IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)

ITA No. 2438/MUM/2023
Assessment Year: 2015-16

DCIT-1(3)(1), Room No. 535, 5th floor, Aayakar Bhavan, M.K. Road, Mumbai-400020.	***Vs.***	M/s Quantum Advisors Pvt. Ltd., 503, Regent Chambers, Nariman Point, Mumbai-400021. **PAN No. AAACQ 0281 C**
Appellant		**Respondent**

Assessee by	**:**	Mr. Niraj Seth
Revenue by	**:**	Mr. Rajendra Chandekar, DR
Date of Hearing	**:**	15/11/2023
Date of pronouncement	**:**	28/11/2023

ORDER

PER OM PRAKASH KANT, AM

This appeal by the Revenue is directed against order dated 15.05.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short 'the Ld. CIT(A)'] for assessment year 2015-16, raising following grounds:

1. *"On the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in allowing marketing & distribution fees of Rs. 2,46,81,144/- paid to the QIEF Management LLC(QIEF) as business expenditure?"*
2. *"On the fact and circumstances of the case and in law, the Ld CIT(A) is correct in allowing the assessee's appeal by treating*

research fees paid to group company as reasonable and genuine and not considering the facts and circumstances brought on record by the AO wherein it is Categorically mentioned that the assessee could not satisfactorily explain the nature purpose and genuineness of research fees?"

3. *"On the fact and circumstances of the case and in law, the Ld CIT(A) was justified in allowing research fees of Rs. 2,33,59,884/- paid to Quantum Asset Management company Pvt. Ltd. (QAMC) as business expenditure?"*
4. *"The Appellant prays that the order of the CIT(A) on the above ground be set aside and that of the ACIT 9(3)(2), Mumbai be restored.*

2. Briefly stated, facts of the case are that during the relevant year under consideration, the assessee company is registered with Securities Exchange Board of India (SEBI) as a discretionary portfolio manager and was engaged in providing advisory services of money management to its clients including institutional clients; sovereign fund; pension fund etc., in relation to their investment in 'Indian listed securities'. The 'discretionary portfolio management services' means investing client's money wherein discretion is with the assessee as a portfolio manager for taking investment decisions viz. as where to invest, how to invest, the period for which the investment is to be made or retained. The assessee filed return of income on 30.11.2015 declaring total income at Rs.23,50,79,800/-. The return of income filed by the assessee was selected for scrutiny assessment and statutory notices under the Income-tax Act, 1961 (in short 'the Act') were issued and complied with. In the assessment completed u/s 143(3) of the Act dated 29.12.2017, the Assessing Officer made disallowance including: (i) disallowance for marketing and distribution fees of Rs.2,46,81,144/- paid to

associated company (related party) namely M/s QIEF management LPP, Mauritius (in short 'QIEF') and (ii) disallowance of Rs.2,33,69,884/- out of fee paid to subsidiary company namely M/s Quantum Asset Management Co. P Ltd (in short 'QAMS') for rendering research services to the assessee.

3. On further appeal, the Ld. CIT(A) deleted both the additions. Aggrieved, the Revenue is in appeal before the Income-tax Appellate Tribunal (in short the 'Tribunal') by way of raising grounds as reproduced above.

4. Before us, the Ld. Counsel for the assessee filed a Paper Book containing paged 1 to 201.

5. As regards the grounds No. 1 of the appeal, the Ld. Departmental Representative (DR) submitted that the Ld. CIT(A) has deleted the addition alleging that the Assessing Officer has not carried out any factual verification but the Ld. CIT(A) himself could have carried out those enquires or verification invoking co-terminus powers of Assessing Officer , however he did not make any attempt for carrying out inquiry or factual verification and deleted the addition, whereas Hon'ble Delhi High Court in the case of **Jansampark Advertising and Marketing Pvt. Ltd ITA 525/2014 dated 11/03/2015** has held that wherever the Assessing Officer fail to carry out any inquiry, then the Ld. CIT(A) as well as the Tribunal are duty bound to carry out such inquiry if required so.

