

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

BEFORE SHRI SHAMIM YAHYA, AM AND SHRI RAM LAL NEGI, JM

I.T.A. No. 1817/Mum/2016
(Assessment Year: 2011-12)

DCIT – 3(2)(1), Room No. 674, 6 th Floor, Aaykar Bhavan, M. K. Road, Mumbai-400 020	Vs.	India Capital Research & Advisor Pvt. Ltd. 97, Jolly Maker Chamber No. 2, Nariman Point, Mumbai-400 021
PAN/GIR No. AABCI 6696 J		
(Appellant)	:	(Respondent)
Appellant by	:	Shri V. Jenardhanan
Respondent by	:	Shri Pratik Shah
Date of Hearing	:	12.07.2018
Date of Pronouncement	:	05.09.2018

ORDER

Per Shamim Yahya, A. M.:

This appeal by the Revenue is directed against the order of the Assessing Officer passed u/s. 143(3) rws 144C(1) of the Income Tax Act, 1961 pursuant to the direction of the Dispute Resolution Panel - I, Mumbai dated 10.12.2015 u/s. 144C(5) of the Income Tax Act, 1961.

2. The grounds of appeal read as under:

1. "Whether on the facts and in the circumstances of the case and in law, the Hon'ble DRP-I, Mumbai was correct in rejecting the comparables taken by the TPO i.e. Motilal Oswal Investment Advisors Ltd., ignoring the fact that it was functionally comparables to the Assessee's business activities of ^rendering of Investments Advisory services.?"
2. "Whether on the facts and in the circumstances of the case and in law, the Hon'ble DRP-I, Mumbai was correct in rejecting the comparables taken by the

TPO i.e. New berry Advisors Ltd., ignoring the fact that it was functionally comparables to the Assessee's business activities of rendering of Investments Advisory services.?"

3. At the outset, the Id. Counsel of the assessee has submitted that the company has entered into an Advance Pressing Agreement (APA) for the relevant transaction with the CBDT on 29.08.2016 which covers the captioned assessment year. It has been reached with respect to the transaction between the assessee and its AE which includes the present assessment year. It has further been submitted that the company has already filed its modified return and paid taxes as per the APA. Thus, it has been pleaded that pursuant to APA it is required that any appeal pertaining to the assessment year which is covered to be withdrawn. Hence, the assessee has withdrawn its appeal and requested the Revenue to withdrawn its appeal also.

4. We have put this submission of the assessee before the Id. Departmental Representative. The Id. Departmental Representative has submitted a response from the Assessing Officer in this regard. The response from the Assessing Officer includes as under:

3. Subsequently, the assessee has filed an APA application consequent to which it has filed a modified return in consonance with the same for A.Y> 2011-12. The said modified return for A.Y. 2011-12 has been processed and order u/s. 143(3) has been passed by this office on 27.03.2018 wherein no further addition has been made to the income of the assessee. In view of the same, the assessee has taken a plea before the Hon'ble ITAT that the Court may direct the A.O. to withdraw the appeal filed for the year under consideration. In view of the same the Hon'ble Court has sought a report on the necessarily of withdrawal of the appeal filed before the ITAT

5. In light of the above, the ld. Departmental Representative fairly agreed that the Revenue's appeal may be dismissed as infructuous, since the modified return for the concerned assessment year has been processed u/s. 143(3) of the Act where no further addition has been made to the income of the assessee.

6. In accordance with the above said discussion, we hold that the Revenue's appeal stands dismissed being infructuous.

7. In the result, the Revenue's appeal stands dismissed being infructuous.

Order pronounced in the open court on 05.09.2018

Sd/-
(Ram Lal Negi)
Judicial Member

Sd/-
(Shamim Yahya)
Accountant Member

Mumbai; Dated : 05.09.2018
Roshani, Sr. PS

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai