

आयकर अपीलीय अधिकरण
मुंबई पीठ " आई ", मुंबई

श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री अमरजीत सिंह, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH " I ", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

आअसं.6818/मुं/2006 (नि.व. 2002-03)
ITA NO.6818/MUM/2006(A.Y.2002-03)

The Bank of Nova Scotia,
Mittal Towers, B-Wing,
Nariman Point, Mumbai 400 020.

PAN: AAACB-1536-H

..... अपीलार्थी/Appellant

बनाम Vs.

Deputy Director of Income Tax
(International Taxation)-3(2),
Scindia House, Ballard Pier,
Mumbai 400 038.

..... प्रतिवादी/Respondent

आअसं.651/मुं/2007 (नि.व. 2002-03)
ITA NO.651/MUM/2007(A.Y.2002-03)

ADIT(IT)-3(2), Mumbai
R. No.132, 1st Floor,
N.M.Road, Mumbai – 400 038.

..... अपीलार्थी/Appellant

बनाम Vs.

The Bank of Nova Scotia,
Mittal Towers, B-Wing,
Nariman Point, Mumbai 400 020.

PAN: AAACB-1536-H

..... प्रतिवादी/Respondent

Assessee by : Shri Nishant Thakkar with
Ms. Jasmin Amasadvla

Revenue by : Shri Soumendu Kumar Dash

सुनवाई की तिथि/ Date of hearing : 25/01/2023

घोषणा की तिथि/ Date of pronouncement : 21/04/2023

आदेश/ORDER

PER VIKAS AWASTHY, JM:

These cross appeals by the assessee and Revenue are directed against the order of Commissioner of Income Tax(Appeals)-XXXI, Mumbai [in short 'the CIT(A)'] dated 18/09/2006 for the assessment year 2002-03.

2. The Revenue in appeal has assailed the order CIT(A) by raising seven effective grounds. The same reads as under:

" 1. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the disallowance of Rs.91,46,886/- made by the Assessing Officer as interest expenses incurred for earning interest on tax free bonds.

2. On the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in holding that the Assessing Officer was not justified in allocating interest of Rs.82,46,164/- as costs incurred towards earning the income and accordingly deleting the disallowance made.

3. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the addition of Rs.77,78.945/- made as interest income of the Head Office by holding that no interest income accrues or arises when payment is made to the Head Office by relying on the judgment of ABN Amro Bank NV.

4. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the disallowance of Rs.9,32,48,681/- made on account of broken period interest in respect of securities purchased.

5. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in holding that the Assessing Officer had wrongly restricted the claim of set off of bad debt by an amount of Rs.3,23,38,903/- by relying on the judgement in the case of Oman International Ltd.

6. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the disallowance made by the Assessing Officer of Rs.1,35,35,218/- in respect of salary paid to expatriate employees working in India on the ground that this expenditure is not covered by Section 44C.

7. On the facts and in the circumstances of the case and in law. the Ld.CIT(A) erred in estimating the markup at 20% as against 42.73% taken by the TPO and thereby allowing relief of Rs.8,20,644/-."

3. The assessee in appeal has raised four grounds. Shri Nishant Thakkar appearing on behalf of the assessee stated at Bar that on instructions from the assessee he is not pressing ground No.3 and 4 of appeal. Thus, only grounds on which he would be making submissions is ground No.1 and 2. The said grounds in the appeal of the assessee reads as under:-

"1. In disallowing interest amounting to Rs 7,778,947/- paid to its head office/overseas branches on the basis that the same amounts to payment to self.

2. In stating that the business of the comparable companies considered by the Appellant are not similar to the correspondent banking services provided by the Appellant and accordingly not accepting the Appellant's basis of computing the arm's length price of correspondent banking services rendered by the Appellant to its associated enterprises."

4. The brief facts of the case as emanating from records are: The assessee is a Banking Company incorporated in Canada. The assessee had obtained licence from Reserve Bank of India to carry out banking activities in India. For the impugned assessment year the assessee filed return of income declaring total income of Rs.61,43,87,930/-. In scrutiny assessment proceedings, the Assessing Officer made following disallowances/additions:

- (i) Disallowance u/s. 14A of the Income Tax Act, 1961 [in short 'the Act'];
- (ii) Disallowance u/s. 40(a)(i) of the Act for non-deduction of TDS on interest paid to Head Office.
- (iii) Disallowance of Broken Period Interest;
- (iv) Disallowance of expenditure relatable to earning of Interest on Foreign Currency Loans;

(v) Disallowance of deduction of bad debts written off u/s. 36(1)(vii) of the Act .

