

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "D", MUMBAI**

BEFORE SHRI RAJESH KUMAR (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 3989/MUM/2017
Assessment Year: 2012-2013**

The Deputy Commissioner of Income Tax 1(3)(1), Room No. 540, 5 th Floor, Aayakar Bhawan, M.K. Road, Mumbai - 400020	Vs.	M/s Qauntum Advisors Pvt. Ltd., 503, Regent Chambers, Nariman Point, Mumbai - 400021 PAN: AAACQ0281C
(Appellant)		(Respondent)

**ITA No. 4259/MUM/2017
Assessment Year: 2012-2013**

M/s Qauntum Advisors Pvt. Ltd., 503, Regent Chambers, Nariman Point, Mumbai - 400021 PAN: AAACQ0281C	Vs.	The Additional Comm. of Income Tax, Circle- 1(2), Aayakar Bhavan, Maharshi Karve Marg, Mumbai - 400020
(Appellant)		(Respondent)

Revenue by : Shri D.G. Pansari (DR)

Assessee by : Shri J.D. Mistri (AR)

Date of Hearing: 19/02/2019
Date of Pronouncement: 10/05/2019

ORDER

PER RAM LAL NEGI, JM

These are the cross appeals filed by the revenue and the assessee against the orders dated 27.03.2017 passed by the Ld. Commissioner of Income Tax (Appeals)-3, Mumbai (for short 'the CIT (A)'), pertaining to the assessment year 2012-13 respectively, whereby the Ld. CIT (A) has partly allowed the appeals

filed by the assessee against the assessment orders passed u/s 143 (3) of the Income Tax Act, 1961 (for short the 'Act').

ITA No. 3989/MUM/2017 (Assessment Year: 2012-13)

Brief facts of the case are that the assessee company engaged in the business of providing advisory services filed its return of income for the assessment year under consideration declaring the total income of Rs. 26,38,21,490/-. Since, the case was selected for scrutiny, the AO issued notice u/s 143 (2) and 142 (1) of the Act. Accordingly, the authorized representative of the assessee appeared before the AO and filed the details called for by the AO. The AO after hearing the authorized representative made disallowance of fees paid to sister concern for research amounting to Rs. 2,39,18,400/- u/s 40A of the Act out of total amount of Rs. 2,99,18,400/- claimed by the assessee. The AO further made disallowance of marketing services fees paid to the group companies amounting to Rs. 1,04,88,902/- out of total amount of Rs. 2,24,88,902/- claimed by the assessee holding the same unreasonable. The assessee challenged the action of the AO before the Ld. CIT (A). The Ld. CIT (A) after hearing the assessee deleted the addition made by the AO on account of disallowance of fees paid to its sister concern, however, confirmed the disallowance made on account of marketing services fees claimed by the assessee. The revenue and the assessee have filed cross appeals against the said order.

2. The revenue has challenged the impugned order passed by the Ld. CIT (A) by raising the following effective ground:-

“Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) was justified in allowing the marketing and distribution fees of Rs. 1,04,88,902/- paid to QIEF management LLC (QIEF) as business expenditure?”

3. At the outset, the Ld. counsel for the assessee submitted that the ITAT, Mumbai has decided the identical issue in favour of the assessee in assessee's own case ITA No. 3418/Mum/2015 for the AY 2011-12. Since, the Ld. CIT (A) has decided the identical issue in favour of the assessee by following the decision of the Tribunal in the assessee's own case for the AY 2011-12 aforesaid, there is no merit in the appeal of the revenue.

4. On the other hand, the Ld. Departmental Representative (DR) fairly admitted that the Tribunal has decided the identical issue in favour of the assessee in assessee's own case for the AY 2011-12, however, the Ld. CIT (A) supported the assessment order passed by the AO.

5. We have perused the material on record in the light of the submissions of the Ld. counsel for the assessee. The only grievance of the revenue is that the Ld. CIT(A) has wrongly held the fees paid by the assessee to its group company QIEF Management LLC as business expenditure. As pointed out by the Ld. counsel, the Ld. CIT (A) has decided the identical issue in favour of the assessee by following the order of the coordinate Bench rendered in the assessee's own case ITA No. 3418/Mum/2015 (supra). The relevant paras of the order of the Ld. CIT (A) are reproduced as under:-

"7.3 I have considered the rival submissions and the facts of the case. The AR has invited my attention to the order of the ITAT in appellant's own case for the AY 2011-12 (ITA No. 3418/M/2015) vide order dated 15.07.2016, wherein it has been held that the marketing and Distribution fee paid to QIEF is an allowable business expenditure. The relevant para of the ITAT order is reproduced as under-

13. The said burden, in our view has not been discharged by the CIT (A) in the present case and, therefore, we are unable to acquiesce to the same. As a consequence, we hereby set-aside the order of the CIT (A) on this aspect and direct the Assessing Officer to delete the addition of Rs. 3,62,05,268/- representing

payment made to QIEF for marketing support services.

Thus, on this aspect assessee succeeds.

