

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'I' NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER &
DR. BRR KUMAR, ACCOUNTANT MEMBR**

ITA No.4767/Del/2017
Assessment Year: 2008-09

Chryscapital Investment Advisors (India) Pvt. Ltd., 103-Ashoka Estate, Barakhamba Road, New Delhi-1100 01		DCIT, Circle 6(1), New Delhi
PAN :AABCC4609H		
(Applicant)		(Respondent)

Appellant by	Shri Mayank Aggarwal, Adv. & Ms. Radhika Sharma, AR
Respondent by	Shri Rajesh Kumar, CIT(DR)

Date of hearing	20.03.2023
Date of pronouncement	06.04.2023

ORDER

PER SAKTIJIT DEY, JUDICIAL MEMBER:

Present appeal has been filed by the assessee assailing the final assessment order dated 25.05.2017 passed under Section 254/143(3) read with section 144C of the Income-Tax Act, 1961, in pursuance to directions of learned Dispute Resolution Panel (DRP).

2. Before we proceed to deal with the specific issues arising before us out of the present appeal, it is necessary to provide a brief factual backdrop leading to the filing of the present appeal before us. Against the final assessment order passed by the Assessing Officer in the first round, the assessee had preferred an appeal before the Tribunal. The said appeal, being ITA No.6183/Del/2012 was disposed of by the Tribunal vide order dated 20.12.2013. Against the decision of the Tribunal, assessee preferred an appeal before the Hon'ble jurisdictional High Court under Section 260A of the Act. The appeal registered as ITA No. 417/Del/2014 was disposed of by the Hon'ble jurisdictional High Court vide judgment dated 27.04.2015. While disposing of the appeal, the Hon'ble High Court held as under:

“44. In light of the above findings, this Court concludes as follows:

a. The mere fact that an entity makes high/extremely high profits/losses does not, ipso facto, lead to its exclusion from the list of comparables for the purposes of determination of ALP. In such circumstances, an enquiry under Rule 10B(3) ought to be carried out, to determine as to whether the material differences between the assessee and the said entity can be eliminated. Unless such differences cannot be eliminated, the entity should be included as a comparable.

b. While determining the comparability of transactions, multiple year data can only be included in the manner provided in Rule ITA 417/2014 Page 52 10B(4). As a general rule, it is not open to the assessee to rely upon previous year's data.

c. As regards Khandwala Securities and Brescon, the matter is remitted to the DRP to carry out the analysis under Rule 10B(3) and determine whether the material differences arising out of

their exceptionally high profits can be eliminated. If not, the said entities cannot be included as comparables. For Keynote, firstly, enquiry is to be carried out by the DRP, preceding the analysis under Rule 10B(3), as to its functional similarity with the assessee; thereafter, the exercise of determining if there are material differences on account of exceptionally high profits which are capable of elimination has to be carried out.

d. The deduction claimed by the assessee under [Section 36\(1\)\(ii\)](#) of the Act, in respect of the bonuses paid to its shareholder- employees is allowed”.

3. As could be seen from the aforesaid observations, the Hon'ble jurisdictional High Court directed the DRP to decide comparability of three comparables viz. Keynote Corporate Services Ltd. (Keynote) Khandawala Securities Ltd. (Khandawala) & Brescon Advisory Ltd. (Brescon). As regards, Keynote, Hon'ble High Court, finding merit, in the submissions of the assessee that there could be functional differences between the assessee and Keynote, directed the learned DRP to consider the issue. While doing so, the Hon'ble High Court rejected Revenue's claim that the comparable was included in previous assessment year and assessee accepted it. As regards, Khandawala & Brescon, Hon'ble High Court directed the DRP to examine whether any adjustment is required to be made under Rule 10B(3) on account of material differences arising out of risk undertaken to eliminate the differences on account of exceptionally high profit and, in case it cannot be made, to exclude the comparables. After the issues were remanded to the DRP by the Hon'ble High Court, learned DRP, on the basis of submissions made by the assessee, called

upon the TPO to examine the issue and submit a report. Based on the report of the TPO, learned DRP included Brescon, Khandawala and Keynote.

4. Being aggrieved with the aforesaid decision, the assessee is in appeal before us.

5. In so far as Keynote is concerned, learned counsel appearing for the assessee submitted that the company being functionally different cannot be treated as comparable. He submitted, Keynote has been excluded as a comparable by the Tribunal in assessment years 2007-08, 2009-10 and 2011-12. As regards Brescon & Khandawala, learned counsel for the assessee submitted, since, the learned DRP was not in a position to eliminate the material differences to make adjustment in terms of Rule 10B(3), these two comparables should be excluded.