Since, the Ld. CIT(A) has not carried out any inquiry in the matter, the Ld. DR submitted that matter may be restored back either to the Assessing Officer for factual verification of the evidence in support of services rendered by M/s QIEF. He submitted that the Assessing Officer has duly noted that no evidence in support of services rendered by M/s QIEF were filed except agreement between assessee and said party. On the contrary, the Ld. Counsel for the assessee submitted that issue in dispute is covered in favour of the assessee by the decision of the Tribunal in the case of the assessee in ITA **No. 3418/Mum/2015 for assessment year 2011-12**, which has been further followed in assessment year 2013-14 and 2014-15 by the Tribunal.

6. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The issue in dispute is regarding disallowance of marketing expenses invoking section 37(1) of the Act. According to the Assessing Officer, the expenditure has not been incurred wholly and exclusively for the purpose of the business. The Ld. Assessing Officer has noted that mere agreement between the assessee and associated concern is not sufficient to justify the requirement of section 37(1) of the Act i.e. expenses incurred wholly and exclusively for the purpose of the business. The relevant finding of the Assessing Officer is reproduced as under:

> *"6.3 For an expenditure to qualify under section 37(1), in addition to other conditions, the expenditure should be laid out wholly and exclusively for*

the purposes of business. Now it is the contention of the assessee that the payments made to QIEF for marketing its business abroad. It has been further argued that as per the written agreement between the assessee and the QIEF, 20% of the total fee received from the clients canvassed by the QIEF is payable as fees. Hence it has been argued that the expenditure qualifies under section 37(1) of the Act. The fact that the expenditure was laid out or expended wholly and exclusively for the purpose of business has to be decided on the facts and in the light of the circumstances of each case. The mere existence of an agreement between the assessee and its marketing agent does not bind the assessing officer to hold that payment was exclusively and wholly for the purpose of business, although there might be such an agreement in existence and payments might have been made, it is still open for the assessing officer to consider the relevant factor and determine himself whether the said commission said to have been paid is properly deductible under section 37 of the act. This is the ratio of decision of the Supreme Court in the case of Lakshminarayanan Madan Lal vs CIT 86 ITR 439. Therefore the expenses claimed by the assessee for the marketing and distribution are disallowed and added to the total income of the assessee."

6.1 The Ld. CIT(A) however deleted the disallowance observing as under:

"10.1. Quite clearly, no discussion was made by the AO on facts to establish that there was no requirement of payment of marketing and distribution fees to QIEF Management LLC. Even the nature of business procured by QIEF Management LLC., if at all any, was not referred to. A reference to a case law, as quoted by the AO, can never determine fate of an issue, which primarily requires facts. Once the facts are determined, then only decisions of courts can play a vital role in regulating or deciding a matter."

6.2 We find that the Co-ordinate Bench of the Tribunal in ITA No. 3418/Mum/2015 for assessment year 2011-12 has noted that the Assessing Officer disallowed the expenditure on the ground that requisite tax was not deducted at source and hence such expenditure was to be disallowed u/s 40(a)(i) of the Act. But the Ld. CIT(A) however held that expenditure was not incurred wholly and exclusively for the purpose of business of the assessee company. The Tribunal in para 7.1 noted that the associated concern of

assessee M/s QIEF was having sufficient infrastructure for carrying out the services to the assessee. The Tribunal in its detailed finding reversed the finding of the Ld. CIT(A), holding that the Ld. CIT(A) has not discharged the burden of demonstrating that the entire expenditure was disallowable u/s 37(1) of the Act. The relevant finding of the Tribunal is reproduced as under:

> *"7.1 On the issue of availability of infrastructure with QIEF, in our view, the CIT(A) has merely brushed aside the material and evidence which the assessee sought to put-forth before him. In Para 1.13(a) of the order, the CIT(A) observes that assessee had failed to show the infrastructure available with QIEF to render services to assesseecompany. Such an observation by the CIT(A) is a bland assertion because the material which was before him, and which has also been placed in the Paper Book filed before us, clearly shows that it is not a case where QIEF could be said to be a concern without adequate infrastructure and ability to render services to assessee. The Annual Accounts of the said concern, copies of which have been placed in the Paper Book, clearly show that QIEF is a concern which is carrying on regular activities in the field of management of investors, etc. and it was having a subsidiary in USA. Notably, assessee is engaged in providing investment management services to International Institutional clients such as sovereign funds, pension fund, etc. in relation to their investment exposures in India-listed securities. Ostensibly, such institutional clients would require appropriate and diligent evaluation of their Investment Manager and for that purpose assessee had undertaken marketing efforts through QIEF. In terms of the agreement with QIEF, the said concern was tasked to look for potential opportunities and to market the capabilities and experience of the assessee-company on India-focused investment options. In fact, at Page-339 of the Paper Book, a list of clients have been placed, who were referred to the assessee by QIEF and at the time of hearing it was explained that more than 90% of assessee's revenues have been earned from the clients referred by QIEF. From the submissions of the asessee made to the lower authorities, it is seen that assessee has consistently explained that QIEF was marketing assessee's services to prospective institutional investors such as sovereign funds, pension funds, etc. in Europe, Middle East and Asia and also to private sector institutional clients in USA. In our considered opinion, the assertions which have been made by the assessee before the lower authorities as well as before us are borne out of record inasmuch as assessee has earned income through clients referred by QIEF, which is not disputed. Much has been made out by the CIT(A) that mere existence of an agreement between asessee and QIEP would not*

ipso-facto lead to the allowability of the impugned expenditure. In absolute terms, we have no quarrel with the said proposition advanced by the CIT(A) but the onus in the present case was on him to establish on the basis of evidence and material that the actual state of affairs was contrary to the agreement. In fact, the agreement between assessee and QIEF has been acted upon inasmuch as assessee has earned business thereupon and in return assessee made payments for the services rendered by the payee. In our considered opinion, having regard to the material and evidence on record, the CIT(A) has sought to disregard the agreement on a mere hypothetical basis, without any factual support.

7.2 Before parting, we may mention two more aspects which were before the CIT(A) . In the course of the assessment proceedings, the only objection of the Assessing Officer was based on non-deduction of tax at source and in so far as the issue of section 37(1) of the Act was concerned, the Assessing Officer had no objection. It was only during the appellate proceedings that the CIT(A) show caused the assesseecompany on the aspect of section 37(1) of the Act. It is seen from the record that during the appellate proceedings, CIT(A) called for a remand report from the Assessing Officer on the issue of allowability of the expenditure under section 37(1), which was not a point raised in the assessment order. In such remand report, the Assessing Officer observed that the impugned expenditure was incurred during the course of normal business activity by the assessee and hence deductible under section 37(1) of the Act. Thus, impliedly the Assessing Officer reiterated the stand taken in the assessment order on the issue of section 37(1) of the Act. Second aspect which needs mentions is the assessment made by the Assessing Officer under section 143(3) of the Act for the assessment year 2012-13, wherein a portion of the marketing support fee paid to QIEF was disallowed by invoking section 40A (2)(b) of the Act. As per the CIT(A), the aforesaid two aspects reflected that the Assessing Officer was contradicting his own position taken in the assessment for assessment year 2012-13 by accepting that the expenditure was deductible under section 37(1) of the Act in the remand report. It appears that for the aforesaid reason, the CIT(A) disregarded the stand of the Assessing Officer in the remand report and proceeded to examine afresh the issue of allowability under section 37(1) of the Act.

7.3 In our considered opinion, the stand of the CIT(A) is misdirected and is based on a wrong perspective. In fact, the invoking of section 40A(2)(b) of the Act to disallow a portion of the expenditure in assessment year 2012-13 does not lend any support to the inference of the CIT(A) that the expenditure has not been made wholly and exclusively for the purpose of assessee's business because what is envisaged by section 40A(2)(b) is to disallow an expenditure which is found to be unreasonable or excessive in relation to it's market value. Invoking of section 40A(2)(b) of the Act to disallow a portion of the expenditure is an altogether different dimension than invoking section 37(1) of the Act to say that the expenditure is not laid out

wholly and exclusively for the purposes of business. In fact, under such a situation, it was all the more onerous on the part of the CIT(A) to demonstrate as to why the entire expenditure was disallowable under section 37(1) of the Act, having regard to the stand of the Assessing Officer in the remand report as well as in the assessment for assessment year 2012- 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.3,26,05,268/- representing payment made to QIEF for marketing support services. Thus, on this aspect assessee succeeds."

6.3 It is evident from the finding of the Co-ordinate Bench of the Tribunal that in the relevant assessment year the Ld. CIT(A) failed to demonstrate that there was a failure on the part of the assessee in substantiating that expenses were incurred wholly and exclusively for the purpose of business. But in the year under consideration, the Assessing Officer duly mentioned that merely agreement between the two parties is not sufficient to demonstrate that expenses were incurred wholly and exclusively for the purpose of the business. Thus, it was the onus of the assessee to substantiate incurring of expenses as wholly and exclusively for the purpose of business. We also note for substantiating rendering of services by M/s QIEF to the assessee with documentary evidences, the assessee was required to demonstrate as how the said associated company solicited customers for the assessee including the evidence of correspondence between M/s QIEF and the customers of the assessee, but no such documents have been filed before the Assessing Officer. The Ld. CIT(A) has merely mentioned that the Assessing Officer has not made any discussion on the facts to establish that there was no requirement of payment of marketing

distribution fee to QIEF. In our opinion, when no documentary evidences in support of services rendered by QIEF were filed before the AO, it was not possible for him to verify the rendering of services. The issue of expenses incurred wholly and exclusively for the purpose of the business has to be seen qua every year and since merely appeal has been allowed for assessment year 2011-12 it cannot be established that expenses in the year under consideration has also been incurred for the purpose of business of the assessee. This factual verification has to be done for the year under consideration which has not been carried out by the Ld. CIT(A) before deleting the disallowance. The Hon'ble Delhi High Court in the case of Jansampark Marketing Pvt. Ltd. (supra) has observed as under:

> *42. The AO here may have failed to discharge his obligation to conduct a proper inquiry to take the matter to logical conclusion. But CIT (Appeals), having noticed want of proper inquiry, could not have closed the chapter simply by allowing the appeal and deleting the additions made. It was also the obligation of the first appellate authority, as indeed of ITAT, to have ensured that effective inquiry was carried out, particularly in the face of the allegations of the Revenue that the account statements reveal a uniform pattern of cash deposits of equal amounts in the respective accounts preceding the transactions in question. This*

necessitated a detailed scrutiny of the material submitted by the assessee in response to the notice under Section 148 issued by the AO, as also the material submitted at the stage of appeals, if deemed proper by way of making or causing to be made a "further inquiry" in exercise of the power under Section 250(4). This approach not having been adopted, the impugned order of ITAT, and consequently that of CIT (Appeals), cannot be approved or upheld.

6.4 Therefore, following the finding of the Hon'ble Delhi High Court in the case of Jansampark Marketing Pvt. Ltd. (supra), we feel it appropriate to restore the issue back to the file of the Assessing Officer with the direction to the assessee to produce all the documentary evidence in support of services rendered by M/s QIEF including correspondence for soliciting business of marketing services rendered including e-mail correspondence etc. The Assessing Officer is at liberty to carry out enquiries deemed fit in the facts and circumstances of the case but shall adjudicate the issue in dispute in accordance with law after considering and verification of the documentary evidence submitted by the assesee. The ground No. 1 of the appeal of the Revenue is accordingly allowed for statistical purposes.

7. The ground No. 2 and 3 of the appeal of the Revenue relates to disallowance of research fee of Rs.2,33,69,884/- deleted by the Ld. CIT(A).

7.1 The facts in brief qua the issue in dispute are that the assessee claimed expenditure on account of research services to its subsidiary company namely Quantum Asset Management Company Pvt. Ltd.(QAMS) amounting to Rs.2,93,69,884/-. The Assessing Officer asked the assessee to produce documentary evidence in support of services rendered by said subsidiary company. The assessee produced some sample papers of research done by QAMS about the companies in respect of whom the assessee advised to its client for investment. According to the Assessing Officer, the scope of research work was quite common which the other research companies had offered in the field of advisory services. According to the Assessing Officer, the payment made to QAMS by the assessee company was excessive. The assessee also could not produce evidence in support of uniform research fee paid for all the 12 months of previous year. The research reports filed by the assessee could not justify huge research fee paid to subsidiary company. Considering these facts the Assessing Officer held that research fee of Rs.60 lakhs per annum was found to be justified for research done by the QAMS and balance amount of Rs. 2,33,69,884 out of total expenditure of Rs.2,93,69,884/- was disallowed. On further appeal, the Ld. CIT(A) deleted the addition on the ground that

neither any discussion nor any analysis was done by the Assessing Officer for restricting the research fee to Rs.60 lakhs per annum. The relevant finding of the Ld. CIT(A) is reproduced as under:

> *"11.1 No discussion was made regarding nature of research work that was being performed and implication of the same with regard to the business of the appellant company. No analysis was made as to why payments so made were being restricted to Rs. 5,00,000/- per month.*
>
> *12. Therefore, in totality, there was no attempt to demonstrate that the expenses incurred were not "for the purpose of business". So long that is not established beyond reasonable doubt, no disallowance can be made u/s 37 of the Act."*

7.2 Before us, the Ld. Counsel for the assessee submitted that ***firstly*** section 40A(2)(b) of the Act is not applicable in the case of the assessee as the relationship as provided for invoking section 40A(2)(a) of the Act does not exits. He submitted that assessee being a company if payment is made to director or his relative then section 40A(2)(a) could be invoked in terms if section 40A(2)(b)(ii) of the Act, but payment has been made to subsidiary company so said provision does not apply. He further submitted that even section 40A(2)(b)(iv) of the Act also does not apply because same applies where payment is made by the subsiding company to holding company but in the case in hand transaction is vice-versa. ***Secondly,*** he submits that the subsidiary company M/s QAMS is also subject to same rate of the tax and therefore, there is no evasion of tax in the process of research fee payment to the subsidiary company. The Ld. Counsel relied on the decision of the **Tribunal in ITA No. 3989/Mum/2017 for assessment year 2012-13**, wherein the Tribunal has set aside the finding of the Assessing

Officer of restricting the research fee expenses to Rs.5 lakhs per month i.e. Rs. 60 lakh per annum.

7.3 We have heard rival submission of the parties and perused the relevant material on record. We find that in the year under consideration, the Assessing Officer has restricted the research fee expenses paid to the subsidiary company to Rs.5 lakhs per month i.e. Rs.60.00 lakhs per annum as against expenses of Rs.2,93,69,884/- claimed by the assessee. Before the Ld. CIT(A) the assessee filed details comparing the research report submitted by the subsidiary company with the identical research report submitted by other company namely 'City Research'. The relevant para of the submissions made before the Ld. CIT(A) is reproduced as under:

> *"1. The difference between the research report provided by QAMC vis-&-is the other brokers is demonstrated hereunder with the following two examples.*
>
> ***Example 1: Research report on 'Larsen & Toubro:***
>
> *• Focusing on long term fundamentals, QAMC" in its report dated 11 March 2014 recommended a hold on fundamentals, CAME prise of INR 1200 and for a Sell target at INR 1311 - a photocopy of the said report of QAMC is forwarded herewith - refer "Appendix-B" (Page Nos. 77 to 88).*
>
> *Citi Research vide its research report dated 22 May 2014 recommended buy on "Larsen & Toubro at a price of NR 1477 with a target price of INR 1752- a photocopy. of the said research report is forwarded herewith - refer "Appendix-B" (Page Nos.*
>
> *In the subsequent period, the stock price of L&T remained flat. On 02nd January 2015, Citi Research became more bullish on the stock and came out with a Buy recommendation at a price of Rs. 1,498 with a target price of INR 1,849 - a photocopy of the said research report is forwarded herewith - refer "Appendix-B" (Page Nos. 106 to 125)*

• On the other hand, having recommended to hold the L&T stock at its earlier price of INR 1,200 for a target of 1311, QAMC recommended a Sell on to the stock in its research report dated 04 September 2014, when the price of the shares were at INR 1,572 - photocopy of the said research report of QAMC is forwarded herewith – refer "Appendix-B" (Page Nos. 126 to 137).

The above illustration shows the disciplined process followed by the research team of QAMC by focusing on long term fundamentals versus near term price momentum which seems to be the basis of the research at Citi Research.

Example 2: Research report on 'Cummins India Limited':

Focusing on long term fundamentals, QAMC in its report dated 06 August 2013 recommended a buy on 'Cummins India limited' at a price of INR 372 with an upside potential of 33% i.e Sell price of INR 496 - a photocopy of the said report of QAMC is forwarded herewith - refer "Appendix-B" (Page Nos. 138 to 146).

