$~44, 45 & 55

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **ITA 74/2019 & CM No.3937/2019**

THE PR. COMMISSIONER OF INCOME TAX -3... Appellant

versus

D.E. SHAW INDIA ADVISORY SERVICES P. LTD. ..... Respondent

\+ **ITA 75/2019 & CM Nos.3938-39/2019**

THE PR. COMMISSIONER OF INCOME TAX -3... Appellant

versus

D.E. SHAW INDIA ADVISORY SERVICES P. LTD. ..... Respondent

\+ **ITA 70/2019 & CM Nos.3774-75/2019**

THE PR. COMMISSIONER OF INCOME TAX -3... Appellant

versus

D.E SHOW INDIA ADVISORY SERVICES P. LTD. ..... Respondent

Present : Ms. Vibhooti Malhotra, Advocate for the appellant.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE PRATEEK JALAN

O R D E R

% **28.01.2019**

The Revenue in these three appeals questions the decision of the ITAT for various assessment years – primarily arguing that the Arms-Length Price (ALP) determination carried out, in the course of transfer pricing exercise under Section 92CA(3) of the Income Tax Act, and approved by the impugned order, is flawed.

The assessee, which is engaged in investment advisory services, for all the relevant years i.e. A.Y. 2010-11; 2011-12 and 2012-13, filed its Transfer Pricing Reports in which it claimed that Transactional Net Margin Method (TNMM) was the most appropriate method (MAM), for the purpose of transfer pricing analysis. The assessee had cited seven comparable entities, in its Transfer Pricing Report (TPR). The Transfer Pricing Officer (TPO) carried out adjustments which became the subject of dispute – the assessee carried the matter to the Dispute Resolution Panel (DRP) which then remitted the issue to the TPO for making working capital adjustments. Upon completion of the working capital adjustments exercise, the final assessment order was made. The assessee appealed to the ITAT which held that the three comparable entities, included by the TPO in the course of his analysis, were not appropriate.

In so concluding, the ITAT noted that the three entities (M/s Brescon Advisors &Holdings Ltd.; Keynote Corporate Services Ltd. and Motilal Oswal Investment Advisors Pvt. Ltd.) broadly or primarily carried out merchant banking activities rather than investment advisory business which is what the assessee was primarily into.

It is contended on behalf of the Revenue that the assessee itself had placed reliance on three comparables (Cyber Media Research Limited; Future Capital Investments and ICRA Management Consulting Services Ltd.), which were dissimilar, broadly speaking. Learned counsel contended that the transfer pricing starts between comparables on the basis of broad financial similarities rather than narrowing down the activities in question in the first instance. That the assessee had brought into the field three companies which were not primarily into the investment advisory activity itself disclosed that the approach adopted by the TPO was not at fault.

Having carefully considered the submissions of the Revenue, this Court is of the opinion that no substantial question of law arises in this case. What the Revenue urges here is that even though the three entities (M/s Brescon Advisors &Holdings Ltd.; Keynote Corporate Services Ltd. and Motilal Oswal Investment Advisors Pvt. Ltd.) do not carry out business activities which are similar as to be called as "comparable entities", nevertheless, the assessee's transgression, if one may so categorize it, in including other entities as comparables which did not *per se* or primarily carry out investment advisory activity but carried it out partly, is a sufficient ground for the inclusion of these three entities (M/s Brescon Advisors &Holdings Ltd.; Keynote Corporate Services Ltd. and Motilal Oswal Investment Advisors Pvt. Ltd.). This Court is of the opinion that the exercise of inclusion or exclusion of the comparables *per se* does not involve a question of law unless the approach of any of the Revenue authorities or the Tribunal, is unreasonable or excludes some relevant factors or takes into account relevant factors, extraneous to Rule 10B, 10C and 10D of the Income Tax Rules.

For the above reasons, this Court is satisfied that there is no merit in these appeals which are accordingly dismissed.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

JANUARY 28, 2019
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