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

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Date of Decision : 24.12.2025

+ **ITA 778/2025 CM APPL. 81589/2025**

PR. COMMISSIONER OF INCOME TAX -7, DELHI

.....Appellant

Through: Mr. Puneet Rai, SSC, Mr. Gibran,
JSC and Mr. Ashvini Kumar and Mr.
Rishabh Nangia, Advs.

versus

M/S TCK ADVISERS PVT. LTD.

.....Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE VINOD KUMAR

V. KAMESWAR RAO , J. (ORAL)

1. This appeal filed under Section 260A of the Income Tax, 1961 (the Act) by the appellant/revenue lays challenge to an order dated 11.11.2019 passed by the Income Tax Appellate Tribunal (ITAT) in ITA 908/DEL/2015.
2. The appeal relates to the Assessment Year (AY) 2010-11. The appeal before ITAT was a challenge to the order dated 28.01.2015 passed by DCIT, Circle(1), New Delhi.
3. The grounds raised by the appellant/revenue before the ITAT are reproduced as under:-



“1. On the facts and in the circumstances of the case, the DRP-II erred in directing to reduce the addition of Rs. 6,67,02,130/- on account of proposed additions of arm's length price of the international transaction with its associated enterprises.

2. The appellant craves, leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of appeal.”

4. The facts as noted are that the assessee/respondent was providing investment advisory services to its Associated Enterprises (AE) Trikona Advisors Mauritius Limited (Trikona, in short). Funds Manager as per Consultancy Agreement dated 01.04.2008 entered between the assessee and Trikona. The assessee was engaged to provide investment advisory services to Trikona as single client and accordingly 100% of its revenue of Rs. 13,43,38,418/- was derived from the export of services and there was no domestic revenue.

5. During the Financial Year 2009-2010, assessess provided investment advisory services to its AE in the nature of investment recommendations primarily in real estate sector in India, which were not binding in nature and served as back office for its AE. From the note on function/activities undertaken by the assessee, the assessee acts as a back office of Trikona, with certain specific manpower, skills sets in finance, legal, engineering and asset management, for providing such services, the assessee charged its AE on cost plus arrangement thereby eliminating any risk on the assessee unlike other companies carrying on advisory business like investment, banking etc., working on multiple clients and thereby undertaking various risks.

6. It was noted by the ITAT that, under such cost plus arrangement, all risks in the form of market/business risk, credit and collection risk, capacity



utilisation risk, service liability risk, human resource management risk as well as foreign exchange fluctuation risk was borne by AE and not by the assessee company.

7. The assessee company was a debt free company and its entire capital requirement was supported by AE in the form of advances against the services as provided by the assessee. In support of Arms Length Price charged by assessee company to its AE, assessee relied upon TPO study report as per which average operating margin of seventeen comparable companies worked out to 8.01%, which was below the operating margin of 11.46% as declared by the tested party, therefore, the price charged by the assessee company from AE was at Arms Length Price.

8. The TPO recommended upward adjustment of Rs. 3,33,32,572/- on account of transfer pricing. The Assessing Officer (AO) accepted the recommendations of the TPO. The assessee filed objections before the DRP; the DRP vide directions dated 01.12.2014, partially allowed the objections of the assessee and directed the AO to reduce the addition of Rs. 6,67,02,130/- on account of proposed addition of Arms Length Price of the international transaction with its AE.

9. The case of the appellant/revenue before the ITAT was that the DRP had erred in excluding six comparables and the TPO had rightly applied proper filter and thereafter included these comparables. In other words, it is the case of the revenue that the TPO's order should have been upheld. It was also stated that DRP admitted in paragraph 7.1 of the directions that, no exact comparable is available in reality.

10. The comparables as highlighted by the revenue are the following:-

“(i) *Ajcon Global Services Ltd. : The Ld. DR*



submitted that the services provided by this company are broadly similar to the services being provided by the assessee company. Therefore, this company has to be used as a comparable. The Ld. DR relied upon the findings of the TPO.