(vi) Addition on account of interest received by Head Office.

(vii) Transfer Pricing adjustment on account of services rendered to Foreign AEs.

(viii) Disallowance of Salary paid to expatriate employees.

5. Aggrieved by the assessment order dated 14/03/2005, the assessee filed appeal before CIT(A). The First Appellate Authority vide impugned order granted part relief to the assessee. The Revenue is in appeal on the issues where the CIT(A) has granted relief to the assessee. Since, the grounds raised by the Revenue are substantial and ground No.1 in appeal of the assessee is corresponding to ground No.3 in appeal of the Revenue, appeal of the Revenue is take up first for adjudication.

ITA NO.651/MUM/2007(Departmental Appeal):

6. Disallowance of interest expenses u/s. 14A of the Act –Rs.91,46,886/-:

During the period relevant to assessment year under appeal, the assessee has earned interest income of Rs.1,22,25,000/- from NABARD Bonds. The interest income from said bonds is exempt u/s. 10(15)(iv)(h) of the Act. The Assessing Officer invoked the provisions of section 14A of the Act to disallow expenditure relating to earning of exempt income and made a disallowance of Rs.91,46,883/-. The CIT(A) following the order of his predecessor in assessment year 1999-2000 and 2000-01 and 2001-02 and further following the order of Tribunal in the case of Maruti Udyog Ltd., 92 ITD 119 (Del) deleted the addition. The Id. Authorized Representative for the assessee stated at Bar that the issue of disallowance u/s. 14A of the Act on interest income from NABARD Bonds has been considered by the Tribunal in assessee's own case for assessment year 1998-99 in ITA

No.5351/Mum/2001 decided on 24/03/2006. The Tribunal decided the issue in favour of the assessee . The Id. Authorized Representative for the assessee further submitted that during the period relevant to assessment year under appeal, the assessee had not made any fresh investments. Dehors the fact that no fresh investments were made during the relevant year, own funds of the assessee were much more than the investment in tax free bonds. Hence, no disallowance u/s. 14A of the Act is warranted. In support his contentions, he placed reliance on the decision in the case of South Indian Bank Ltd. vs. CIT, 438 ITR 1(SC).

6.1 Shri Soumendu Kumar Dash representing the Department vehemently supported the assessment order and prayed for reversing the findings of CIT(A).

6.2 We have heard the submissions made by rival sides and have examined the orders of authorities below. The CIT(A) in the impugned order has given finding of fact that the assessee has surplus interest free funds in the form of capital and reserves to cover the investment made. Purportedly, no fresh investments were made in the impugned assessment year. The assessee had made investments in NABARD tax free bonds in assessment year 1996-97 and 1997-98. Similar disallowance u/s. 14A of the Act was made by the Assessing Officer in assessment year 1998-99 for earning tax free interest income. The Co-ordinate Bench vide order dated 24/03/2006 (supra) deleted the disallowance. The Hon'ble Apex Court in the case of South Indian Bank Ltd. vs. CIT (supra) has reiterated the legal position, "*that the proportionate disallowance of interest is not warranted u/s.14A of the Income Tax Act for investment made in tax free bonds/ securities which yielded tax free dividend and interest to assessee bank in those situation where, the interest free own funds available with the assessee, exceeded their investment.*". The Revenue has not disputed the fund position as highlighted by the CIT(A) in the impugned order. Thus, taking into consideration entire facts of the case and the law expounded by Hon'ble

Apex Court in this regard, we find no merit in ground No.1 of the appeal, hence, the same is dismissed.

7. Allocation of interest Rs.82,46,164/- towards earning of income on foreign exchange loans:

During the period relevant to assessment year under appeal, the assessee has earned interest income amounting to Rs.2,13,66,918/- from foreign currency loans. The assessee claimed that interest income is liable to be taxed @20% on gross basis u/s. 115A of the Act. The Assessing Officer held that net interest income is taxable at concessional rate of 20% u/s. 115A of the Act. The Assessing Officer allocated Rs.82,46,164/- interest cost for earning of interest income. The Id. Authorized Representative for the assessee pointed that identical addition on account of interest allocation was made in assessment year 1997-98 and 1998-99. The Tribunal deleted the addition. The CIT(A) after following the order of Tribunal for assessment year 1997-98 deleted the disallowance of Rs.82,46,164/- made by the Assessing Officer.

7.1 We have heard the submissions made by rival sides. We find that in assessment year 1997-98 identical disallowance was made by Assessing Officer, the CIT(A) deleted the same, the Revenue carried the issue in appeal before the Tribunal in ITA No.306/Mum/2001. The Co-ordinate Bench vide order dated 21/04/2004 dismissed the ground raised in the appeal of Revenue by observing as under:-

“ 3. We have heard the rival submissions and also perused the orders of authorities below. Parties appearing before us have respectively relied upon the order of A.O and CIT(A). Since the introduction of section 115A certain changes have been made and with the passage of time the Finance Act 1994 has also carried out certain amendments in the said section w.e.f. 1/4/95 the scope and effect of the amendments was explained by CBDT in Circular No.684 dated 6/6/94(208 ITR 08(St.), relevant page-43. This CBDT circular and related provisions of IT Act has been elaborately discussed by the first appellate authority. On careful examination of the entire issue it is abundantly clear that the legislature has intended to tax the interest only on gross basis. Further in support of his arguments Id. A.R has also cited Article 10& 11 of DTAA with Canada. Notification No.10503(F No.505/2/87-FTD) reference

229 ITR 44(St.) Further it has also been mentioned that section 90(2) of IT Act also provides that the provisions of this Act shall apply to the extent they are more beneficial to that assessee. The order of the first appellate authority is quite elaborate on this subject and needs no interference, therefore, under the totality of the circumstances and in view of the specific provisions of the Act we hereby dismiss this ground of the Revenue.”

The Revenue has failed to distinguish the above order of Tribunal. Hence, following the order of Co-ordinate Bench in assessee's own case on the same issue, we have no hesitation in dismissing ground No.2 of the Department's appeal.

8. Disallowance u/s. 40(a)(ia) of the Act for not deducting TDS on interest paid to Head Office – Rs.77,78,947/-:

The branch office of the assessee in India paid interest to the Head Office/ overseas branches . The Indian branch is the Permanent Establishment (PE) of the assessee. The Assessing Officer held that Indian branch of the assessee was liable to deduct withholding tax on the interest payment. In first appellate proceedings, the CIT(A) following the decision of Special Bench in the case of ABN AMRO Bank NV vs. ADIT, 97 ITD 89 (Kol)(SB) held that interest payment made by the Indian PE to Head Office is not allowable as deduction. Thus, the CIT(A) upheld the disallowance but for the different reason. The Revenue in ground No.3 of appeal has assailed the findings of the CIT(A) in rejecting the reason given by Assessing Officer for making disallowance u/s. 40(a)(ia) of the Act . The assessee in ground No.1 of the appeal has raised a ground assailing the findings of CIT(A) in holding that payment of interest by branch to head office is not allowable.

8.1 The Id. Authorized Representative for the assessee placing reliance on the decision rendered by Special Bench in the case of Sumitomo Mitsui Banking Corporation vs. DCIT, 19 taxmann.com 364 (Mum)(SB) submitted that where an Indian branch of a foreign bank pays interest to head office and other overseas branches on advances received by it, the said interest is neither deductible in the hands of Indian branch nor chargeable to tax in the hands of head office/ overseas branches, all being single entity. The Id. Authorized Representative for the assessee

further placed reliance on the decision of Hon'ble Delhi High Court in the case of PCIT vs. The Bank of Tokyo Mitsubishi UFJ Ltd. in ITA NO.604 of 2015 decided on 08/04/2016 to submit that on remittance of interest by branch office to head office, the head office was not liable to pay any tax under the Act, hence, no question of deduction of tax at source.

On the other hand, Id. Departmental Representative placing reliance on the assessment order prayed for reversing the findings of CIT(A).

8.2 Both sides heard. The Assessing Officer made disallowance of interest payment invoking the provisions of section 40(a)(ia) of the Act. The CIT(A) made disallowance on interest payment holding that the interest payment by the Indian PE/Branch to the head office is not a allowable deduction. The decision by Special Bench in the case of Sumitomo Mitsui Banking Corporation vs. DCIT(supra) has clinched both the issues. The relevant extract of the decision of Special Bench is reproduced herein below:

“88. Keeping in view all the facts of the case and the legal position emanating from the interpretation of the relevant provisions of domestic law as well as that of the treaty as discussed above, we are of the view that although interest paid to the head office of the assessee bank by its Indian branch which constitutes its PE in India is not deductible as expenditure under the domestic law being payment to self, the same is deductible while determining the profit attributable to the PE which is taxable in India as per the provisions of article 7(2) & 7(3) of the Indo-Japanese treaty read with paragraph 8 of the protocol which are more beneficial to the assessee. The said interest, however, cannot be taxed in India in the hands of assessee bank, a foreign enterprise being payment to self which cannot give rise to income that is taxable in India as per the domestic law. Even otherwise, there is no express provision contained in the relevant tax treaty which is contrary to the domestic law in India on this issue. This position applicable in the case of interest paid by Indian branch of a foreign bank to its Head Office equally holds good for the payment of interest made by the Indian branch of a foreign bank to its branch offices abroad as the same stands on the same footing as the payment of interest made to the Head Office. At the time of hearing before us, the learned representatives of both the sides have also

not made any separate submissions on this aspect of the matter specifically. Having held that the interest paid by the Indian branch of the assessee Bank to its head office and other branches outside India is not chargeable to tax in India, it follows that the provisions of section 195 would not be attracted and there being no failure to deduct tax at source from the said payment of interest made by the PE, the question of disallowance of the said interest by invoking the provisions of section 40(a)(i) does not arise."

Thus, in the light of the decision of Special Bench, ground No.3 raised in appeal by the Revenue is dismissed and ground No.1 in the appeal of assessee is allowed.

9. Disallowance of Broken Period Interest Rs. 9,32,48,681/-:

During the period relevant to assessment year under appeal, the assessee has paid broken period interest amounting to Rs.9,32,48,681/- on securities held as stock in trade on 31/03/2002. The Assessing Officer disallowed the same. The CIT(A) deleted the addition placing reliance on the decision in the case of American Express International Banking Corporation vs. CIT, 258 ITR 601(Bom).

9.1. The Id. Authorized Representative for the assessee submitted that it is now well settled that broken period interest is allowable. The Id. Authorized Representative for the assessee pointed that the Hon'ble Apex Court in the case of CIT vs. State Bank of India, 281 Taxman 368. has dismissed the SLP filed against the decision of Hon'ble Karnataka High Court in the case of CIT vs. State Bank of India, 428 ITR 316 (Kar), wherein the Hon'ble High Court allowed broken period interest income accrued from sale of Government Securities as business income u/s. 28(1) of the Act and allowed the same as permissible deduction.

9.2. We have heard the submissions made by rival sides. It is no more res-integra that broken period interest is an allowable deduction. The CIT(A) has granted relief to the assessee by placing reliance on the decision of Hon'ble Jurisdictional High Court. There are catena of judgements allowing deduction in respect of broken period interest. The Hon'ble Supreme Court of India has dismissed the SLP of the Department in the case of State Bank of India (supra), thereby upholding the order of Hon'ble Karnataka High Court allowing broken period interest as deduction. Thus, we find no infirmity in the impugned order on this issue. Ergo, ground No.4 of the appeal is dismissed.

10. **Restricting the claim of bad debts:**

The assessee has claimed deduction of Rs.15,63,10,684/- u/s. 36(1)(vii) of the Act. The Assessing Officer held that banking companies are covered by the provisions of section 36(1)(viia) of the Act, hence, amount of bad debt claimed would be limited to that amount which exceed the credit balance in the provision for bad and doubtful debts. Thus, the Assessing Officer held that deduction allowable u/s. 36(1)(viia) Rs.3,23,37,903/- is also required to be set off against bad debts of Rs.15,63,10,684/-. The CIT(A) placing reliance on the decision in the case of Oman International Ltd. vs. DCIT, 96 ITD 76 (Mum) and the decision of Bangalore Bench in the case of Vijaya Bank vs. CIT, in ITA No. 3/Bang/1998 for Assessment Year 1994-95 decided on 24/04/2003 held that current years allowance u/s. 36(1)(viia) cannot be taken into account while computing deduction for bad debt u/s. 36(1)(vii) of the Act.

10.1 The Id. Authorized Representative for the assessee vehemently supported the findings of CIT(A) on this issue and also placed reliance on CBDT Instruction No.17/2008 dated 26/11/2008.

10.2 Per contra the Id. Departmental Representative placed reliance on the findings of the Assessing Officer.

10.3 Both sides heard. We find that the CIT(A) has allowed assessee's claim of deduction of bad debt u/s. 36(1)(vii) of the Act by following the order of Tribunal in the case of Oman International (supra) and Vijaya Bank (supra). The Id. Authorized Representative for the assessee has further placed reliance on the Instructions No.17/2008 (supra). The relevant part of said Instructions is extracted herein below:

“(i) Under section 36(1)(vii) of the Act, deduction on account of bad debts which are written off as irrecoverable in the accounts of the assessee is admissible. However, this should be allowed only if the assessee had debited the amount of such debts to the provision for bad and doubtful debt account under section 36(1)(viii) of the Act, as required by section 36(2)(v) of the Act.

(ii) While considering the claim for bad debts under section 36(1)(vii), the Assessing Officer should allow only such amount of bad debts written off as exceeds the credit balance available in the provision for bad and doubtful account created under section 36(1)(viii) of the Act. The credit balance for this purpose will be the opening balance i.e. the balance brought forward as on 1st April of the relevant accounting year.”

The Hon'ble Gujarat High Court in the case of CIT vs. UTI Bank Ltd. 29 taxmann.com 79 has observed that the CBDT Circular No.17 of 2008 dated 26/11/2008 had clarified the position beyond any doubt. Thus, the Hon'ble High Court refused to admit the appeal of Revenue observing that the Circular, issued by the Board in exercise of its statutory powers u/s. 119(2) of the Act may have the effect of relaxing the rigors of statutory provision. Thus,

in the light of aforesaid decisions and CBDT Instructions we find no merit in ground No.5 of the appeal, hence, the same is dismissed.

11. **Salary paid to expatriate employees Rs.1,35,35,218/-:**

The assessee has claimed deduction of salary expenses of four expatriate employees Rs.1,35,35,218/-. The said expatriate employees were paid for their wholly and exclusive services in India. The salary expenses were borne by the head office. The assessee had not claimed the deduction u/s. 37(1) of the Act while computing total income at the time of filing return of income. The claim was made by filing revised computation before the Assessing Officer. The Assessing Officer held that the expenditure was covered by section 44C of the Act. Since, the expenses has been borne by the head office the same is not allowable to the assessee. The CIT(A) examined the facts and following the decision in the case of CIT vs. Emirates Commercial Bank, 262 ITR 55 deleted the addition.

11.1 The Id. Authorized Representative for the assessee supported the order of CIT(A) and further placed reliance on the following decisions in support there of:

- (i) PCIT vs. Bank of Mitsubishi UFJ Ltd.ITA 604/2015(Del)
- (ii) CIT vs. Emirates Commercial Bank, 262 ITR 55 (Bom)
- (iii) ADIT vs. Hongkong Shanghai Banking Corporation,
113 taxamann.com 245 (Bom)
- (iv) British Bank of Middle East vs. JCIT, 4 SOT 122 (Mum)

11.2 On the other hand, the Id. Departmental Representative strongly defended the assessment order. The Id. Departmental Representative submits that undoubtedly the head office paid salary expenses of expatriate employees and no debit note was raised on the assessee for the settlement of account. The Id. Departmental Representative thus, prayed for reversing the findings of CIT(A) on this issue.

11.3 Both sides heard . Undisputedly, the salary expenditure of expatriate employees was for rendering services wholly and exclusively for assessee in India. The quantum of expenditure and payment of salary to employees expatriated to India by head office has not been doubted by the Assessing Officer. The solitary objection of Assessing Officer for disallowing expenditure is that no debit note was raised by head office . The CIT(A) has negated the objection raised by the Assessing Officer by placing reliance on the decision in the case of Kedarnath Jute Manufacturing Co. 82 ITR 353(SC). Regarding applicability of section 44C of the Act, the CIT(A) placed reliance on the decision of Hon'ble Jurisdictional High Court in the case of Emirates Commercial Bank (supra) to conclude that payment of salary to expatriate employees paid by the head office is an allowable expenditure in view of Article 7(3) of the DTAA and section 37 of the Act and such expenditure does fall within the ambit of section 44C of the Act. We find no infirmity in the findings of CIT(A) on this issue, hence, ground No.6 of the appeal is dismissed.

12. **Transfer Pricing Adjustment:**

The Transfer Pricing Officer(TPO) made transfer pricing adjustment of Rs.47,80,644/- in respect of Correspondent Banking Services rendered by the

assessee to its AEs. The Assessing Officer accordingly made addition in the assessment order. Purportedly, the assessee did not compute Arm's Length Price(ALP) of its international transactions. The TPO applied TNMM as the most appropriate method to benchmark the transaction. Further, the TPO selected four comparable viz.:

Name of the Company	Operating profit/ Total operating cost
Allianz Securities Ltd.	5.48%
Centrum Finance Ltd.	44.38%
Integrated Enterprise (India) Ltd.	32.09%
Poineer Investcorp Ltd.	88.97%
Arithmetic mean	42.73%

The assessee proposed to include Kinetic Trust Ltd. and PNR Services Ltd. as comparables. The TPO rejected Kinetic Trust Ltd. on account of low turnover and small scale of operation. PNR Services Ltd. was rejected by TPO because of difference in line business.

The TPO applied arithmetic mean of 42.73% and made adjustment of Rs.47,80,644/-.

12.1 Before the CIT(A), the assessee objected to the comparables selected by the TPO. The CIT(A) rejected all the four comparable on the ground of functional disparity. The CIT(A) further rejected Kinetic Trust Ltd. and PNR capital Services Ltd. proposed by the assessee on the ground of difference in functions. The CIT(A) made estimated T.P addition by applying 20% markup.

Though there is no concept of estimated T.P addition, the Id. Authorized Representative for the assessee stated at Bar that the assessee had accepted the adjustment made by the CIT(A). The Revenue has assailed the findings of

CIT(A) in rejecting T.P adjustment made by the TPO. Transfer Pricing concept was in nascent stage in assessment year 2002-03. The jurisprudence on Transfer Pricing was in infancy stage. Having rejected comparables the CIT(A) ought to have selected fresh set of comparables to benchmark the transaction. The CIT(A) rightly rejected the comparables selected by the TPO as none of the comparables selected by the TPO were functionally comparable to the activities carried out by the assessee. We are of the considered view that transfer pricing adjustment made by the TPO has been rightly rejected by the CIT(A). Thus, the ground No.7 raised in appeal by Revenue fails.

13. Ground No.8 and 9 in appeal by the Revenue are general in nature, hence, require no adjudication.

14. In the result, appeal of the Revenue is dismissed.

ITA No.6818/Mum/2006 –A.Y.2002-03:

15. The ground No.1 in assessee's appeal is corresponding to ground No.3 in Department's appeal. The ground No.1 has already been adjudicated (in favour of assessee) while adjudicating ground No.3 of Department's appeal.

16. The Id. Authorized Representative for the assessee made a limited submission in respect of ground No.2, that the TPO has selected comparable that is engaged in merchant banking activities. The assessee is engaged in banking services. Merchant banking activities are not comparable to correspondent banking services. Therefore, while computing arm's length price the TPO has erred in selecting comparable engaged in providing merchant banking activities.

16.1 We find that while adjudicating Transfer Pricing issue, the CIT(A) has rejected all the comparable selected by the TPO. One of the comparable (Pioneer Investcorp Ltd.) selected by the TPO was a registered category one merchant banker with SEBI. The CIT(A) has rejected the said comparable on the ground of functional disparity. The Revenue has failed to substantiate that the a functions carried out by the assessee are similar to those of a merchant banker. The assessee in ground No.2 has assailed rejection of comparables suggested by the assessee. No submissions were made by the Id. Authorized Representative for the assessee in this regard. Ergo, ground No.2 of the appeal is dismissed.

17. The Id. Authorized Representative for the assessee stated at Bar that he is not pressing ground No.3 and 4 of appeal. In view of the statement made by Id. Authorized Representative for the assessee, ground No.3 and 4 of appeal are dismissed as not pressed.

18. In the result, appeal of the assessee is partly allowed.

19. To sum up, appeal of the Revenue is dismissed, and appeal of the assessee is partly allowed.

Order pronounced in the open court on Friday the 21st day of April, 2023.

Sd/-

(AMARJIT SINGH)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 21/04/2023

Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

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BY ORDER,

(Dy./Asstt.Registrar)/Sr. Private Secretary ITAT,
Mumbai