

THE INCOME TAX APPELLATE TRIBUNAL
“J” Bench, Mumbai
Shri B.R. Baskaran (AM) & Shri Pavan Kumar Gadale (JM)

I.T.A. No. 1557/Mum/2014 (A.Y. 2009-10)

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| Rothschild & Co. India Private Limited [formerly known as Rothschild (India) Private Limited/N.M. Rothschild & Sons (India) Private Ltd.] 103, Piramal Tower, Peninsula Corporate Park G.K. Marg, Off Senapati Bapat Marg, Delisle Road Mumbai-400 013. PAN : AAACN8083H (Appellant) | Vs. | DCIT-3(2) Aayakar Bhavan M.K. Road Mumbai-400 020. (Respondent) |
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| Assessee by | Shri Dhanesh Bafna, Shri Pratik Shah & Shri Riddhi Maru |
| Department by | Shri Samuel Pitta |
| Date of Hearing | 28.11.2022 |
| Date of Pronouncement | 06.12.2022 |

ORDER

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the assessment order dated 29.01.2014 passed by the Assessing Officer for A.Y. 2009-10 in pursuance with the directions given by learned Dispute Resolution Panel (DRP). The issue urged in this appeal relates to the addition of Rs.3.95 crores relating to the transfer pricing adjustment made by the assessing officer.

2. The facts relating to the above said issue are stated in brief. The assessee herein is a wholly owned subsidiary of Rothschild India Holding AG, Switzerland. It is engaged in the business of providing advisory/consultancy

services in respect of mandates received by the Associated Enterprises (AEs) from third party clients. Since the assessee has entered into international transactions with its AEs, the Assessing Officer referred the matter of determination of arms' length price (ALP) of international transaction to the Transfer Pricing Officer (TPO). The assessee adopted TNM method as most appropriate method and "Operating profit by Operating revenue" as Profit level indicator (PLI). The assessee has declared PLI at 17.07%. The assessee selected five comparable companies, whose main mean PLI was 12.94%. Hence the assessee claimed before the learned TPO that its international transactions are at arms' length.

3. The TPO did not accept the transfer pricing study conducted by the assessee. He accepted only one comparable companies that was selected by the assessee. The TPO selected finally following comparables whose mean PLI was 26.93%.

| Sr No | Name of the comparable | Weighted Avg. (OP/OR) (%) |
|-------|--|---------------------------|
| 1 | ICRA Management Consulting Services Ltd. | (1.88) |
| 2 | Brescon Advisors | 53.75 |
| 3 | Kshitij Investment Company Limited | 22.04 |
| 4 | Future Capital Investment Advisors Private Limited | 17.15 |
| 5 | Axis Private Equity | 23.31 |
| 6 | Khandwala Securities | 28.98 |
| 7 | Motilal Oswal Investment advisors | 45.19 |
| | Average | 26.93 |

Accordingly learned TPO made transfer pricing adjustment of Rs. 3.95 crores as indicated below :-

| | |
|--|-------------|
| Operating revenue | 401,353,508 |
| Operating profit @17.07% | 68,503,822 |
| Arms Length Price @26.93% | 108084450 |
| Shortfall being proposed as adjustment | 39,580,678 |

4. The Ld DRP partially agreed with the objections raised by the assessee before it, but the transfer pricing adjustment amount remained the same after giving effect to the directions given by Ld DRP.

5. We notice that the grounds of appeal raised by the assessee with regard to the transfer pricing adjustment are general in nature. However, at the time of hearing, the Ld A.R submitted that the assessee seeks

- (a) exclusion of M/s Motilal Oswal Investment advisors and
- (b) inclusion of M/s ICRA Management Consulting Services Ltd.

He submitted that the assessee did not ask for exclusion of M/s ICRA Management Consulting Services Ltd before Ld DRP, but the Ld DRP has wrongly understood that the assessee sought for exclusion of the above said company. He further submitted that M/s ICRA Management Consulting Services Ltd is very much comparable with the assessee. He further submitted that M/s Motilal Oswal Investment advisors is not comparable with the assessee company and it has been wrongly included by the tax authorities.

