IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1599 OF 2014

The Commissioner of Income Tax-4 .. Appellant

v/s.

M/s. J.P. Morgan India Pvt. Ltd. .. Respondent

Mr. A.R. Malhotra a/w Mr. N.A. Kazi for the appellant
Mr. Perdy Pardiwala, Senior Counsel a/w Ms. Jasmine Amalsadvala for the respondent

CORAM : S.V. GANGAPURWALA &
A.M. BADAR, J.J.

DATED : 7th JULY, 2017

P.C.

1. This appeal pertains to Assessment Year 2002-03.

2. The appellant assails the order passed by the Tribunal to the extent it confirmed the order of the Commissioner with regard to deletion of an amount of Rs.74,79,266/-.

3. Mr. Malhotra, the learned Counsel for the appellant strenuously contends that the appellant is engaged in the business of merchant banking, stock broking and dealing in other securities and

in providing related financial and advisory services.

4. According to the learned counsel, the matter was referred to the Transfer Pricing Officer (TPO) under Section 92CA of the Income Tax Act to compute the Arms Length Price (ALP) in relation to the international transactions. The TPO passed an order under Section 92CA(3) wherein the Transfer Pricing adjustment of Rs.74,79,266/- was made. Pursuant thereto, the Assessing Officer passed the assessment order in accordance with the order of the Transfer Pricing Officer making addition of Rs.74,79,266/-. The Commissioner of Income Tax (Appeals) [CIT(A)] on erroneous premise, substituted its own view. According to the learned Counsel, though the Commissioner accepted that the Transaction Net Margin Method (TNMM) as was suggested by the assessee was not an appropriate method and CUP method, which is accepted by the TPO and the AO, is correct one. However, committed an error making T.P. adjustment. The reasoning given by the Assessing Officer is plausible one and based on reasons. There are two primary types of settlement mechanism i.e. Delivery Verses Payment (DVP) and Direct Custodian Settlement (DCS). The Assessing Officer has considered that the

reasoning given by the assessee in respect of the transaction with unrelated parties that research is required, so also more risk is involved is unsustainable. Inasmuch as, in giving advice whether it is for the related parties or unrelated parties, the same research would be required. The TPO has considered the said aspect in a proper manner. Considering the entire transactions, the Assessing Officer had rightly arrived at the conclusion. The learned Counsel further submits there was an error on the part of the Commissioner to observe that the Assessing Officer also accepted the adjustment to be made. The said finding is improper and against that record. The Tribunal also committed an error in accepting the same. The Assessing Officer considered the average brokerage rates charged for uncontrolled transaction as 0.56% in DVP trades and calculated the average brokerage rate. The Arms Length Price along with price was calculated based on the aforesaid rates. No error was committed by the TPO *inter alia* the Assessing Officer. There was no reason for the CIT(A) and Tribunal to interfere.

5. Mr. Pardiwala, the learned Senior Counsel for the respondent submits that the TNMM adopted by the assessee was not accepted by

the TPO nor by the Commissioner and the Tribunal. The Commissioner and the Tribunal accepted the CUP method for determination of the Arms Length Price. The adjustment was made by the Assessing Officer / TPO, the same has been considered. However, the CIT(A) found that the adjustment which is made by the Assessing Officer is improper and gave reasons for adjustment to be made. The CIT(A) was dealing with the facts. The Assessing Officer had accepted that there are differences. The Assessing Officer had made the adjustment. The difference in functions and risk have been considered by the CIT(A) *inter alia* the Tribunal and thereby have arrived at the conclusion, though the case of the petitioner of TNMM being appropriate method, has been negatived.

6. We have considered the submissions canvassed by the learned Counsel for the respective parties. The present appeal can only be entertained on substantial question of law. The CIT(A) and the Tribunal have concurrently accepted the case that there are difference in functions performed so also the risk undertaken by the assessee with respect to the transaction between related and unrelated parties. It is further considered that the rates charged by

the assessee to related and unrelated parties cannot be the same and by making appropriate adjustments to the rates charged by the assesses to the related and unrelated parties, the CUP method can be used. The CIT(A) and the Tribunal accepted that the difference in rates with regard to the transactions with the related and unrelated parties are on account of various factors. The efforts of research personnel in the case of related parties based on time spent was approximately 20% lower than that of unrelated parties. The sales trading efforts for related parties was 20% of the efforts required for unrelated parties since no sales persons were dedicated towards building and fostering clients relationship. The additional cost incurred in transaction with unrelated parties vis-a-vis related parties was accepted *inter alia* difference in brokerage charged to related and unrelated parties.

7. The findings arrived at by the CIT(A) on appreciation of facts and record, are the findings of fact which the Tribunal has also accepted. The said concurrent findings arrived at by the CIT(A) and the Tribunal are based on appreciation of factual matrix and the same does not give rise to any substantial question of law. The

provisions of Section 92C r/w Rule 10B of the Act have been considered and applied in a plausible manner.

8. Accordingly, no substantial question of law arises. The appeal stands dismissed. No costs.

(A.M. BADAR, J.) **(S.V. GANGAPURWALA, J.)**