8. *Respectfully following the decision of Hon'ble ITAT, Mumbai on this issue, I allow the expenses claimed as business expenditure. In view of the same, Ground No. 2 is allowed."*

9. *Ground No. 3 is general in nature, which does not require any adjudication, hence, dismissed."*

6. Since, the findings of the Ld. CIT (A) are based on the decision of the coordinate Bench rendered in the assessee's own case for the AY 2011-12, we do not find any reason to interfere with the findings of the Ld CIT (A). Moreover, the revenue has not pointed out any material change in the facts of the present case. Hence, respectfully following the decision of the coordinate Bench passed in assessee's own case referred above, we uphold the decision of the Ld. CIT(A) and dismiss the sole ground of appeal of the revenue.

ITA No. 4259/MUM/2017 (Assessment Year: 2012-13)

The assessee has challenged the impugned order passed by the Ld. CIT (A) by raising the following grounds:-

- 1:0 *"Re: Disallowance of Rs. 2,39,18,400/- paid by the Appellant to Quantum Asset Management Company Private Limited ("QAMC") for research fee':*
- 1:1 *The Commissioner of Income-tax (Appeals) has erred in confirming the disallowance of Rs. 2,39,18,400 being the research fee paid by the Appellant to QAMC during the year under consideration.*
- 1:2 *The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject, the research fees paid to QAMC were reasonable having regard to the fair market value of the services and the stand taken by the Assessing Officer in this regard is misconceived, erroneous and not in accordance with law and the Commissioner of Income-tax (Appeals) ought to have held as such.*
- 1:3 *The Appellant submits that the Assessing Officer be directed to delete the disallowance made by him and re-compute its total income accordingly."*

2. Before us, the Ld. counsel for the assessee submitted that the Ld.CIT (A) has confirmed the disallowance of Rs. 2,39,18,400/- made out of the total amount of Rs. 2,99,18,400/- paid by the assessee to its group company Quantum Asset Management Company Pvt. Ltd. (QAMC) during the previous year ignoring the fact that the research fees paid to QAMC are reasonable having regard to the fair market value of the services. The Ld. counsel submitted that for the purpose of providing investment management services and managing portfolio of its clients, the assessee avails research services from QAMC for identifying potential opportunities for investment. The research and analysis done by QAMC includes review of companies with, evaluating the details on the business of specific company, the environment in which its operate its management and the ability to achieve long term goals evaluating the stock price of company based on fundamentals, collating of industry/sector analysis report and details available in public domain providing no-bidding research analysis on investment opportunities in India as well as disposal of investment made in the companies identifying key issues, critical risk in potential companies and return potential over a period of time etc.

3. The Ld. counsel further pointed out that during the year relevant to the assessment year under consideration QAMC had generated an aggregate income of Rs. 13,13,72,237/- by way of research fees, which includes the fees of Rs. 2,99,18,400/- paid by the assessee. The Ld. counsel further pointed out that the amount paid by the assessee constitutes 22.77% of the total research fees received by QAMC. It was further pointed out that the QAMC has offered the entire amount of research fees, to tax and paid the same rate of tax as was applicable to the assessee. The Ld. counsel further pointed out that the assessee has produced the copy of audited annual accounts and the copy of return of income filed by QAMC before the first appellate authority under rule 46A(c) and (d) of the Income Tax Rules. The Ld. counsel further submitted that

as per the settled law once it is established that there is a nexus between the expenditure and the purpose of business the revenue cannot claim to put itself in the position of the Board of Directors and assume the role to decide as to how much is reasonable expenditure having regard to the circumstances of the case. The Ld. counsel placing reliance on the judgment of the Hon'ble Bombay High Court in the case of *CIT vs. Indo Saudi Services (Travel) Pvt. Ltd.* 310 ITR 306 (Bom), submitted that since the revenue has failed to point out as to how the assessee evaded tax by making payment to its subsidiary, the action of the Ld. CIT(A) is liable to be set aside. The Ld. counsel further relying on the judgment of the Hon'ble Bombay High Court in the case of *CIT vs. Vs. Dempo & Company Pvt. Ltd.* 336 ITR 209 (Bom), submitted that since the subsidiary company is not a related person of the assessee within the meaning of, sub-clause (iv) of clause (b) of section 40A(2), the provisions of section 40A(2) of the Act are not attracted in the present case, therefore the Ld CIT(A) has wrongly confirmed the disallowance made u/s 40A of the Act.

