[2022] 145 taxmann.com 138 (Mumbai - Trib.)[22-07-2022]

TRANSFER PRICING : When CUP method was applied for determining ALP of international transaction of brokerage commission earned by assessee, then downward adjustment to extent of 40 per cent was to be granted to assessee

TRANSFER PRICING : Where assessee claimed that transaction of charging of brokerage commission income from its AEs was at ALP for reason that third party brokerages houses had charged higher brokerage rates to AEs, since there was a huge difference of almost 3 times between lowest rates charged and highest rate charged by other brokerage house, data submitted by assessee could not be relied upon to accept its claim

[2022] 145 taxmann.com 138 (Mumbai - Trib.)

IN THE ITAT MUMBAI BENCH 'J'

Morgan Stanley India Company (P.) Ltd.

v.

Additional Commissioner of Income-tax*

PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER
IT APPEAL NOS. 2206 & 2320 (MUM.) OF 2011
[ASSESSMENT YEAR 2005-06]
JULY 22, 2022

Section 92C of the Income-tax Act, 1961 - Transfer pricing - Computation of arm's length price (Adjustments - Commission) - Assessment year 2005-06 - Assessee earned brokerage commission from AEs, aggregated all transactions and adopted TNMM as MAM - TPO found that commission rate earned from AEs was less than commission rate earned from independent parties - He used CUP method for computing arm's length price and made upward adjustment to total income of assessee - Assessee claimed that if CUP method was applied for determining arm's length price of international transaction of brokerage commission earned, downward adjustment to extent of 50 per cent was required to be granted to assessee - On appeal, Commissioner (Appeals) did not consider adjustment of 50

per cent brokerage - It was found that for earlier years Commissioner (Appeals) had granted adjustment to extent of 40 per cent, which had been upheld by co-ordinate benches - Whether therefore, Assessing Officer/Transfer Pricing Officer was to be directed to adjust and grant benefit of 40 per cent discount to assessee - Held, yes [Para 22] [Partly in favour of assessee]

Section 92C of the Income-tax Act, 1961 - Transfer pricing - Computation of arm's length price (Adjustments - Commission) - Assessment year 2005-06 - Assessee-company was engaged in business of stock trading - It had earned brokerage commission from associate enterprises in Mauritius and UK - it claimed that, transaction of charging of brokerage commission income from its AEs was at ALP for reason that third party brokerages had charged higher brokerage rates to these AEs and, therefore, there could not be any adjustment - It was found that there was a huge difference of almost 3 times between lowest rates charged and highest rate charged by other brokerage house and there was no justification for such wide variants in rates - Whether huge rate variants did not inspire any confidence in data submitted by assessee and, therefore, assessee's claim was to be rejected - Held, yes [Para 31] [In favour of revenue]

CASES REFERRED TO

First Credit ITES (P.) Ltd. v. *Addl. CIT* [2022] 138 taxmann.com 353 (Mum. - Trib.) (para 29) and *CIT* v. *Kotak Securities Ltd.* [2016] 67 taxmann.com 356/239 Taxman 139/383 ITR 1 (SC) (para 39).

Sunil M. Lala, AR *for the Appellant.* **Ms. Vatsalaa Jha**, CIT DR *for the Respondent.*

ORDER

Prashant Maharishi, Accountant Member. - These are the cross appeals filed by the assessee M/s Morgan Stanley India company P. Ltd (formerly known as JP Morgan Securities Pvt. Ltd) (assessee/appellant) in ITA No. 2206/Mum/2011, and by the *Addl.* Commissioner of Income Tax, Range 4(3), Mumbai (the learned Assessing Officer) in ITA No. 2320/Mum/2011) for A.Y. 2005-06 against the order passed by the Commissioner of income-tax (Appeal)-15, Mumbai dated 7th January, 2011 [Appellate Order].