6. Learned Departmental Representative submitted, Keynote is functionally similar to the assessee as per the profile of the assessee and Keynote. He submitted, in assessment year 2007-08 Keynote was excluded as comparables because of amalgamation. However, he submitted, comparability of a company has to be considered based on each year's facts. As regards, Brescon & Khandawala, learned Departmental Representative submitted, the assessee has not furnished any information before the DRP regarding the adjustment to be made to the margin of the comparables on account of risk. In this context, he drew our attention to the relevant observations of learned DRP.

8. We have considered rival submissions and perused the material available on record.

9. In so far as, comparability of Keynote is concerned, from the annual report of the company, it is observed that in the year under consideration, it was actively involved in lead managing IPOs, rights offer, buy back and take over. In the annual report, the company has highlighted the following performances during the year:

- KEYNOTE continued to be a leading player in the domestic capital market for mid-cap companies.
- KEYNOTE is amongst top 3 Merchant Bankers in India in respect of number of Rights Issues handled continuously for past 5 financial years.
- KEYNOTE established itself in the M & A segment and represents clients such as Gitanjali Gems Ltd. and Pyramid Saimira Theatre Limited in its acquisition aspirations.
- KEYNOTE was amongst the most active advisor on FCCBs and GDR issues for Indian companies in the international markets. In the Financial Year 2007-08, it completed 5 such transactions.
- KEYNOTE is now building its Private Equity (PE) sell side team to establish a strong presence in this area.

10. Further, the service description of the company in the annual report is as under:

“Managing of the Public Issue of Securities, Underwriting, Project Appraisal, Equity Research, Capital Structuring/Re-structuring, Loan and Lease Syndication, Corporate Advisory Services, Mergers and Acquisition, Placement Services, Portfolio Management, Debenture Trustee, Managing/advisory on International Offerings of Debt/Equity i.e. GDR, ADR, Bonds and other instruments. Private placement of securities, Corporate Advisory Services related to Securities Market e.g. Takeovers, Acquisitions, Disinvestments etc., Advisory Services for Projects, International Financial Advisory Services. Warehousing/Parking of

Securities, Bridge Financing, Bought out Deals relating to issue Management.”

11. Whereas, the assessee is engaged in the business of providing advisory services to its AEs to assist them in their investment decision. Therefore, in our view, Keynote cannot be treated as comparable to the assessee. It is relevant to observe, due to aforesaid functional differences, the Tribunal in assessee's own case in assessment year 2009-10 and 2011-12, has excluded Keynote as a comparable. Consistent with the view taken by the Tribunal in assessment years 2009-10 and 2011-12, we hold that the company cannot be treated as comparable.

12. In so far as Khandawala & Brescon are concerned, assessee's case is, it is a risk free entity, whereas, comparables are risk bearing entities. It is submitted, since, DRP was not in a position to make suitable adjustment to the margin of the comparables on account of risk differences in terms with Rule 10B(3), they have to removed from the list of comparables.

13. Having considered the submissions of the parties, we find that the assessee has not furnished any data/material regarding the risk analysis of the comparables so as to make suitable adjustment in terms of Rule 10B(3). The assessee has simply stated before learned DRP that, in case, it is not possible to carry out reasonably accurate adjustment, the comparables should be removed. Without furnishing relevant material/Data and computation of risk adjustment to the margin of the comparables, the assessee cannot put the entire burden on the

Revenue authorities. The burden is on the assessee to furnish required details regarding the risk undertaken by the comparables so that suitable adjustment can be made. Thus, the assessee has to discharge its initial burden. This is what the co-ordinate Bench has held while deciding similar issue in assessee's own case in assessment year 2011-12 vide ITA No. 458/Del/2016 dated 19.04.2022. The relevant observations of the Bench are as under:

“15. We have considered rival submissions and perused the material available on record. Though, we agree with the assessee that considering the nature of risk undertaken by the assessee as well as the comparables, adjustment in specific cases has to be made to the margin of the comparables on account of risk profile, however, burden is entirely on the assessee to furnish required details regarding the risk profile of the comparables to ascertain the nature of risk being undertaken by the assessee and the comparables. Since, the required details regarding the risk profile of the comparables are not properly gone into either due to lack of details furnished by the assessee or otherwise, we are inclined to restore this issue to the Assessing Officer for considering assessee's claim of risk adjustment after examining the material on record and in accordance with settled legal principles. Needless to mention, the Assessing Officer must provide reasonable opportunity of being heard to the assessee.”

14. Consistent with the view taken by the co-ordinate Bench in assessee's own case in assessment year 2011-12 (supra), we restore the issue to the Assessing Officer with similar direction.

15. Needless to mention, the assessee must be provided reasonable opportunity of being heard before deciding the issue.

16. In the result, the appeal is partly allowed, as indicated above.

Order pronounced in the open court on 06th April, 2023.

Sd/-
(DR. BRR KUMAR)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 06th April, 2023.

Mohan Lal

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi