referred to reports of IBIS World and CIRISL, that the DRP upheld the order of the AO/TPO holding that the valuers had not factored the rate of inflation while valuing the share price.

3.4.1. Before proceeding further, we would like to refer to the case of Mahadeo Jalan (86 ITR 621), wherein the Hon'ble Supreme Court laid down certain basic principles to determine the value of shares and the same read as under:

(1) Where the shares in a public limited company are quoted on the stock exchange and there are dealings in them, the price prevailing on the valuation date is the value of the shares.

(2) Where the shares are of a public limited company which are not quoted on a stock exchange or of a private limited company the value is determined by reference to the dividends, if any, reflecting the profit-earning capacity on a reasonable commercial basis. But, where they do not, then the amount of yield on that basis will determine the value of the shares. In other words, the profits which the company has been making and should be making will ordinarily determine the value. The dividend and earning method or yield method are not mutually exclusive; both should help in ascertaining the profit earning capacity as indicated above. If the results of the two methods differ, an intermediate figure may have to be computed by adjustment of unreasonable expenses and adopting a reasonable proportion of profits.

(3) In the case of a private limited company also where the expenses are incurred out of all proportion to the commercial venture, they will be added back to the profits of the company in computing the yield. In such companies the restriction on share transfers will also be taken into consideration as earlier indicated in arriving at a valuation.

(4) Where the dividend yield and earning method break down by reason of the company's inability to earn profits and declare dividends, if the set-back is temporary then it is perhaps possible to take the estimate of the value of the shares before set-back and discount it by a percentage corresponding to the proportionate fall in the price of quoted shares of companies which have suffered similar reverses.

(5) Where the company is ripe for winding up then the break-up value method determines what would be realised by that process.

(6) As in Attorney-General of Ceylon v. Mackie [1952] 2 All ER 775 (PC) a valuation by reference to the assets would be justified whereas in that case the fluctuations of profits and uncertainty of the conditions at the date of the valuation prevented any reasonable estimation of prospective profits and dividends."

3.4.2. We would also like to refer to the case of Swadeshi Mining & Manufacturing Co. Ltd., (116 ITR 259), decided by the Hon'ble Calcutta High Court. In that matter the assessee sold a lot of 7,500 ordinary shares of Jaipuria Kajora Collieries Ltd. to one Swadeshi Cotton Mills

Ltd.at the rate of Rs.9.50 per share,the face value thereof being Rs.10 per share.During the assessment proceedings,the AO proceeded to compute capital gains arising out of the said transaction.He was of the view that said shares had been sold at an unusually low price to a great advantage to the vendee and, therefore, he proceeded to ascertain the break-up value of the said shares which worked out to Rs.23.85 per share. The surplus was sought to be taxed as capital gains.Being aggrieved by the order of assessment, the assessee went up in appeal before the FAA,who held that neither the break-up value nor the maintainable profits method can be adopted as the sole guide for determining the price of the said shares. Taking the mean of the break-up value of the said shares computed on the basis of the balance-sheet of the company and the market price of the shares, he determined the value of the said shares at Rs.15 per share.From the order of the FAA,a further appeal was preferred by the assessee before the Tribunal. It was contended in the appeal that the break-up value could never indicate the correct market price of shares of a running company as a buyer would be always influenced by the prospect of return to his capital outlay, i.e., expected dividend from year to year.The company in question had declared only 2.5% dividend on its equity shares in the calendar years 1952 and 1956 and during the intervening years no dividend whatsoever was declared. Only after the sale of the shares in question the company had declared dividend of 5% out of profits of the calendar year 1957.This would, however, not be known to the buyers. The Tribunal held that the break-up value of the said shares did not indicate their market value on the date of sale on account of the low return on the basis of average maintainable commercial profits. The Tribunal held further that the value at which the said shares had been sold, that is, at little less than the par value, was very reasonable. The assessee did not make any capital gain but suffered a loss.Deciding the matter the Hon'ble High court held as under:

“On a careful consideration of the facts and circumstances we cannot say that the Tribunal fell into any error when it upheld the valuation of the said shares on the basis of average maintainable profit computed on the basis of past dividends declared. This is definitely one of the methods accepted..... We are of the opinion that it is only in very exceptional cases that the shares of a company would be valued by the break-up method and the fact that the purchaser and vendor are associated with each other in business is not a fact which would bring the transaction within such special circumstances.”

In the case of Grindlays Bank Ltd.,the Hon'ble Calcutta High Court(158 ITR 799)has held that in the case of a company which is a going concern and whose shares are not quoted on the stock exchange,the profits which the company has been making and should be capable of making or, in other words, the profit-earning capacity of the company would ordinarily determine the value of its shares.The break-up value will not be appropriate for valuation of shares of such a company.Similarly,in the matter of Shardaben B Mafatlal(177 ITR 463),the

Hon'ble Bombay has held that, in the case of a company shares of which were not quoted at any stock exchange, the shares were not required to be valued on the break-up method and that the profit-earning method was the only method which could be properly applied for arriving at the valuation of shares in such a case.

3.5. From the above, it is clear that for fair valuation of unquoted shares of a corporate entity only one factor should not be considered. In other words share price depends upon many factors. It is said that the mere capitalization of actual past earnings would not produce a reasonable result in such cases and that the emphasis has to be on prospective earning capacity rather than actual past earnings-although naturally the latter has to be used as a starting point to calculate the former.

3.5.1. The purpose behind introducing the TP provisions in the Act was to ensure that goods/services purchased/sold or rendered/availed by the group entities should be at market rate. It was found that to avoid taxes the AE.s were not showing the market price of IT.s. So, to curb the misuse of proximity of group concerns located in India and outside India provisions of chapter X were included in the statute. What the legislature wanted was that the price of IT.s with AE should be at arm's length i.e., that an independent person in the market would pay/receive the same price as paid/received by the group entity for the good/services. If the surrounding circumstances lead to the conclusion that price charged by the AE.s is not the normal fair market value, the departmental authorities can make adjustment to the price shown by the assessee. But, the adjustments cannot be made without any basis. In short, the basis of TP adjustment is determining fair market value of IT.s entered in to by the assessee.

3.6. Now, coming back to the fact of the case, we find that the TPO/DRP have heavily relied upon the report of PWC, issued in June, 2013, to adopt 7% PGR and to make upward adjustment. We find that in its report PWC had mentioned that *'the estimate of long term growth rate was for the economy as a whole and was not likely to be representative of long term growth rates for individual companies, which would depend on the industry prognosis and company specific plan.'* In our opinion, the report of PWC is a generic report and should not have been applied to decide the PGR. Secondly it was issued in June, 2013, as stated earlier, so, it did not relate to the AY under appeal. If the DRP had not called for the Remand Report the TPO would have stuck to 4% PGR-it was during the remand proceedings the TPO increased the rate of perpetuity growth to 7%. In his showcase notice dtd. 19.01.2016 the TPO proposed value of the shares of FAPL at Rs.10,963.2 per share. But on 27.01.2016, he held that the fair

market value should be taken at Rs.14,597/- per share. Within a span of 8 days he increased the rate of share by Rs.4,000/- (approximately). Nothing, except the report of the PWC, is on record to justify the change in the rate. The report of PWC is very general and is not specific about the business carried out by the assessee. The transfer of shares had already taken place before the report of the PWC. The TPO and DRP should not have based their orders on such a general report to determine the ALP of the shares sold.

3.7. It is true that only historical performances cannot be guiding factor for deciding the valuation of shares, but, the PGR should have some base. It was specifically brought to the notice of the DRP that the CAGR of the earning and free cash flow of FAPL for the immediately preceding 5 years was (-)16% and that the other companies—considered as comparable—had shown CAGR of (-)8.4%. It is found that the DRP did not deal with this basic and fundamental objection. Considering these facts we hold that it was not reasonable to assume that such a company would suddenly grow at the estimated growth rate of the economy in perpetuity.