(ii) Brescon Corporate Advisors Global Services Ltd.: Since this company is not undertaking any fund based activities earning income for it, hence, it is a correct comparable as it is providing intermediation and advisory services of Debt Resolution and Recapitalization, Debt syndication and Other Corporate Financial Services which are in the nature of financial advisory services. Hence, it is a correct comparable. The TPO further observed that a temporary dip in revenue in one year does not matter, in fact revenue had increased in FY 2008-09 and its revenue had dipped only marginally in FY 2009-10. Thus, the Ld. DR submitted that this comparable be retained.

(iii) Karvy Investors Services Ltd.: The Ld. DR submitted that this comparable is already rejected by the TPO.

(iv) Kshitij Investment Advisory Co. Ltd.: The Ld. DR submitted that realignment of this comparable is only in respect of one customer and that too has effect for 3 months only which is 25% of the period. Hence, it will not have substantial impact. The TPO has taken corrected margin of 79.60 to chose it in final list of comparables.

(v) Motilal Oswal Investment Advisors Pvt. Ltd.: The company has total equity of Rs. 15.98 crores and does not have any debt. The TPO rightly rejected the supernormal profits and fluctuating margins and therefore, selected as comparable.

(vi) Pushpak Financial Services Ltd.: The TPO rightly considered that 90.56% revenue is from consultancy services segment only. Hence, the company has been considered comparable at the



company level and not at segmental level. Further, income from trading of shares and investing activity has not been taken into account while calculating operating margin (OP/OC). There is no substantial decrease in this year in respect of the income derived from consultancy services. Thus, this comparable was rightly selected in the final list by the TPO.”

11. On the other hand, the case of the respondent was that, as the revenue had not specifically challenged the directions of the DRP for excluding the six companies from the list of comparables and consequently any challenge is misconceived, therefore the appeal deserve to be dismissed. The respondent/assessee agrees that the DRP had given valid reasons for excluding those six companies/comparables.

12. Suffice to state that the reasoning given by the DRP for excluding the six comparables are as under:-

“(1) Ajcon Global Services Limited

The Company is engaged in stock market and DP operations, providing consultancy and advisory services and security trading activities. Higher risk undertaken by such service provider company, since total debtors is about 75.58% of total turnover of such company, whereas the total debtors of tested party are only about 0.018% of its total turnover. Further capital employed of such company is more than 17 times of capital employed of tested party. This company fails the functional test since about 50% of its income is earned from stock market and DP operations as well as profit from securities trading activities whereas the tested party does not carry out or have any income from such type of activities. This Company carries on fund based activities also and the therefore its earning is not on account of its personnel only but also on account of its capital and hence is not comparable with the tested party. This



proposition/filter has been used by the TPO for rejecting Karvy Investors Services Ltd as a comparable Company but omitted to apply such proposition/ filter in this case. As held by Mumbai ITAT in the case of Temasek Hording Advisors India P Ltd. vs. Dy. CIT, Ajcon Global Services Ltd. is not comparable to the Appellant (carrying investment advisory services) since such Company's major activities is in field other than financial advisory services. Moreover, segmental information regarding fund and non-fund based financial activities of this Co. are not available from its financial statements and hence on this basis, it cannot be considered a comparable Company. As about 50% of this Company's income was earned from stock market and DP operations as well as profit from securities trading activities, accordingly consultancy provided by this company does not meet the service revenue filter of 75% as adopted by TPO. Percentage of export income of this company is nil out of total turnover whereas income of tested party is 100% from exports. Accordingly this company is to be excluded on the basis of 75% export turnover filter. Accordingly, as per Rule 10(B)(2) of I.T. Rules, this company is to be excluded from the list of comparable companies.