This was also at a time when the share price of the company was declining rapidly the same is evident from the chart given in the aforesaid research report.

'Citi Research' a renowned global research house vide its research report dated 09 October 2013 fearing further reduction in the share price of Cummins India Limited' cut its earnings estimates for the company and came out with a recommendation of 'Sell' at a price of INR 402 with a target price of just INR 377

- a photocopy of the research report dated 09 October 2013 of Citi Research is forwarded herewith - refer "Appendix-B" (Page Nos. 147 to 159).

• In the subsequent period, the stock price of 'Cummins India Limited' increased substantially. On 23 May 2014, Citi Research having downgraded the stock to sell earlier, became now bullish on the stock and came out with a Buy recommendation at a much higher prices price of INR 604 reversing it earlier downgrade of the stock - - a photocopy of the research report dated 23 May 2014 of Citi Research is forwarded herewith - refer "Appendix-B" (Page Nos. 160 to 169).

2. Some of the aforesaid report though for a period prior to the year under consideration are submitted just to demonstrate/explain the methodology and to explain the difference. We would like to point out that if desired, the Appellant. Company can also produce the research reports for the year under consideration.

3. We highlight the fact that the Appellant's policy/philosophy for its clients is 'to hold long' i.e. to hold their investments for a long period to be able to encash the gains arising from not only the peak of a business cycle, the investee company's results reflecting it/ indicating it - either

by way of quarterly result, without unnecessarily churning their portfolio - which normally results in an outflow for the investors by way of brokerage 0.3 - 0.75 %, securities transaction tax 0.125% and lastly 'tax on short term capital gains' 15% (which add up to around 15.625% of the gains even when there is a 25% appreciation in the value of an equity share).”

7.4 We find that the issue in dispute is in respect of fair market value of the services rendered. The assessee ***firstly***, claimed that provisions of section 40A(2)(a) are not applicable, but we don’t agree with the same. The section 40A(2)(b)(v) of the Act specifies that if director of a company, to whom payment has been made , has substantial interest in assessee , then also provisions of section 40A(2)(a) are applicable. In the case in hand , the target company being subsidiary company, the director of subsidiary are having substantial interest in the assessee and therefore provisions of section 40A(2)(a) are applicable. The Tribunal in the case of assessee for assessment year 2012-13 has deleted the said restriction of the research expenses by the AO observing as under:

“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 @ 91/2 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) (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) (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 ½ per cent has been allowed though the same has not been dealt with by the AO specifically in the order.

(iv) (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) (v) The sister concern of the assessee M/s Middle East International is also assessed to tax and income assessed for the asst. yr. 19914-92 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) (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 incoming 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 is 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 safety be concluded that the provisions of section 40A(2) do not apply in the present case."

7.5 Thus, the Tribunal held that even if is presumed that payment was excessive, but the subsidiary has been taxed at same rate of tax thus there being tax neutral exercise, there was no case of tax evasion, and hence deleted the disallowance. The issue in dispute in the year under consideration is identical to the issue, which has been adjudicated by the Tribunal in assessment year 2012-13. But in the year under consideration verification is required as how much research fee expenses, combined by the assessee and subsidiary, has been claimed against research fee, for ascertaining any tax evasion and therefore, respectfully following the ratio of the Tribunal (supra) , we restore the issue in dispute to the file of the Assessing Officer for deciding in accordance with law. . The ground No. 2 and 3 of the appeal of the Revenue are accordingly allowed for statistical purpose.

8. In ground No. 4 the Revenue is requesting for restoring the issues in dispute to the Assessing Officer. Since we have already restored the issues in dispute relating to marketing fee and research fee to the file of the Assessing Officer, the ground No. 4 of the appeal of the Revenue stands allowed.

9. In the result, the appeal of the Revenue is allowed for statistical purpose.

Order pronounced in the open Court on 28/11/2023.

Sd/-	**Sd/-**
(RAHUL CHAUDHARY)	**(OM PRAKASH KANT)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai;
Dated: 28/11/2023
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

//True Copy//

(Assistant Registrar)
ITAT, Mumbai