ITAT: Grants 50% ‘discounting’ adjustment for brokerage-services vis-a-vis independent & overseas clients; Follows earlier order

Oct 29, 2021

Morgan Stanley India Company Private Limited (Formerly known as J.M. Morgan Stanley Securities Private Limited) [TS-550-ITAT-2021(Mum)-TP]

Conclusion

Mumbai ITAT rules on selection of MAM for brokerage services for Morgan Stanley for AY 2004-05; As regards assessee’s contention wrt to applicability of TNMM as MAM, ITAT dismisses the same as not pressed; During the given AY, it was assessee’s contention that even if CUP method is applied for determining the arm's length price then the comparability analysis should consider an adjustment of at least 50% vis–a–vis brokerage charged to independent clients; Given the same, ITAT relies on coordinate bench ruling in assessee’s own case for AY 2002-03, wherein the issue has been decided against the Revenue and in favour of the assessee; Coordinate bench had upheld CIT(A)’s action that appropriate adjustments need to be made if CUP is to be applied and accordingly granted adjustments at 40% as a ‘discounting factor’ on the brokerage charged towards savings on lower research activities for the AE, high volume and loyalty of the AE; Accordingly, coordinate bench had held that for comparability purposes, all the independent entities i.e. domestic as well as overseas should he considered, and a discounting factor of 40% as adjustment should be applied; Following the same, ITAT decides the issue in favour of the assessee and against the Revenue; As regards assessee’s contention wrt comparability analysis on the basis of overseas and domestic independent clients, ITAT relies on coordinate bench ruling in assessee’s own case for AY 2002-03 wherein the issue had been decided against the Revenue and in favour of the assessee, wherein coordinate bench had upheld CIT(A)’s action that domestic independent clients should be considered for comparability purpose and had upheld assessee’s contention that if CUP was applied, then appropriate adjustment was required to be made for all differences; With respect to assessee’s ground pertaining to brokerage rates entered into between MS Mauritius (i.e., MSDW) and third party brokers, ITAT dismisses the ground as not pressed due to non–availability of data; Further, with respect to ground with regard to confirmation of AO/TPO's order without appreciating the fact that the appellant company is a joint venture JM Group and Morgan Staney 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, ITAT dismisses the same as not pressed; Separately, ITAT rules on various corporate tax issues.:ITAT Mum

Decision Summary

The ruling was delivered by ITAT bench comprising of Shri Mahavir Singh, Vice President and Shri S. Rifaur Rahman.

Dr. Sunil Lala argued on behalf of the assessee while Revenue was represented by Mr Vatsalya Saxena.

Ruling Relied Upon

- ITAT: Accepts Indian clients as comparables, grants 40% ‘discounting’ adjustment for Morgan Stanley's brokerage-services
- TS-369-ITAT-2020(Mum)-TP

Case Law Information

Taxpayer Name

- Morgan Stanley India Company Private Limited (Formerly known as J.M. Morgan Stanley Securities Private Limited)

Judicial Level & Location

- Income tax Appellate Tribunal Mumbai

Date of Ruling

- 2021-10-05

Ruling in favour of

- Assessee

Section Reference Number

- 92B
- 92C

Nature of Issue

- ALP computation
- Comparable Uncontrolled Price Method (CUP)
- Cost Plus Method more appropriate than TNMM
- Transaction Net Margin Method
- Rule of Consistency

Judges

- Shri Mahavir Singh, Judicial Member
- Shri S. Rifaur Rahman

Counsel for Tax Payer

- Mr. Sunil Lala

Counsel for Department

- Mr. Vatsalya Saxena

Industry

- Investment / Finance & Related Advisory

IN THE INCOME TAX APPELLATE TRIBUNAL

"J" BENCH, MUMBAI

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND

SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA no.1164/Mum./2011
(Assessment Year : 2004–05)

Morgan Stanley India Company P. Ltd.
18F/19F, One India Bulls Centre
Tower–2B, 841, Jupiter Mills
Off Senapati Bapat Marg
Lower Parel, Mumbai 400 013
PAN – AAACJ4998F ……. Appellant

v/s

Income Tax Officer
Ward–4(3)(4), Mumbai ……. Respondent

ITA no.1582/Mum./2011
(Assessment Year : 2004–05)

Dy. Commissioner of Income Tax
Circle–4(3), Mumbai ……. Appellant

v/s

Morgan Stanley India Company P. Ltd.
18F/19F, One India Bulls Centre
Tower–2B, 841, Jupiter Mills
Off Senapati Bapat Marg
Lower Parel, Mumbai 400 013
PAN – AAACJ4998F ……. Respondent

Revenue by : Shri Sunil Lala
Assessee by : Shri Vatsalya Saxena

Date of Hearing – 28.07.2021	Date of Order – 05/10/2021

O R D E R

PER S. RIFAUR RAHMAN, A.M.

The aforesaid cross appeals are against the common order dated 2nd December 2010, passed by the learned Commissioner of Income Tax (Appeals)–15, Mumbai, for the assessment year 2004–05.