2. The learned Assessing Officer has raised the following grounds of appeal :-

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made of Rs. 14,82,08,736/- on account of trades executed for MSDW Mauritius and MSIL UK due to Transfer Pricing Adjustment made by the Assessing Officer.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of Rs. 6,24,08,002/- on account of overseas support service received from its AES, MSIL, under the head payment of Overseas Support fees" "

3. On the facts and in the circumstances of the case and in law, the Ld. CITIA) erred in deleting the disallowance of Rs. 53,72,360/- u/s. 40A(2) paid to Sh. Ashith Kampani being remuneration paid in excess of limit prescribed by the Ministry of Law, Justice and Co. Affairs."

4. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of Rs. 78,93,438/- under section 14A made by the AO.

5. (*i*) "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of Rs. 1,72,51,564/- made u/s.40(*a*)(ia) in respect of Transaction charges, leaseline charges. VSAT charges including WAN & TWS paid to Stock Exchange respectively, without appreciating the facts that these were composite charges for professional and technical services rendered by the stock exchange to its members and the assessee has failed to deduct TDS thereon."

(*ii*) On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in ignoring the fact that these services are essential in nature as they can only be availed by members of Stock Exchange."

(*iii*) On the facts and in the circumstances of the case and in law the Ld. CIT(A)erred in ignoring the facts that use of technology and algorithmic based programs have converted an erstwhile physical market into a digitally operated market."

(*iv*) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in ignoring the fact that the services rendered by the brokers are not standard services but services that has been developed to cater to the needs of the broker community to facilitate trading.

v. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has overlooked the fact that the brokers have in subsequent years themselves started deducting the TDS on such payments and that there is no reason to give a different treatment in this year.

6. On the facts and in the circumstances of the case, the impugned order of the Ld. CIT(A) is contrary to law to be set aside and that of the Assessing Officer be restored.

7. The appellant craves leave to amend or alter any ground or add a new ground which may be necessary."

3. Assessee has raised the following grounds of appeal:-

"Aggrieved by the order passed by the Commissioner of Income-tax (Appeals)-15, Mumbai [hereinafter referred to as 'the learned CIT(A)'], under section 250 of the Income-tax Act, 1961 ('Act') and based on the facts and circumstances of the case, Morgan Stanley India Company Private Limited (formerly known as J M Morgan Stanley Securities Private Limited) [hereinafter referred to as 'the Appellant]. respectfully submits that the learned CIT(A) erred in upholding the order of the Additional Commissioner Income-tax-Range 4(3) [hereinafter referred to as 'the learned AO'] and the Additional Commissioner of Income-tax

Transfer Pricing - Range I(IV) (hereinafter referred to as 'the learned TPO), thereby disposing the appeal of the Appellant on the following grounds:

Ground 1:

1. By confirming a part of the upward addition made by the learned TPO to the extent of Rs. 102,389,087 on account of the Arm's Length Price (ALP) of brokerage received on trades executed for the Associated Enterprises (AEs), namely, Morgan Stanley Mauritius Company Limited (MS Mauritius) and Morgan Stanley & Co International Limited, United Kingdom (MSIL UK) due to Transfer pricing (TP) adjustment. In this regard, the learned CIT(A) specifically erred on the following grounds:

1.1 By not appreciating the fact that during the Financial Year (FY) 2004-05, MS Mauritius had entered into similar trades with third party brokers also, who had charged brokerage to it at lower rates than the brokerage rates charged by the Appellant in FY 2004-2005, which establishes adherence to the arm's length principle of the trades entered into between the Appellant and the AES.

1.2 In not accepting the Appellant's contention of applying Transactional Net Margin Method (TNMM) on overall basis as the most appropriate method for determining the ALP for trades executed with the AES.

1.3 In not accepting the Appellant's contention that even if the Comparable Uncontrolled Price Method (CUP Method) is applied for determining the ALP then the comparability analysis should consider an adjustment of at least 50% *vis-à-vis* brokerage charged to independent clients.

1.4 In not accepting the Appellant's contention that even if the CUP Method is applied for determining the ALP then the comparability analysis should be undertaken considering both overseas and domestic independent clients.

