

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

BEFORE SHRI R.C.SHARMA, ACCOUNTANT MEMBER  
AND  
SHRI VIKAS AWASTHY, JUDICIAL MEMBER

ITA NO.5564/MUM/2015(A.Y.2010-11)  
ITA NO.5563/MUM/2015(A.Y. 2011-12)

A.C.I.T-3(1)(2),  
Room No.607, 6<sup>th</sup> Floor,  
Aaykar Bhavan, M.K.Road,  
Mumbai – 400 020 ..... Appellant

Vs.  
M/s.Helix Investments Advisors India Pvt. Ltd.  
1421, Maker Chambers-V,  
Nariman Point, Mumbai 400 021  
PAN:AABCH8531M ..... Respondent

C.O.NO.172/MUM/2016  
(Arising out of ITA No.5564/Mum/2016,A.Y.2010-11)

M/s.Helix Investments Advisors India Pvt. Ltd.  
1421, Maker Chambers-V,  
Nariman Point, Mumbai 400 021  
PAN:AABCH8531M ..... Cross Objector

Vs.  
A.C.I.T-3(1)(2),  
Room No.607, 6<sup>th</sup> Floor,  
Aaykar Bhavan, M.K.Road,  
Mumbai – 400 020 ..... Appellant in appeal

Revenue by : Ms. Nillu Jaggi  
Assessee by : S/ Shri Vijay Mehta & Govind Javeri

Date of hearing : 10/12/2019  
Date of pronouncement : 20/12/2019

ORDER

PER VIKAS AWASTHY, JM:

The two appeals by the Revenue in ITA No.5564 & 5563/Mum/2015 are directed against the orders of Commissioner of Income Tax(Appeals)-56 (in short 'the CIT(A)'), Mumbai for the assessment years 2010-11 and 2011-12, respectively. Both the impugned orders are of even date i.e. 16/09/2015.

2. Shri Vijay Mehta appearing on behalf of the assessee submitted at the outset that the appeals filed by the Revenue are liable to be dismissed on account of low tax effect in the light of the recent CBDT Circular No. No.17/2019 dated 08/08/2019.

3. Ms. Nillu Jaggi representing the Department fairly admitted that the tax effect involved in both the appeals is less than Rs.50,00,000/- each.

4. Both sides heard. A perusal of the grounds of appeal in ITA No.5564/Mum/2015 for assessment year 2010-11 shows that the Revenue is in appeal against the relief of Rs.57,03,352/- allowed by the CIT(A) in transfer pricing adjustment. Similarly, in ITA NO. 5563/Mum/2015 for assessment year 2011-12, the department is in appeal against deleting the addition of Rs.42,25,179/-.

5. The tax effect involved in these appeals is less than the monetary limit prescribed by the recent CBDT Circular No.

17/2019, dated 08-08-2019 for filing of appeals before the Tribunal by the Department. The CBDT vide circular dated 08-08-2019 (supra) has amended Para 3 of Circular No. 3 of 2018 dated 11-07-2018 thereby enhancing monetary limit of tax effect from Rs.20 Lakhs to Rs.50 Lakhs for filing of appeals by the Department before the Tribunal. Thus, without going into merits of the issue raised in the appeals, the present appeals by the Revenue are dismissed on account of low tax effect.

6. Before parting, we clarify here that the Revenue shall be at liberty to approach the Tribunal for restoration of appeal(s), with the requisite material to show that the appeal(s) is/are protected by the exceptions prescribed in Para 10 of the Circular dated 11-07-2018 and its amendment dated 20/08/2018.

7. In the result, both appeals by the Revenue are dismissed.

C.O No. 172/Mum/2016 (AY.2010-11):

8. The assessee has filed cross objections in the appeal filed by the Revenue for assessment year 2010-11. The cross-objections are time barred by 249 days. The assessee has filed application supported by an affidavit seeking condonation of delay in filing of the cross objections.

9. The Id.Representative of the assessee submitted that delay in filing of the cross objections occurred as the assessee was under bonafide

belief that it has received complete relief from the CIT(A). It was only when the assessee got in touch with present Representative of the assessee, it was pointed that wrong comparables and incorrect margins were taken by the CIT(A) while adjudicating the appeal of the assessee. The delay in filing the cross objections is not deliberate or intentional. To support his contention the Id.Representative of the assessee placed reliance on the following decisions:-

(i) DBS Bank Ltd. vs. DDIT, CO No.189/Mum/2013 A.Y. 1995-96 decided on 15/04/2016.

(ii) Sundaram Multipap Ltd. vs. DCIT,C.O No.272/Mum/2017, A.Y. 2012-13 decided on 20/04/2018.

10. The Id. Departmental Representative vehemently opposed condonation of delay in filing of cross objections. The Id. Departmental Representative submitted that inordinate delay of 249 days in filing cross objection is unpardonable because of the assessee's negligence.

11. We have heard the submissions made by rival sides on the issue of condonation of delay. After examination of facts, we are satisfied that the delay in filing of cross objections was not deliberate. The Hon'ble Supreme Court of India, in the case of Ram Nath Sao vs. Gobardhan Sao reported as 2002(3) SCC 195 has held that acceptance of explanation furnished should be the rule and refusal an exception more so when no negligence or inaction or want of bonafide can be imputed to the defaulting party. Taking a pedantic and hyper technical view of the

matter, explanation furnished should not be rejected, where arguable points of facts and law are involved in the case. Taking into consideration the explanation furnished by the assessee resulting delay in filing of cross objections and the law laid down by the Hon'ble Apex Court on this issue, we deem it appropriate to condone the delay of 249 days in filing of the cross objections. The cross objections are admitted for hearing and the same are disposed of on merits.

