

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : I-2 : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SMT. BEENA A. PILLAI, JUDICIAL MEMBER

ITA No.705/Del/2016
Assessment Year: 2011-12

ACIT,
Circle-27(2),
New Delhi.

Vs. Wolfensohn India Advisors Pvt. Ltd.,
10th Floor, RHS Taj Mahal Hotel,
Number One Mansingh Road,
New Delhi.

PAN: AAACW7876K

(Appellant)

(Respondent)

| | | |
|-----------------------|---|------------------------------|
| Assessee by | : | None |
| Revenue by | : | Shri Sarabjeet Singh, Sr. DR |
| Date of Hearing | : | 04.12.2018 |
| Date of Pronouncement | : | 06.12.2018 |

ORDER

PER R.K. PANDA, AM:

This appeal by the Revenue is directed against the order dated 16.11.2015 passed u/s 144C(5) of the IT Act by the DRP.

2. This appeal was fixed for hearing on 11th October, 2018. However, the notice issued through registered post was returned by the Postal Authorities unserved. Accordingly, notice was served through the Income-tax Department fixing the hearing of the appeal for 4th December, 2018. Although the notice was duly served on the

assessee through the Income-tax Department, none appeared on behalf of the assessee. Therefore, this appeal is being decided on the basis of the material available on record and after hearing the ld. DR.

3. The facts of the case, in brief, are that the assessee, Wolfensohn India Advisors Private Limited ('WIAPL') is engaged in the business of providing advisory services related to investment opportunities in India to its ultimate holding company namely Wolfensohn Fund Management LP ('WFM'). The advisory services rendered include preparation of investment related information reports, reports on due diligence conducted, providing non-binding advice on potential investments and related services. The return of income in respect of AY 2011-12 was filed by the Assessee Company on 29.09.2011 declaring total income of Rs 68,81,128. During period under consideration, the assessee reported following international transactions:-

| Nature of transaction | Method | Amount (Rs.) |
|---|--------|--------------|
| Provision of Investment advisory services | TNMM | 5,28,37,854 |
| Reimbursement of expenses | CUP | 17,96,954 |

4. In its TP study report, the assessee selected the TNMM, with OP/OC as the profit level indicator ('PLI'), to be the most appropriate method for ascertaining the arm's length price ('ALP'). The assessee worked out average profit margin of 10.94% in case of 5 comparables selected by it as against margin of 15.0% in its own case. The A.O. referred the matter to the TPO u/s 92CA of the Act for determining the ALP of the international transaction undertaken by the assessee. In response to the notice issued by the TPO, the assessee appeared before him and filed the necessary details.

However, the TPO rejected the economic analysis done by the assessee and selected his own set of comparables and worked out the margin at 44.47% and, accordingly, made an upward adjustment of Rs.1,35,40,303/-.

4.1 The assessee approached the DRP challenging the TP adjustment made by the TPO. It was argued that the TPO has accepted the two functionally dissimilar companies, namely, Motilal Oswal Investment Advisors Private Ltd. and IM+Capital without analyzing the comparability of their functions and risks in comparison with those of the assessee company. Relying on various decisions, it was argued that these two comparables should be excluded from the list of comparables.

4.2 Based on the arguments advanced by the assessee, the DRP directed the TPO to exclude Motilal Oswal Investment Advisors Private Ltd. and IM+Capital from the final set of comparables. So far as the direction of the DRP to exclude the two comparables are concerned, the finding of the DRP are as under:-

“ DRP has duly considered submissions of the assessee. The assessee has challenged action of TPO of taking Motilal Oswal Investment Advisors Private Limited and IM+Capital as comparables. The main argument of the assessee is that these two companies are registered with SEBI as Merchant Banking companies. TPO has said that these companies are functionally comparables. However, it is also noted that TPO has rejected Birla Capital Financial Services Ltd. taken as comparable by the assessee on the ground that it is merchant banker. The panel is of considered view that these two companies being Merchant Banking companies are not functionally comparable to the assessee and hence need to be rejected as comparables. The objection is accordingly allowed.”

5. The DRP further directed the Assessing Officer to re-verify the RPT computation of Almondz Global (seg) and Motilal Oswal Invst. Advisors Pvt. Ltd.

6. Aggrieved with such order of the DRP, the Revenue is in appeal before the Tribunal by raising the following grounds:-

1. "On the facts and in the circumstances of the case, the DRP-2 erred in directing the A.O. to complete the assessment as per observations made by DRP in the order which resulting in reducing the addition to Rs.36,98,674/- in place of original recommended ALP of Rs.1,35,40,303/- for the International transactions undertaken the assessee company with its associate/parent enterprise.

2. "On the facts and in the circumstances of the case, the DRP-II erred in directing TPO to exclude below mentioned companies from the final set of comparables :

i) IM + Capital

ii) Motilal Oswal Invt. Advisors P Ltd.,

3. The appellant craves, leave or reserving the right to amend modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal."

7. We have heard the ld. DR and perused the material available on record. We find the order of the DRP is very cryptic and they have not considered the various issues raised by the TPO while excluding the above two companies as comparables. The ld. DRP has not passed a speaking order while excluding the above two companies from the list of comparables as adopted by the TPO. We, therefore, deem it proper to restore the issue to the file of the DRP with a direction to pass a speaking order on the issue of selection of the above two comparables as per fact and law. Needless to say, the DRP shall give due opportunity of being heard to the assessee. We hold and direct accordingly. The grounds raised by the Revenue are accordingly allowed for statistical purposes.

8. In the result, the appeal filed by the Revenue is allowed for statistical purposes.

The decision was pronounced in the open court on 06.12.2018.

Sd/-
(BEENA A. PILLAI)
JUDICIAL MEMBER

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMFBER

Dated:06th December, 2018

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1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi