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

INCOME TAX APPEAL NO. 1482 OF 2017

The Pr. Commissioner of Income
Tax – 14 ….Appellant

V/s.

Mount Kellett Capital Management
India Pvt. Ltd. (Now Known as
LIIP Advisory India Pvt. Ltd.) …Respondent

Mr. Suresh Kumar for Appellant.
Ms. Priyanka Bora i/b Mr. Atul K. Jasani for Respondent.

CORAM : K.R. SHRIRAM &
AMIT B. BORKAR, JJ.
DATED : 17th NOVEMBER 2021

P.C. :

1. The following three substantial question of law has been proposed in this appeal.

QUESTION OF LAW

1. Whether on the facts and circumstances of the case and in law, the Honourable ITAT was justified under Rule 10B (2)(b), in directing the AO/TPO to exclude M/s. Motilal Ostwal Investment Advisors Pvt. Ltd. from the set of comparable companies by relying on the decisions of Carlyle India Advisors Pvt. Ltd. for A.Y. 2010-11 and Sparkles Dhando Advisors Pvt. Ltd. (ITAT/1047/M/2015-A.Y. 2010-11, dated 31.12.2015) without appreciating the facts, which brought on record that both the companies are providing advisory services and their activities similar to the activity of the assessee?

2. Whether for the purpose of establishing functional comparability of M/s. IDFC India Advisors Ltd. under Rule 10B(2), the Honourable ITAT was correct in concluding that the said company is not comparable to the assessee by relying on the decision in the case Carlyle India Advisors Pvt. Ltd. for A.Y. 2010-11 and Sparkles Dhando Advisors Pvt. Ltd. (ITA/1047/ M/2015 – A.Y. 2010-11, dated 31.12.2015) without appreciating the fact that as per the notes to accounts – para 4, it operates in only one segment, of providing investment advisory services and without appreciating the fact that the comparable company also earned substantial revenue (49.85%) from similar activities i.e. non binding investment advisory in financial sector?

3. Whether on the facts and circumstances of the case and in law, the Honourable ITAT was justified under Rule 10B(2)(b) in directing the AO/ TPO not to consider the case of ICRA Online Ltd. as comparable relying on the decision in the case of AGM India Advisors Pvt. Ltd. without appreciating the fact that the comparable also engaged in investment, research and advisory services, which is similar to the activity of the assessee company?

2. We have perused findings of the Income Tax Appellate Tribunal (ITAT) with the assistance of Mr. Suresh Kumar and Ms. Priyanka Bora. The findings of ITAT we noticed is entirely one of fact and the revenue has failed to show as to how the findings of the fact arrived at by the ITAT is perverse in any manner. While undertaking the exercise to arrive at the arm's length price which is essentially a matter of estimate of the fair value which the Indian Company had paid or had received from its Associate Enterprise (A.E.), such exercise is required to be undertaken by the Transfer Pricing Officer (TPO) on the basis of the facts and figures relating to comparable cases of other similarly placed entities, whose relevant data is available in the public domain. As per the provisions of the Act and the Rules, the assessee company is required to furnish its own Transfer Pricing Analysis and the list of chosen comparables which may or may not be agreed to by the Revenue Authorities and they would introduce some more comparables rejecting the comparables given by the assessee company by applying certain filters like Related Party Transactions (RPT) filter, turnover filter, export earnings filter, employee cost filter, etc. to bring them within the comparable range of the cases of such comparables and generally there would be a disagreement between the assessee and the revenue in such a

situation. Therefore, the entire exercise of making transfer pricing adjustments on the basis of comparables is nothing but a matter of estimate of a broad and fair guess-work of the authorities based on factual relevant materials brought before the authorities, i.e., the TPO or Dispute Resolution Panel (DRP) or ITAT, which are the fact finding authorities. We are supported in this view by two judgments of this court in ***Pr. Commissioner of Income Tax-6 Vs. M/s Eight Roads Investment Advisors Pvt Ltd.***[1] (Unreported) and ***The Pr. Commissioner of Income Tax-1 Vs. Barclays Technology Centre India Pvt Ltd.***[2] (Unreported).

3. In our view, the ITAT has not committed any perversity or applied incorrect principles to the given facts and when the facts and circumstances are properly analysed and correct test is applied to decide the issue at hand, then, we do not think that questions as pressed raises any substantial questions of law.

4. The appeal is devoid of merit and is dismissed with no order as to costs.

(AMIT B. BORKAR, J.) **(K.R. SHRIRAM, J.)**

1 Dated 27th February 2020 in ITXA No.1125 of 2017
2 Dated 26th June 2018 in ITXA No.1384 of 2015