3.8. If PGR was to be adopted at 7% then something, other than allowing a 15% adjustment, more had to be brought on record. Against the proposed adjustment, the assessee had furnished four reports. Shernik and Associates, for valuation purposes, used the method suggested in FEMA Rules. Whether such a valuation can be considered a perfect valuation for Income tax purposes or not is a separate issue. But, at least the valuation was based on some recognised method. It was definitely better than a general report of PWC. No part of the PWC report talks about the factors/parameters to be considered for estimating PGR of any particular industry or company. But, in the D&P report the valuer has dealt with PGR as well as weighted average cost of capital that should be used for valuation of shares sold. Besides, a report of an independent research organization, IBIS World was also filed by the assessee. In its report, IBIS had dealt with background-screening-industry. CRISIL had also prepared a valuation report for an assessee that was carrying out same business as of the assessee and had estimated PGR of 3%. It is found that D&P had factored inflation factor while estimating the PGR. Thus, there are definite and positive documentary evidences in support of the argument that PGR adopted by the TPO and the DRP were not based on any justifiable foundation and that the estimated PGR indicated by the independent valuers have better bottom line. It is a case of no evidence versus some evidence. Tax liability cannot be determined in air—there has to be some base to demand taxes by the State from its subjects. In the case under appeal, estimate made by the assessee for determining PGR and the valuation of

the shares is better and more convincing than the estimation made by the departmental authorities. The Hon'ble Bombay High Court in the case of Titan Time Products Limited (supra), has held that valuation reports of experts should not be rejected by the departmental authorities unless the assumption considered in the report are proved to grossly erroneous or another expert-opinion is obtained contradicting the earlier report. In the present matter the DRP has not given any cogent or valid reason for rejecting the four reports submitted by the assessee.

3.9. We find that during the year under consideration there was buy back of shares of FAPL from FADV, Singapore, that the shares of FAPL were sold by the Singapore entity at the same rate at which they were sold by the assessee to the Singapore AE, that the TPO had examined the buyback agreement of the shares (i.e. sale of shares by Singapore entity to FAPL) and held that the transaction was at Arm's length. If the subsequent transaction was found to be at fair market value then what was the justification for not treating the first transaction at arm's length, is not coming out of the order of the TPO/DRP.

3.10. It is one of the recognised principle of valuation that a high PGR would require a proportionate higher cost of equity. If the said theory is applied to the facts of the case under consideration, the cost of equity will have to be taken at minimum of 17.57% (for 7% PGR). Therefore, we agree with the argument advanced by the assessee that if cost of equity was taken at 17.57%, then the value of a share of FAPL would be lower than value determined by the independent valuer. In short the transaction i.e. valuation of shares of FAPL, was at Arm's length.

Considering the peculiar facts and circumstances of the case and the above discussion we decide Gs. AO 3 and six in favour of the assessee.

ITA/1547/Mum/2017:

4. Facts and circumstances of the instant case are similar to the fact of earlier case-the only difference is of valuation of the shares sold. During the year under appeal the assessee sold shares of FASOL to a group entity located in Singapore. Shrenik and Associates valued the fair market price of the shares of at Rs.54.1 per share. The TPO first determined the share price at Rs.68.9 per share and after considering the PWC report he estimated the shares price of one share at Rs.88.8. The new estimate was based on the assumption that PGR would be 7%.

Following our order in the case of First Advantage Quest Research Limited(paragraphs 3 to 3.7 of our order),we decide effective ground of appeal in favour of the assessee.

As a result, appeals filed by both the assessees stand allowed.

फलतः दोनों निर्धारितियों द्वारा दाखिल की गई अपीलें मंजूर की जाती हैं।

Order pronounced in the open court on 05th January ,2018.

आदेश की घोषणा खुले न्यायालय में दिनांक 05 जनवरी , 2018 को की गई ।

Sd/-

Sd/-

(रविश सूद /Ravish Sood)

(राजेन्द्र / RAJENDRA)

न्यायिक सदस्य / JUDICIAL MEMBER

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक/Dated :05.01.2018.

Jv.Sr.PS.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1.Appellant /अपीलार्थी

2. Respondent /प्रत्यर्थी

3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त

5.DR “ ” Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ,आ.अधि.मुंबई

6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ **BY ORDER,**

उप/सहायक पंजीकार **Dy./Asst. Registrar**

आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.