(2) Brecon Corporate Advisors Ltd. (Name of the Co. has been incorrectly mentioned by TPO as Brescon Advisors and Holdings Ltd.: The company is engaged in intermediation and advisory services of debt resolution & re-capitalisation, debt syndication and other corporate financial services. Higher risk undertaken by such service provider company, since total debtors is about 32.81% of total turnover of such company, whereas the total debtors of tested party are only about 0.018% of its total turnover. Further capital employed of such company is more than 10 times of capital employed of tested party. This company fails the functional test since 100% of its income is earned from Debt Resolution & Debt Syndication whereas the tested party does not carry out or have any income from such kind of



operations/activities. As held by Mumbai ITAT in the case of *Temasek Holding Advisors India P Ltd. vs. Dy. CIT, Brescon Corporate Advisors Ltd.* is not comparable to the Appellant (carrying investment advisory services) since such Co.'s major activities is in field other than financial advisory services. As income from consultancy services was Nil and the entire income of Rs.19,10,48,799/- was derived from debt resolution and debt syndication, 24 which is generally charged as per success fee model and hence commands higher margins on account of high risk undertaken when compared with low margin non-binding investment advisory services provided by the Assessee. Percentage of export income of this company is about 1% out of total turnover whereas income of tested party is 100% from exports. Accordingly this company is to be excluded on the basis of 75% export turnover filter. Accordingly, as per Rule 10(B)(2) of I.T. Rules, this company is to be excluded from the list of comparable companies test.

(3) Karvy Investors Services Ltd.

This company is engaged in providing merchant banking services in India. Higher risk undertaken by such service provider company, since total debtors is about 6.68% of total turnover of such company, whereas the total debtors of tested party are only about 0.018% of its total turnover. Further capital employed of such company is more than 17 times of capital employed of tested party. This company fails the functional test since it provides merchant banking services whereas the tested party does not carry out or have any income from the above mentioned kind of services/activities. Hence, this merchant banking services Co. cannot be compared with the tested party which is providing investment advisory services as held by ITAT Mumbai in *Acumen Fund Advisory Services India (P) Ltd. vs. Dy. CIT.* As income from consultancy services was Rs.2,09,65,732/- (i.e. about 30.57% of this company's total income of Rs.6,85,75,179/-which included other activities,



accordingly consultancy provided by this company does not meet the service revenue filter of 75% as adopted by the TPO. Percentage of export income of this company is nil out of total turnover whereas income of tested party is 100% from exports. Accordingly this company is to be excluded on the basis of 75% export turnover test. The TPO concluded that this company does not meet the services revenue filter and hence is not comparable with the tested party. However, it appears that while computing ALP, the TPO has inadvertently included this company as one of the comparable companies with the tested party. Accordingly, as per Rule 10(B)(2) of I.T. Rules, this company is to be excluded from the list of comparable companies.

(4) Kshitij Investment Advisory Co. Ltd. :

The Company is engaged in investment advisory activity. Higher risk undertaken by such service provider company, since total debtors is about 40.49% of total turnover of such company, whereas the total debtors of tested party are only about 0.018% of its total turnover. Further capital employed of such company is more than 8.50 times of capital employed of tested party. Percentage of export income of this company is 55% which is less than 75% of total turnover whereas income of tested party is 100% from exports. Accordingly this company is to be excluded on the basis of 75% export turnover test. Accordingly, as per Rule 10(B)(2) of I.T. Rules, this company is to be excluded from the list of comparable companies. Moreover, this company has undertaken much higher risks by deploying capital of more than 8.50 times as compared with the capital deployed by the tested party.

(5) Motilal Oswal Investment Advisors Pvt. Ltd. :

The Company engaged in different business verticals viz. equity capital markets, mergers and acquisitions, private equity syndications and structured debt. Higher risk undertaken by such service provider company, since total debtors is about 31.03% of total turnover of such



company, whereas the total debtors of tested party are only about 0.018% of its total turnover. Further capital employed of such company is more than 2.80 times of capital employed of tested party. This company fails the functional test since it is engaged in the equity capital markets, mergers and acquisitions, private equity syndications and structured debt and derives whereas the tested party does not carry out or have any income from the above type of services. Percentage of export income of this company is 49% which is less than 75% of total turnover whereas income of tested party is 100% from exports. Accordingly this company is to be excluded on the basis of 75% export turnover test/filter. Accordingly, as per Rule 10(B)(2) of I.T. Rules, this company is to be excluded from the list of comparable companies.

(6) Pushpak Financial Services Ltd.