1.5 In confirming the learned AO/TPO's order and disregarding the Appellant's stand on applicability of TP Regulations to trades executed for the AES (the said transaction) and in confirming the adjustment to the ALP to the extent mentioned above without appreciating the fact that none of the methods prescribed under section 92C of the Act were applicable and accordingly, the basic machinery for computing the ALP failed.

Ground 2 :

2. In confirming the learned AO/TPO's order wherein the ALP of the aforesaid transactions was not determined in accordance with section 92CA(1) and (2) of the Act as required under section 92C(3) of the Act.

Ground 3 :

3. In confirming the learned TPO's order without appreciating the fact that the Appellant company is a joint venture between JM Group and Morgan Stanley as a result of which there is an inbuilt mechanism to meet the arm's length principle and hence, the transactions are at arm's length.

The Appellant craves leave to add, amend, alter, vary, omit, substitute or amend the above grounds of appeal at any time before or at the time of hearing of the appeal so as to enable the Honourable Income-tax Appellant Tribunal to decide this appeal according to the law"

4. The brief fact of the case shows that assessee is a company engaged in the business of stock trading and member of Bombay Stock Exchange and National Stock Exchange. The assessee on 25th October, 2005 filed its return of income at Rs. 82,63,550/-, assessed by the learned Assessing Officer at a total income of Rs. 106,23,02,970/- by the order [Assessment order] dated 29th December, 2008 passed under section 143(3) of the of the Income-tax Act, 1961 (the Act).

5. Assessee has entered into a certain international transaction; the matter was referred to *Addl.* CIT, Transfer Pricing, 1(4), Mumbai, (the learned Transfer Pricing Officer) for computation of arms length price.

6. Assessee has earned brokerage commission from associate enterprises in Mauritius amounting to Rs. 21,90,69,377/- and UK amounting to Rs. 35,54,824/-. The assessee aggregated all the transactions and adopted Transactional Net Margin Method (TNMM), as the most appropriate method, benchmarked along with other transactions which are not in dispute, submitted that all international transactions are at arms' length price.

7. Assessee has also made a payment to Morgan Stanley International Inc of overseas support services fees amounting to Rs. 62,408,002/-. This was also benchmarked adopting transactional net margin method as the most appropriate method clubbing it along with other international transactions. Hence, according to assessee it is also at arm's-length.

8. These transactions were tested by the learned Transfer Pricing Officer and found that the commission rate earned from the associate enterprises is less than the commission rate earned from independent parties. The learned Transfer Pricing Officer found that in the immediately preceding year adjustments were made on account of these transactions. Therefore, based on the last year, the learned Transfer Pricing Officer made an adjustment to the total income of the assessee with respect to the lower commission income earned by the assessee in case of clearing house transaction as well as DVP [Delivery versus payment] trades amounting to Rs. 14,82,08,736/-. The ld TPO passed order on 27/10/2008 u/s 92 CA (3) of the Act proposing upward adjustment of Rs. 148208736/- .

9. With respect to various support services, the learned transfer pricing officer held that there is no justification and genuineness of the payment Under the said to the associated enterprises and therefore as assessee has not received any benefits for which it is being overseas support fees to its associated enterprise, he determined the arm's-length price of this transaction at Rs. nil.

10. The same was adjusted by increasing the total income of the assessee along with certain other adjustments and corporate additions. The assessment order was passed on 29th December, 2008.

11. This assessment order was challenged before the learned Commissioner of income-tax (Appeal). With respect to the addition of Rs. 14,82,08,736/-, on account of brokerage commission earned from Mauritius and UK entity, he rejected the contention of the assessee as under :-

i. The learned Assessing Officer used CUP method for computing arms length price; same was objected by the assessee holding that TNMM is the most appropriate method adopted by the assessee. The learned CIT(A) held that CUP method should be applied as it is more direct than the Transactional Net Margin Method.

ii. He also rejected the contention of the assessee with internal CUP, using the Mauritius as the tested party to arrive at arms length price.

iii. He followed his own decision for A.Y. 2004-05 in case of assessee where for the trade of clearing housing and DVP [Delivery vs payment] trades, weighted average rate of brokerage charged to the independent overseas client was used for comparability.

iv. He rejected any adjustment on account of research, volume adjustment and marketing adjustment.

12. Accordingly, he computed the adjusted brokerage rate of 0.3252% in case of DVP trades and 0.4437% in the clearing house trades for determination of arms length price. For DVP trade ALP was determined at Rs. 1,05,85,329/- compared to the transaction of Rs. 56,68,096/- and in case of clearing house trades, the arms length price is worked out at Rs. 33,15,32,868/- against the brokerage charged of Rs. 21,69,55,132/-. Accordingly, assessee was granted marginal relief. Therefore, assessee is aggrieved with the order of the learned CIT(A) by rejection of the contention of the assessee, rejection of TNMM method, adoption of CUP method, not considering adjustment of 50% brokerage and not accepting that if CUP method is applied than overseas and domestic clients both must be considered.

13. With respect to the adjustment on account of overseas support services fees, the learned CIT - A that during the assessment year 2004 - 05 the similar issue of disallowance of expenditure pertaining to overseas support services has been examined by him in detail in the adjustment made by the AO was deleted for the reasons discussed in that order dated 2-12-2010. Accordingly he deleted the adjustment on account of the arm's-length price of the transaction of overseas support services of Rs. 62,408,002/-.

14. The learned Assessing Officer is aggrieved as the learned CIT(A) has granted substantial relief to assessee on transfer pricing issues. The learned Assessing Officer is also aggrieved by deletion of adjustment on account of arm's-length price of the overseas support services.

15. We first deal with appeal of assessee. The learned Authorized Representative submitted that ground no. 1 is general in nature, therefore, same may be considered in light of other specific grounds. We find that ground no. 1 is general in nature and therefore, no specific arguments were advanced, hence, dismissed.

16. The learned Authorized Representative submitted that ground no. 1.2 is not pressed, where the TNMM method adopted by the assessee as the most appropriate method was rejected by the learned Transfer Pricing Officer and learned CIT(A) and CUP method was considered as the most appropriate method. In view of this, the arms length price of the international transaction entered into by the assessee are required to be derived only on the basis of CUP method. Hence, ground no. 1.2 is dismissed.

17. Ground nos. 1.3 and 1.4 were claimed by the learned Authorized Representative covered in favour of assessee by the decision of co-ordinate Bench in assessee's own case.

18. By ground no. 1.3, the assessee claimed that if CUP method is applied for determining the arms length price of international transaction of brokerage and commission earned, downward adjustment to the extent of 50% is required to be granted to the assessee. The learned Authorized Representative submitted that in assessee's own case for A.Y. 2004-05, the ITAT has granted 50% discounting adjustment for brokerage services provided to Associated Enterprises in ITA No. 1164 & 1582/Mum/2011 dated 5th October, 2021. He further stated that the co-ordinate Bench has followed the order of the co-ordinate Bench in assessee's own case for A.Y. 2002-03 dated 25th October, 2020 in ITA No. 266/Mum/2006. Accordingly, he submitted that assessee is to be granted this discount for this year too.

19. The learned Departmental Representative referred to his written submission dated 6th December, 2021 and stated that assessee has first adopted the Transactional Net Margin Method as MAM but now, has accepted the CUP as the most appropriate method as the earlier years Tribunal's decision are on this issue. With respect to granting of deduction to the extent of 50%, he submitted that as greater details are required, for this, it should be restored to the file of the learned Assessing Officer.

20. We have carefully considered the rival contentions and perused the orders of the lower authorities. Since, the issue has already been decided by the co-ordinate Bench in assessee's own case for A.Y. 2002-03, which has been followed by co-ordinate Bench in assessee's own case for A.Y. 2004-05, we find no reason to sent the matter back to the file of the learned Transfer Pricing Officer. The co-ordinate Bench has decided the issue as under for A.Y. 2002-03. For that assessment year the TPO granted an adjustment of marketing cost to the extent of 0.1076% and which is approximately 30% of the weighted average rate charged to 3rd party clients. The learned CIT (A) granted adjustment of 40% with respect to marketing cost adjustment for significant volume and research cost and granted relief to the assessee. This action of the learned CIT - A was challenged by the revenue in its appeal as per ground number (*vi*). Coordinate bench as per paragraph number 29 upheld the order of the learned CIT - A. Thus the adjustment granted by the learned CIT - A as per paragraph number 22 of that order of 40% was upheld. In appeal of the assessee as well as the revenue for assessment year 2004 - 05 this issue is dealt with in paragraph number five of that order wherein also at page number 5 of that decision in the last para the learned and CIT - A allowed the discounting factor of 40%. The coordinate bench upheld the order of the learned CIT - A. Therefore, the assessee cannot be allowed 50% discount on the price of the comparables (third parties) but only 40% as per the order of the coordinate benches in earlier years.

21. We also find that rule 10 B (1) (*a*) (*ii*) of the income tax rules 1962 also allowed adjustment to the prices which could materially affect the price in the open market.

22. Further guidelines (2022) at paragraph number 2.17 also suggest that in considering whether controlled and uncontrolled transaction is comparable, regard should be held to the effect on price of broader business functions other than just product comparability. Where the differences exist between the controlled and uncontrolled transaction is on between the enterprises undertaking

those transactions, it may be difficult to determine reasonably accurate adjustment to eliminate the effect on price. However such difficulties should in all fairness be adjusted reasonably but that should not preclude the application of cup method. In the present case for earlier years the learned and CIT - A has granted adjustment to the extent of 40%, which is been upheld by the coordinate benches in case of the assessee for earlier years, we also direct the learned assessing officer/transfer pricing officer to adjust and grant benefit of 40% discount to the assessee.

23. In view of this, ground no. 1.3 of the appeal is partly allowed.

24. Ground no. 1.4 is with respect to the claim of the assessee that for the comparability analysis, the learned Assessing Officer/Transfer Pricing Officer/CIT(A) should have considered both overseas and domestic independent clients. This is identical to ground no. 1.4 of the appeal in assessee's own case for A.Y. 2004-05, which has been dealt with by the co-ordinate Bench at Para 7.2 to 10 of the appeal. For that year, identical ground was raised and assessee did not press the same due to non availability of data pertaining to the year. Hence, same was dismissed. Before us, assessee has contested that comparability analysis both overseas and domestic independent client is required to be taken. He referred to the order of the co-ordinate Bench in assessee's own case for A.Y. 2002-03 dated 25th February, 2020. He referred to page no. 14 of that decision. He further submitted the chart at page no. 5 of the chart of issues, wherein it is contested that in clearing house trade, the final adjustment would be rupees Nil and in case of DVP trades, the adjustment would be Rs. 9,59,202/-.

25. The learned Departmental Representative submitted that this issue needs verification.

26. We have carefully considered the rival contentions and find that now assessee has submitted the details, wherein the third party rates are charged by the assessee for clearing house trading is 0.25% and adjustment on account of volume marketing etc. at the rate of 50% makes the arms length price of the brokerage at 0.13%. The assessee has charged the brokerage of 0.14% from Mauritius entity and 0.21 % from UK entity. Therefore, final amount of adjustment is in case of clearing house trades.

27. With respect to the delivery versus Payment towards third party rates charged by assessee is 0.38% and after deduction of 50% it comes to 0.19%. Assessee has charged from Mauritius Associated Enterprises 0.14 % and from UK Associated Enterprises of 0.22%, looking to the volume of trade, the adjustment with the UK entity is Rs. Nil and with Mauritius entity is Rs. 9,59,202/-. The learned Assessing Officer is directed to verify the same and computation of arms length price has directed the above. Accordingly, ground no. 1.4 of the appeal is allowed with above direction.

28. Ground no. 1.5, ground no. 2 and ground no. 3 were not pressed and hence, dismissed.

29. This leaves us to ground no. 1.1. The claim of the assessee is that the transaction of charging of brokerage commission income from its associate enterprise is at arm's length price for the reason that third party brokerages namely Motilal Oswal Securities Limited and ICICI Brokerage Services Limited have charged higher brokerage rates to these associate enterprises. Therefore, there cannot be any adjustment. For this proposition, he referred to page nos. 215 to 213 of the Paper Book, wherein Mauritius Associated Enterprises has entered into clearing house

transactions with ICICI Brokerage Services Limited at an average commission rate of 0.7% and with Motilal Iswal Securities Limited at an average of 0.08%. He submitted that the rates charged by the assessee from the associated enterprises compared to rates charged by these two entities from associate enterprises are much higher. He submitted that for the clearing house rate the rate of the assessee are 0.14% and 0.21% from Mauritius and UK entities. Similarly, he also referred to page no. 217 where from Mauritius Associated Enterprises ICICI brokerage services limited has charged commission of 0.05% on delivery versus payment trades, whereas assessee has charged from its Associated Enterprises at 0.14% and 0.22% from Mauritius and UK entities. For this proposition, he referred to his compilation judgment and referred to *First Credit ITES (P.) Ltd.* v. *Addl. CIT* [2022] 138 taxmann.com 353 (Mum. - Trib.) dated 18-05-2022 wherein Para no. 40, the identical addition was deleted.

30. The learned Departmental Representative vehemently opposed above submission. He referred to the rates of commission mentioned at page no. 215 which varies from 0.05% to 0.15%. With respect to DVP brokerage rates, he submitted that solitary transaction of very small amount cannot also be relied upon.

31. We have carefully considered the rival contentions. Here the claim is that when the foreign Associated Enterprises has been charged by other brokerage house rates less than what assessee has charged than the rates charged by the assessee should be considered as arm's length price. We have verified the data place at page no. 215, 217 of the Paper Book. We find that in case of 19 transactions, the ICICI brokerage Securities Limited on clearing house transaction has charged 0.1% as commission rate and also 0.05%. There is a difference of almost 3 times between the lowest rates charged and the highest rate charged by the ICICI brokerage Securities Limited. Coming to the Motilal Oswal Securities rate, the identical situation is depicted. In two of the transactions there is a nil rate of commission and in three of the transactions it is at 0.16%. There is no justification for such wide variants in the rates. With respect to the DVP rates, the assessee has only given a single instance where the commission expenditure is merely Rs. 15,542/-. No justification is coming from the side of the assessee with respect to such a wide variance in the rates. Further, 40% deduction granted by the ITAT also covers such issue. The reliance on the decision *First Credit ITES (P.) Ltd.'s* case (*supra*) also do not apply to the facts of the case as the issue in that case related to the adoption of other method where the authentic quotes were accepted. In the present case, the huge rate variants do not inspire any confidence in the data submitted by the assessee. Further assessee cannot change the benchmarking and comparability analysis at his own whims and fancies. Accordingly, ground no. 1.1 is dismissed.

32. Accordingly, appeal of the assessee is partly allowed.

33. Now, we come to the appeal of the learned Assessing Officer.

34. Ground no. 1 and 2 are relating to the Transfer Pricing adjustment.

35. Ground no. 1 relates to transfer priding adjustment with respect to brokerage income which is already covered in the appeal of the assessee. The learned CIT(A) has dealt with this issue which is now covered by the appeal of the assessee. As we have already granted substantial relief, assessee following the decision of the co-ordinate Bench in earlier years, we do not find any

infirmity on this score in the order of learned CIT(A) accordingly, ground no. 1 is dismissed.

36. Ground no. 2, is with respect to the disallowance of Rs. 6,24,08,002/- deleted by the learned CIT(A) on account of overseas support services received from its associate enterprises. Assessee has availed support services from its associate enterprise as per the agreement, where assessee was to reimburse the actual cost incurred by Associated Enterprises. The cost so derived did not include any markup. The learned Assessing Officer disallowed the same stating that assessee has not received any benefit. The learned CIT(A) following his own order for A.Y. 2004-05 deleted the addition. The order of the learned CIT - A has been upheld by the coordinate bench has been upheld by ITAT. Coordinate bench followed the decision of the ITAT in assessee's own case for assessment year 2002-03 dated 25 February 2020 in ITA number 266/M/2006 wherein as per paragraph numbers 6-7 the addition was deleted. The coordinate bench has also held that the identical issue arose in the case of the assessee's own case for assessment year 2000-01 and 2001-02 where the issue is decided in favour of the assessee. In view of this, ground no. 2 of the appeal is covered against Revenue. Hence, dismissed.

37. Ground no. 3 is with respect to the disallowance of remuneration paid to Mr. Ashith Kampani under section 40A(2) of the Act. The disallowance has been made by the learned Assessing Officer holding remuneration is paid in excess of limits permitted by Ministry of law and justice *vide* letter dated 24th April, 2001. The learned CIT(A) found that remuneration was paid of Rs. 89,17,000/-against the approval limit of 53,72,360/-. He further held that Mr. Ashith Kampani has 18 years of experience in the field of capital market. Identical issue arose in case of assessee for A.Y. 2004-05 where learned CIT(A) deleted the addition which was confirmed by ITAT. In view of this, we find no infirmity in the order of the learned CIT(A) in deleting the disallowance which has been confirmed by ITAT in assessee's own case for earlier years. We also find that the learned Assessing Officer has not given any reason that why the above remuneration is excessive and unreasonable looking to the legitimate needs of the business. Further, the approval granted under the companies Act cannot use for making disallowance under the income tax Act, for the reason that both the enactments have different objects and reasons. Accordingly, ground no. 3 is dismissed.

38. Ground no. 4 is with respect to the deletion of disallowance of Rs. 78,93,438/- under section 14A of the Act. The learned Assessing Officer disallowed the above sum applying the provisions of rule 8D of the Income-tax Rules, 1962 (the Rules). The learned CIT(A) held that Rule 8D applies only with A.Y. 2008-09. He therefore, upheld the disallowance of only Rs. 1 lacs. The learned CIT(A) also followed his own order for A.Y. 2004-05 in A.Y. 2002-03 in assessee's own case, the disallowance to the extent of Rs. 1 lacs was upheld. There is no change in the facts and circumstances of the case and further Rule 8D of the Rules does not apply for this year also. Respectfully following the order of the co-ordinate Bench in assessee's own case, we upheld the order of the learned Commissioner of income-tax (Appeal). Accordingly, ground no. 4 is dismissed.

39. Ground no. 5 is with respect to the disallowance of transaction charges lease line charges and VSAT charges paid by assessee to the Stock exchanges. The assessee paid a sum of Rs. 1,72,51,564/-, however, did not deduct any tax at source. The learned Assessing Officer held the

same to be fees for technical services under section 194J of the Act or under section 194C of the Act. Therefore, he disallowed the sum applying the provisions of Section 40a(ia) of the Act. The learned CIT(A) held that these charges are merely recovery of the cost of infrastructure support and therefore, neither it falls under section 194J of the Act nor under section 194C of the Act. Therefore, no tax is required to be deducted; hence, he deleted the disallowance. We find that now this issue is squarely covered by the decision of Hon'ble Supreme Court in case of *CIT* v. *Kotak Securities Ltd.* [2016] 67 taxmann.com 356/239 Taxman 139/383 ITR 1, wherein it has been held that these are the standard facilities and no tax is required to be deducted for the reason that these are the services not specifically sought by the user but are standard services. In view of this, we do not find any infirmity in the order of the learned CIT(A) in deleting the above disallowance. Accordingly, ground no. 5 is dismissed.

40. Ground no. 6 and 7 are general in nature, hence, dismissed.

41. Accordingly, appeal filed by the learned Assessing Officer is dismissed.

42. In the result, appeal of the learned Assessing Officer is dismissed and appeal of the assessee is partly allowed.

VARSHA

*Partly in favour of assessee.