4. We have heard the rival submissions of the parties and carefully gone through the material on record in the light of the rival submissions of the parties. The grievance of the assessee is that the Ld. CIT(A) has wrongly confirmed the disallowance of Rs. 2,39,18,400/- made out of the total amount of Rs. 2,99,18,400/- paid towards research fees by the assessee to its group company Quantum Asset Management Company Pvt. Ltd. (QAMC) during the previous year. We notice that the AO has made the said disallowance u/s 40A of the Act merely on the ground that the payment made to the group company for research work is excessive and does not commensurate with the cost of services rendered and further the payment has been made by the assessee only with an intention to enrich the other group company. It is not the case of the revenue that the fees were not at all paid by the assessee. However, in the opinion of the authorities below, the fees are not reasonable and the same has been paid in order to enrich the subsidiary company of the assessee. As has

been pointed out by the Ld. counsel for the assessee, the Hon'ble Bombay High Court in the case of *CIT vs. Indo Saudi Services (Travel) Pvt. Ltd.* (supra) has dismissed the appeal of the revenue challenging the action of the ITAT in allowing incentive commission paid to its sister concern which was more than the commission paid to other sub agents *inter alia* for the reason that revenue is not in a position to point out as to how the assessee evaded payment of tax by making payment of higher commission to its sister concern. The findings of the Hon'ble Court are as under:-

"4. We have heard the learned advocates appearing for both sides. We have also perused the order passed by the Tribunal dated 21st Oct. 1992 which is impugned by the Revenue in the present appeals. We find that the following facts were established before the Tribunal and the same have been accepted by the Revenue even before us.

(i) That the assessee apart from paying handling charges @ 9 1/2 per cent to its sister concern, have paid handling charges at the same rate to other agents Viz. M/s A.K. Travels, M/s Om Travels and M/s Jet Age Travels.

(ii) For asst. yrs. 1986-87 and 1987-88 the assessee had paid the handling charges paid were considered to be reasonable by the appellant.

(iii) For asst. yrs. 1989-90 and 1990-91 the assessee had reduced the payment of handling charge to 9 1/2 per cent to its sister concern. The AO has considered the payment of commission to the sister concern in the asst. yr 1989-90 and allowed the claim after due scrutiny. For asst. yr. 1990-91 also the claim of the assessee @ 9 1/2 per cent has been allowed though the same has not been dealt with by the AO specifically in the order.

(iv) For asst. yrs. 1993-94 and 1994-95 the assessment has been made by the AO under section 143 (3) and handling charges paid to the sister concern @ 9.5 per cent have been considered to be reasonable and allowed.

(v) The sister concern of the assessee M/s Middle East International is also assessed to tax and income assessed for the asst. yr. 1991-92 is Rs. 9,38,510 and for asst. yr. 1992-93

is Rs. 14,65,880 and the said assessment orders have been placed on record.

(vi) Under the CBDT Circular No. 6-P, dated 6th July, 1968 it is stated that no disallowance is to be made under section 40A(2) in respect of the payments made to the relatives and sister concerns where there is no attempt to evade tax.

5. In view of the aforesaid submitted facts we are of the view that the Tribunal was correct in coming to the conclusion that the CIT (A) was wrong in disallowing half per cent commission paid to the sister concern of the assessee during the asst. yrs. 1991-92 and 1992-93. The learned advocate appearing for the appellant was also not in a position to point out how the assessee evaded payment of tax by alleged payment of higher commission to its sister concern since the sister concern was also paying tax at higher rate and copies of the assessment orders of the sister concern were taken on record by the Tribunal.

6. We, therefore, answer the above question of law raised in these appeals in affirmative and dismiss the above appeals filed by the appellant. There will, however, be no order as to costs.”

5. In the present case, the assessee has brought on record the facts that the subsidiary company QAMC generated an aggregate income of Rs. 13,13,72,237/- by way of research fees during the previous year, which includes the fees of Rs. 2,99,18,400/- paid by the assessee. QAMC has offered the entire amount of research fees, to tax and paid the same rate of tax as was applicable to the assessee. On the other hand, the revenue has failed to point out as to how the assessee evaded payment of tax by making unreasonable payment to its subsidiary for research services. Further, as has been held by the Hon'ble Bombay High Court in the case of *CIT vs. Vs. Dempo & Company Pvt. Ltd.* (supra), only a Director of a company, partner of a firm or member of the association or any family or any relative of such Director, partner or member is a related person under sub- clause (ii) of clause (b) of sub-section (2) of section 40. A subsidiary company of the assessee is not a related person

within the meaning of section 40A (2), the provisions of section 40A(2) do not attract in the present case. Since, the issue involved in the present case are similar to the issue involved in the aforesaid case, it can safely be concluded that the provisions of section 40A(2) do not apply in the present case.

6. Hence, in the light of the facts of the present case and the principles of law laid down by the Hon'ble Bombay High Court discussed above, we are of the considered view that the Ld. CIT (A) has wrongly confirmed the *ad-hoc* disallowance made by the AO with regard to payment of research fees made by the assessee to its sister concern. Since, the authorities below have not denied the expenditure in question and allowed the expenses @ 5,00,000/- per month, the only issue remains as to whether how much of the expenses is allowable. Since, the AO has not justified its action by pointing out any cogent and convincing reason for disallowance of the remaining amount, the Ld. CIT(A) ought to have set aside the findings of the AO. Hence, following the principles of law laid down by the Hon'ble jurisdictional High Court discussed above, we allow this ground of appeal of the assessee and set aside the findings of the Ld. CIT (A).

In the result, revenue's appeal is dismissed and the assessee's appeal is allowed.

Order pronounced in the open court on 10th May, 2019.

Sd/-
(RAJESH KUMAR)

ACCOUNTANT MEMBER

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 10/05/2019

Alindra PS

आदेश प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.

3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**