This Company is registered as NBFC with RBI. Higher risk undertaken by such service provider company, since total debtors is about 21.07% of total turnover of such company, whereas the total debtors of tested party are only about 0.018% of its total turnover. Further capital employed of such company is more than 17 times of capital employed of tested party. This company fails the functional test since it is deriving its income from NBFC activities including from trading in shares/derivative transactions, whereas the tested party is not an NBFC and accordingly is not permitted to nor it carries out or has any income from operations/activities that are carried out by NBFC. This Co. carries on fund based activities also and the therefore its earning is not on account of its personnel only but also on account of its capital and hence is not comparable with the tested party. This proposition/filter has been used by the TPO for rejecting Karvy Investors Services Ltd as a comparable Company but omitted to apply such proposition/filter in this case. Moreover segmental information regarding fund and non-fund based financial



activities of this Co. are not available from its financial statements and hence on this basis, it cannot be considered a comparable Company. Percentage of export income of this company is nil out of total turnover whereas income of tested party is 100% from exports. Accordingly this company is to be excluded on the basis of 75% export turnover test/filter. Accordingly, as per Rule 10(B)(2) of I.T. Rules, this company is to be excluded from the list of comparable companies”

13. The ITAT was of the view that the DRP has given a detailed findings as to why the six comparables be excluded from the final list. It was of the view that the functional dissimilarity of each of above comparables has not been contradicted by the appellant/revenue and as such it did not interfere with the findings of the DRP, and consequently the appeal against the Assessment Year 2010-2011 was dismissed.

14. We note that the following are the proposed substantial questions by the appellant/revenue in this appeal:-

“A. Whether on the facts and circumstances of the case Hon’ble ITAT erred in law in seeking only in reality sector companies while searching for comparable companies of the assessee under TNMM whereas the requirement of law and international jurisprudence requires seeking similar comparable companies?

B. Whether on the facts and circumstances of the case Hon’ble ITAT was right in demanding comparability standards that may itself defeat the purpose of law relating to determination of ALP under the Income Tax Act?

C. Whether on the facts and circumstances of the case Hon’ble ITAT was right in rejecting the comparables i.e Ajcon Global Services Ltd., Brecon Corporate Advisors Ltd. and Pushpak Financial Services Ltd. on



the ground that these comparables are functionally dissimilar without undertaking prescribed process in Rule 10B of the Income Tax Rules and when the TPO has established functional similarity under TNMM, a transfer Pricing method provided in Section 92C as per prescribed process in Rules 10B(1)(e) read with Rule 10B(2) of Income Tax Rules, 1962?

D. Whether on the facts and circumstances of the case Hon'ble ITAT was right in applying 75% export filter and rejecting Ajcon Global Services Ltd., Brecon Corporate Advisors Ltd., Kshitij Investment Advisory Pvt. Ltd., Motilal Oswal Investment Advisors Pvt. Ltd. and Pushpak Financial Services Ltd. when the TPO in its order has rejected this filter and established that adoption of 75% export filter is arbitrary and not in accordance with the stated object and purpose?"

15. Mr. Puneet Rai, learned Senior Standing Counsel appearing for the appellant/revenue would justify the conclusion drawn by the TPO.

16. We are unable to accept the submission in that regard for the simple reason that the DRP, whose conclusions, we have reproduced above has come to a conclusion that the companies/the comparables, fail functional test as the comparables were engaged in operations other than export service undertaken by the assessee. The DRP's conclusion also includes how the comparables to be excluded on the basis of 75% export turnover test. It was concluded by the DRP that the export income of this company is 49%, which is less than 75% of total turnover, whereas income of tested parties is 100% from exports. Suffice to state, meaningfully read, the DRP has given sufficient reasons for excluding the comparables. The findings of the DRP, which have been accepted by the ITAT, are pure question of facts.



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17. Additionally we are of the view that there is a delay of 1285 in re-filing the appeal for which there is no justifiable explanation. We dismiss the appeal both on merits and delay.

V. KAMESWAR RAO, J

VINOD KUMAR, J

DECEMBER 24, 2025

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