12. The assessee has raised two grounds in the cross objections and the same are reproduced herein below:-

*I. CONFIRMATION OF COMPARABLE TAKEN BY TPO - FUTURE CAPITAL HOLDINGS LTD*

*1) The Learned CIT(A) erred in confirming the comparable taken by TPO in the case of Future Capital Holdings Ltd.*

*2) Without prejudice to the above the Learned CIT(A) failed to appreciate that the OP/TC of Future Capital Holdings Ltd - Segment Investment Advisory is 15.21% and not 31.68%.*

*II. CONFIRMATION OF COMPARABLE TAKEN BY TPO - KSHITIJ INVESTMENT ADVISORY CO. LTD*

*1) The Learned CIT(A) erred in confirming the comparable taken by TPO in the case of Kshitij Investment Advisory Co. Ltd."*

13. In respect of ground No.1, the Id.Representative of assessee submitted that while calculating operating margins, the authorities below have erred in applying OP margin on Future Capital Holding Ltd. – Investment Advisory Segment as 31.68% instead of 15.21%. The Id.Representative of the assessee submitted that this issue may be

restored to the file of Assessing Officer for fresh computation of OP margin.

14. In respect of ground No.2, the Id.Representative of assessee submitted that the authorities below have erred in selecting Kshitij Investment Advisory Co. Ltd. as one of the comparables. The Id.Authorized Representative pointed that the Mumbai Bench of Tribunal in the case of Carlyle India Advisory Pvt. Ltd. vs. ACIT, reported as 157 ITD 600(Mum) has held that Kshitij Investment Advisory Co. Ltd is not a good comparable for investment advisory services. The said company is engaged in merchant banking, investments and offer portfolio management services.

15. Per contra, the Id. Departmental Representative vehemently supported the impugned order and prayed for dismissing the cross objections of the assessee. The Id. Departmental Representative submitted that TPO in his order has categorically mentioned that Kshitij Investment Advisory Co. Ltd has realigned its business. The business has not resulted in any change of activity and thus, will not impact comparability. M/s. Kshitij Investment Advisory Co. Ltd has not earned any income from merchant banking activities during the relevant period. Hence, it is a good comparable as its income during the relevant period is only from the single segment i.e. advisory services.

16. Both sides heard. In so far as ground No.1 of the cross objections is concerned, the Id. Authorized Representative has pointed that while selecting Future Capital Holding as comparable, the TPO has wrongly applied OP margin as 37.68% as against actual OP margin of 15.21%. The assessee has also filed calculation giving details of computation of OP margin in the case of Future Capital Investment segment. We are of considered view that there appears to be a clerical error in calculation of OP margins. This issue is restored to the file of Assessing Officer/TPO for recomputation of OP margin in respect of Future Capital/investment segment. The TPO/Assessing Officer, after recomputing O.P margin shall apply corrected margins, in accordance with law. The ground No.1 of the cross objections is allowed for statistical purposes.

17. The Ground No.2 of the cross objections is against selection of Kshitij Investment Advisory Co. Ltd as comparable. The assessee is engaged in the business of investment advisory services. The contention of the Id.Authorized Representative of the assessee is that Kshitij Investment Advisory Co. Ltd is engaged in the business of merchant banking activities and hence, is not a good comparable. To support his contentions reliance is placed on the decision of Carlyle India Advisory Pvt. Ltd. vs. ACIT (Supra). We find that the Co-ordinate Bench of the Tribunal in the case of Carlyle India Advisory Pvt. Ltd. vs. ACIT (supra) for assessment year 2010-11 had an occasion to consider inclusion/exclusion of Kshitij Investment Advisory Co. Ltd. in the final set of comparables in respect of a company engaged in investment advisory related support

services. The TPO had included Kshitij Investment Advisory Co. Ltd as comparable, whereas, the assessee therein had sought exclusion of the said company. The Co-ordinate Bench of the Tribunal after examining the activities of comparable company concluded as under:-

*“22.....Considering the entire conspectus of facts and circumstances, in our view, the assessee company is justified in asserting that Kshitij Investment Advisory Co. Ltd. deserves to be excluded from the final set of comparables on account of peculiar economic circumstances during the year under consideration”*

18. The Id. Departmental Representative has not been able to controvert the findings of the Co-ordinate Bench on this issue. We find merit in the submissions of the assessee. Accordingly, we direct the Assessing Officer / TPO to exclude Kshitij Investment Advisory Co. Ltd from the list of comparables for similar reasons. The assessee succeeds on ground No.2 of the cross objections as well.

19. In the result, cross objections of the assessee is partly allowed in the terms aforesaid.

20. To sum up, appeals of the Revenue are dismissed and cross objections of the assessee are partly allowed.

Order pronounced in the open court on Friday the 20<sup>th</sup> day of December, 2019.

Sd/-  
(R.C.SHARMA)  
ACCOUNTANT MEMBER

Sd/-  
(VIKAS AWASTHY)  
JUDICIAL MEMBER

Mumbai, Dated 20 /12/2019  
Vm, Sr. PS(O/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**