

\$~51

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

+ ITA 146/2020

PR. COMMISSIONER OF INCOME TAX-06 Appellant
Through Mr. Ruchir Bhatia, Advocate

versus

M/S MCKINSEY KNOWLEDGE
CENTRE INDIA (P) LTD Respondent
Through Mr. Porus Kaka, Senior Advocate
with Mr. Harpreet Singh Ajmani and
Mr. Divesh Chawla, Advocates.

% Date of decision: 12th October, 2021.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE NAVIN CHAWLA

MANMOHAN, J. (Oral)

The hearing has been conducted through video conferencing.

1. Present appeal has been filed by the Department challenging the judgment and order dated 16th September, 2019 passed by the Income Tax Appellate Tribunal (hereinafter referred to as 'ITAT') in ITA No.7348/DEL/2018 for Assessment Year 2014-2015.

2. The appellant in the present appeal has sought framing of the following questions of law:-

1. Whether the order of ITAT was perverse on facts directing to exclude Aditya Birla Capital Advisors Pvt. Ltd. as this company performs similar functions as that of the assessee?

2. Whether the order of ITAT was perverse on fact directing to delete adjustments made on account of interest on receivables?
3. Mr. Ruchir Bhatia, learned counsel for the appellant, submits that the ITAT erred in excluding Aditya Birla Capital Advisors Pvt. Ltd, (for short 'ABCL') as a comparable since it is engaged in providing financial advisory services and management services which require procurement and analysis of data, and final result, which is similar to the function performed by the assessee company.
4. He further submits that the ITAT has erred in deleting transfer pricing adjustment made on account of interest on receivables. He submits that the ITAT has failed to appreciate that deferred payment or receivable or any other debt arising during the course of business money is held to be an 'international transaction' within the meaning of Section 92B(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
5. He also submits that the ITAT has failed to appreciate that Section 92B of the Act makes it evident that an arrangement between two Associated Enterprises (for short 'AE') for allocation or apportionment of or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises is an international transaction.
6. *Per contra*, Mr. Porus Kaka, learned senior counsel for the respondent, states that the activity of advising investment management performed by Aditya Birla Capital Advisors is quite distinct from the services provided by the assessee under the transaction of research and information services. He emphasises that the first proposed question of law is covered against the

Department by the judgments of this Court in ITAs No. 461/2017, ITA 526/2017, ITA 590/2017 and ITA 82/2018.

7. As regards the second proposed question of law, without prejudice to the argument that outstanding receivables are not an “international transaction”, learned senior counsel for respondent submits that there were no outstanding receivables itself in the present case.

8. He points out that during the Transfer Pricing Proceedings, the respondent had filed a chart containing details of money received corresponding to invoices raised on AEs.

9. He contends that the Transfer Pricing Officer while making the adjustment on account of the delay in receiving the outstanding has only considered invoices/receivables paid beyond sixty days for making a notional interest adjustment ignoring payments/receivables made in advance. He states that if the adjustment is to be computed for interest, the same should be computed considering the weighted average of all receivables. He points out that the weighted average period of recovery days works out to negative twenty-two days.

10. He emphasises that the Tribunal after noting the statement showing the respondent has received more in advance than outstanding and the financial statements of the respondent verified the balance sheet and noted that the respondent is a debt-free company. Therefore, according to him, in such circumstances, the respondent does not have any borrowing for its business activity and is a debt-free company.

11. Having heard learned counsel for the parties, this Court is of the view that the first proposed question of law by the Department is squarely covered in favour of the respondent-assessee vide this Court’s order dated

9th August, 2018 in ITAs No.590/2017 and 82/2018 for Assessment Year 2011-12 and Assessment Year 2012-13 wherein this Court had dismissed the appeal filed by Income Tax Department/appellant on the exclusion of ABCL from the list of comparables, as functions performed by ABCL as a fund manager were wholly different from that of the respondent and also with a totally different risk profile.

12. This Court is also of the opinion that under no transfer pricing norm, principle or evaluation of any “benefit” can there be a one-sided adjustment taking into account delayed invoices while at the same time ignoring invoices/payment received in advance. Consequently, factually there can be no notional computation of ‘delayed receivables’ only ignoring the receivables received in advance.

13. A perusal of paper book reveals that most of the invoices/receivables had been paid significantly in advance. When the period for which the amounts of receivables received in advance enjoyed by the respondent is seen vis-a-vis the amount receivable beyond sixty days, it is apparent that the respondent has received significantly more advance rather than outstanding receivable beyond sixty days.

14. Consequently, on the facts and circumstances of the case, the notional interest relating to alleged delayed payments in collecting receivables from the AEs is uncalled for as in fact, there are no outstanding receivables as the amount received in advance far outweighs the amount received late.

15. The question as to whether in a given case transfer pricing adjustment on ‘delayed receivables’, could apply even to a debt-free company or not, hence does not arise on facts and is left open.

16. Keeping in view the aforesaid conclusions, this Court is of the view that no substantial question of law arises in the present case. Accordingly, present appeal is dismissed.

17. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

NAVIN CHAWLA, J

OCTOBER 12, 2021

js