6. In support of his contentions, he placed his reliance on the decision rendered by Hon'ble Bombay High Court in the case of PCIT vs. Warburg Pincus India P Ltd (ITA No.376 of 2018).

7. The Ld D.R, on the contrary, supported the order passed by the tax authorities.

8. We have heard rival contentions. The assessee seeks exclusion of M/s Motilal Oswal Investment advisors from the list of comparable companies. The assessee herein is providing advisory/consultancy services to its AEs. In the case of M/s Warbug Pincus India P Ltd (supra), the Hon'ble Bombay High Court noticed that the assessee before it was also providing investment advisory services. Accordingly the Hon'ble Bombay High Court held that M/s Motilal Oswal Investment advisors is not comparable with a company engaged in advisory services. The relevant observations made by Hon'ble Bombay High Court are extracted below:-

“13. The issue as to whether Integrated Capital Services Ltd and Motilal Oswal Investment Advisors P Ltd, which are engaged in providing investment banking services, could be declared as comparable to a company which was providing investment advisory services is no longer res-integra.

14. The Apex Court in the case of Commissioner of Income tax 10, Mumbai vs. Carlyle India Advisors (P) Ltd(2013)(32 taxmann.com 23)(Bom) has already held that the case of an investment advisor or sub-advisory cannot be compared with a merchant banker or investment banker. This view was reiterated in the case of Principal Commissioner of Income tax-3 vs. Blackstone Advisors India (P) Ltd (2020)(114 taxmann.com 221)(SC).

15. In view of the aforementioned settled legal position, Integrated Capital Services Ltd and Motilal Oswal Investment advisors Pvt. Ltd cannot at all be held as comparables with the assessee company.”

We notice that the above said decision has been rendered for AY 2009-10. Since there is parity of facts, following the decision rendered by Hon'ble jurisdictional Bombay High Court in the above said case, we direct exclusion of M/s Motilal Oswal Investment advisors P Ltd.

9. Next the assessee seeks inclusion of M/s ICRA Management Consulting Services Ltd. In the case of Warburg Pincus India P Ltd (supra), the Hon'ble Bombay High Court has directed inclusion of M/s ICRA Management

Consulting Services Ltd as a comparable company. The relevant discussions made by Hon'ble Bombay High Court are extracted below:-

“9. In regard to ICRA Management Consulting Services Limited, a company which was suggested as a comparable, but was rejected by the TPO and the DRP, as being not functionally similar to the assessee, the Tribunal held that the said company was basically engaged in offering consultation services in the area of strategy, risk management, operations, improvement, regulatory economics and translations advisory and that its entire revenue was being generated from consultation fees.

10. Even in the case of IDC India Limited, the Tribunal held the same as comparable to an investment advisory service provider, keeping in mind, the view already expressed on similar lines in the case of The Commissioner of Income tax-3 vs. Temasek Holding Advisors India P Ltd (2014)(46 ITR (Trib) 311)(Mum). Based upon the above observations, the Tribunal accordingly directed the Transfer Pricing Officer to compute/determine the Arm's Length Price by considering the aforementioned two comparables.”

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18. In regard to ICRA Management Consulting Services Ltd, the Tribunal relied upon the decision of the Temasek Holdings Advisors India Private Limited vs. DCIT and held that the same to be a good comparable in view of the fact that it was offering consultation services in the area of strategy, risk management and operations regulatory economics and translations Advisory and that its entire revenue was being generated from consultation fees.

19. In this regard, learned counsel for the respondent relied upon an order dated 28th March 2022 passed in Income tax Appeal No. 117 of 2018, in the case of the assessee in which a similar issue was raised and rejected and the appeal dismissed.

20. Be that as it may. We are of the view that no interference is warranted in the order passed by the Tribunal. The appeal is found to be without any merit, and is accordingly dismissed with no order as to costs.”

Accordingly, we direct for inclusion of M/s ICRA Management Consulting Services Ltd in the list of comparable companies.

10. In view of the above, we restore this issue to the file of AO/TPO for determination of ALP of international transactions afresh in the light of discussions made supra.

11. Other grounds raised by the assessee are general in nature.

12. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 06.12.2022.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 06/12/2022

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.

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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