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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 18.10.2023
Judgment pronounced on: 01.11.2023

+ **ITA 588/2023**

PRINCIPAL COMMISSIONER OF INCOME TAX DELHI-1

..... Appellant
Through: Mr Kunal Sharma, Sr Standing
Counsel with Ms Zehra Khan,
Standing Counsel.

versus

M/S CHRYS CAPITAL INVESTMENT ADVISORS (INDIA) PVT.
LTD. Respondent
Through: Mr Mayank Aggarwal, Adv.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE GIRISH KATHPALIA
[Physical Hearing/Hybrid Hearing (as per request)]

GIRISH KATHPALIA, J.

1. By way of this appeal brought under Section 260A of the Income Tax Act, the revenue has assailed order dated 19.04.2022 of the learned Income Tax Appellate Tribunal whereby appeal of the respondent/assessee was partly allowed. In the Memorandum of Appeal, the appellant/revenue proposed the following issues to be deliberated upon by us:

“I. Whether, on the facts and in circumstances of the case and in law, the Ld. ITAT is justified in directing to exclude certain comparables simply by following the judgment of the Hon'ble High Court in the assessee's own case for AY 2007-08 to 2009-10,



without appreciating that for selection of comparables for determination of arm's length price of an International transaction, the exercise contemplated under Section 92C of the Income-Tax Act, 1961 r/w Rule 108 of the Income Tax Rules, 1962, needs to be carried out on case to case basis and also comparable to comparable basis and depends upon the assessee specific functions, assets and risk (FAR) analysis.

II. Whether in the facts and circumstances of the case, the Ld. ITAT was correct in excluding the comparable of M/s IM + Capital Ltd. (formerly known as Brescon Corporate Advisory Ltd.) & whether such exclusion was in contravention of the provision of Rule 10(B)(2) of the Income Tax Rules, 1962, which specifies the factors to be considered for judging comparability.

III. Whether in the facts and circumstances of the case, the Ld. ITAT was correct in excluding the comparable of M/s Keynote corporate services Ltd. & whether such exclusion was in contravention of the provision of Rule 10B(2) of the Income Tax Rules, 1962 which specifies the factors to be considered for judging comparability.”

In the backdrop of above proposed questions, we heard learned counsel for both sides.

2. Briefly stated, circumstances leading to the present appeal are as follows.

2.1 The respondent/assessee, a company engaged in providing investment advisory services to its overseas Associated Enterprise (AE), earned revenue of Rs.48,49,75,777/- during the financial year concerning the Assessment Year (AY) 2011-12.

2.2 For the purposes of benchmarking its transactions with the AE, the respondent/assessee selected Transactional Net Margin Method (TNMM) as the most appropriate method and for that purpose, selected four companies



as comparables. Applying the profit level indicator of operating profit to operating cost, the mean margin of the comparables was worked out at 6.28%.

2.3 The margin shown by the respondent/assessee being much higher, to the tune of 25.84%, the Transfer Pricing Officer (TPO) did not accept the benchmarking, though accepted the TNMM as the most appropriate method with the operating profit to operating cost as profit level indicator. The TPO opined that the respondent/ assessee had not applied appropriate qualitative and quantitative filters, which had led to exclusion of functionally similar comparables and inclusion of companies which are not comparable.

2.4 That being so, the TPO proceeded to select fresh comparables independently and in that process short listed 13 companies as comparables with average margin of 43.01%. In the said process, out of four comparables selected by the respondent/assessee, three were accepted and one was rejected by the TPO. On the basis of average margin of the selected comparables, the TPO proposed an upward adjustment to the arms length price (ALP) and the same was incorporated in the draft assessment order dated 31.12.2014.

2.5 Aggrieved by the draft assessment order, the respondent/assessee filed an application before the Dispute Resolution Panel (DRP) and in terms with order dated 29.09.2015 of DRP, the respondent/assessee was called upon by the TPO to submit computation of risk adjustment in respect of two comparables namely IM+ Capital (formerly known as Breskon Corporate



Advisors) and Keynote Corporate Services Limited and to also give working capital adjustment, but the respondent/assessee vide letter dated 26.10.2015 asked the TPO to complete the process at the level of the latter.

2.6 As such, the TPO, following the recommendations of the DRP, carried out working capital adjustments and recomputed arms length price, which led to the Assessment Order dated 30.11.2015 under Section 143(3) read with Section 144C of the Act at an assessed income of Rs.23,78,88,160/- after making additions/adjustments of Rs.11,82,53,407/- as against the previous adjustments of Rs.13,79,85,005/-.

2.7 Aggrieved by the Assessment Order dated 30.11.2015, the respondent/assessee filed an appeal before the learned Tribunal, which was disposed of vide order dated 17.05.2019. Thereafter, on a miscellaneous application filed by the respondent/assessee, the learned Tribunal took note of rectifiable mistakes and consequently recalled the appeal order for limited purposes of deciding five grounds mainly pertaining to the issue of applicability of certain filters while selecting comparables and risk adjustment. After hearing both sides, the learned Tribunal passed the impugned order dated 19.04.2022.

2.8 Hence the present appeal.

3. Broadly speaking, in the impugned order the learned Tribunal held that in consonance with the earlier decision of a coordinate bench of the Tribunal pertaining to the respondent/assessee for Assessment Year 2009-



10, the comparable namely Motilal Oswal Advisors Pvt. Ltd. could not be excluded; that the other comparable IM+ Capitals Ltd. had consistently been rejected as a comparable in the case of respondent/assessee for AY 2006-07, 2007-08 and 2009-10 by not just a coordinate bench of the Tribunal but also by the High Court, so the said company was liable to be excluded from the list of comparables; and that the third comparable Keynote Corporate Services Ltd. was liable to be rejected on account of its extremely volatile operating margin, for which reason it was rejected as comparable in the case of the respondent/assessee for AY 2007-08 and 2009-10.

4. During arguments, learned counsel for appellant/revenue took us through the above matrix and contended that the impugned order is not sustainable in the eyes of law. It was argued by learned counsel for appellant/revenue that selection of comparables for determination of arms length price of an International transaction has to be carried out on case to case basis, so the learned Tribunal erred in exclusion of certain comparables going simply by the judgment of the jurisdictional High Court in the case of respondent/assessee pertaining to the AY 2007-08 to 2009-10. Per contra, learned counsel for the respondent/assessee contended that the appeal is devoid of merit as no question of law is raised.

5. The impugned order clearly shows that the learned Tribunal not just followed the previous orders mentioned above to maintain consistency, but also examined the entire material on record to ascertain the comparability of each of the comparables with the case of the respondent/assessee pertaining to AY 2007-08.



6. Besides, the appellant/revenue has not been able to demonstrate change, if any, in circumstances qua the respondent/assessee and/or any of the comparables in the financial year in question vis-à-vis the earlier years. There is not even a whisper alleging any such change while calling upon fresh analysis of comparability.
7. We have not been shown that the Tribunal committed any perversity in reaching the conclusion it reached in the matter.
8. In view of the aforesaid, we find no question of law, much less substantial question of law involved in this appeal to be answered by us.
9. The appeal is accordingly dismissed.

**GIRISH KATHPALIA
(JUDGE)**

**RAJIV SHAKDHER
(JUDGE)**

NOVEMBER 01, 2023

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