ITA no.1164/Mum./2011
Assessee's Appeal – A.Y – 2004–05

2. Ground no.1.1, raised by the assessee relates to applicability of transfer pricing regulations, which has not been pressed by the learned Counsel for the assessee. Consequently, this ground is dismissed as not pressed.

3. Ground no.1.2, raised by the assessee relates to applicability of Transactional Net Margin Method. The learned Counsel for the assessee has expressed his intention not to press this ground. Accordingly, ground no.1.2, is dismissed as not pressed.

4. Ground no.1.3, raised by the assessee relates to assessee's contention that even if the comparable Uncontrolled Price Method is applied for determining the arm's length price then the comparability analysis should consider an adjustment of at least 50% vis–a–vis brokerage charged to independent clients.

5. During the course of hearing both the learned Counsel appearing for the parties agreed that the issue for our adjudication has been decided by the Co–ordinate Bench of the Tribunal, Mumbai Bench, in assessee's own case for the assessment year 2002–03, vide order dated 25th February 2020, ACIT v/s Morgan Stanley India Company Pvt. Ltd., ITA no.266/Mum./2006, etc., wherein the issue has been decided against the Revenue and in favour of the assessee. The relevant portion of the findings of the Tribunal is reproduced below for reference:–

> *"26. We have considered the submissions of both the parties, perused the record. While filing the return of income, the assessee reported transactions with its A.E. as reported in Form no.3CEB. Consequent to that, the A.O. made reference to the TPO vide reference dated 25–09–2003 for computation of arm's length price. The TPO vide his order dated 22–02–2005 suggested the adjustment of ₹ 1,18,559,779/–. The TPO rejected the TNMM method applied by assessee for bench marking its transaction with its A.E. The TPO computed the arm's length price by applying CUP method. And suggested adjustment of ₹ 18,59,779 in arm's length price. On receipt of report of TPO, the A.O. made addition of ₹ 1,18,59,779/– in respect of arm's length price while passing the assessment order. The assessee filed appeal before the CIT(A). Before the CIT(A), the assessee besides other contentions, stated that CUP method cannot be used as it is for determination of ALP of assessee's transaction with its A.E. as it is difficult to make accurate adjustments for itself as compared to other trades / transactions and TNMM on the overall basis should have been considered being more reliable and accurate method in assessee's case. The Ld.CIT(A), after considering the submissions of assessee concluded that CUP is the most appropriate method which should be applied to the proper adjustment instead of using TNMM which is an indirect method.*

27. On the grounds of comparability of comparables, concluded that domestic independent client should be considered for comparability purpose. The assessee further stated that if CUP is to be applied, then appropriate adjustment needs to be made for lesser function performed / asset utilised and risk assumed. It may further stated that assessee did not perform any marketing and sales activities while executing trade for A.E. in Mauritius. Even the levels of other activities like research, trade relationship, etc., are lower as compared to independent client. In addition, Mauritius A.E. is the trusted client of assessee and provided substantial volume of business. Mauritius A.E. is dedicated client of the assessee. While fixing the brokerage rate of Mauritius A.E., the assessee has to consider all the above factors. Accordingly, the assessee urged that if CUP has to be applied, then discounting factor of 50% should be applied as an adjustment to the brokerage rate charged to all Indian clients.

28. The contention of assessee was accepted by Ld. CIT(A) by taking view that if CUP method has to be applied, then appropriate adjustment need to be made for all differences. The Ld. CIT(A) further noted that TPO has carried out adjustment for marketing function by making adjustment considering part of marketing cost and has not made any adjustment to research activities on the premise that Mauritius AE would he getting research related services from assessee. Thus, the Ld. CIT(A) not agreed with the view of TPO that no adjustments are required to he made for research activities based on assumption and possibility and not on actual facts. The Ld.CIT(A), after considering the high volume of business profit of Mauritius A.E. to assessee which is 15% of the total business volume of assessee and the other highest client account is only 3.7% of total business volume the Ld. CIT(A) took his view that it is settled commercial principle that "volume increase the price decrees". The Ld.CIT(A), after considering the facts, passed the following order:–

I agree with the appellant that if CUP method has to he applied then appropriate adjustments need to be made for all differences. The TPO has carried out adjustments for marketing functions by making an adjustment considering part of marketing cost. The TPO has not made any adjustments for research activities on the premise that MSDW Mauritius would be getting research related services from the appellant. I am unable to agree with the TPO who has formed a view that no adjustments are required to be made for research activities based on certain assumptions and possibilities and not on actual facts.

Further, the TPO has not considered any adjustment for the high

volume of business given by MSDW Mauritius to the appellant. The total volume of trades (for purchases and sale) generated by MSDW Mauritius is Rs.1316 crores. As noted by the TPO on page 8 of his order, the business provided by MSDW Mauritius is approximately 15% of the total business volume of total trades. The next highest client accounts for only 3.77% of the total business volume. It is well settled commercial principle that "as volume increases, the price decreases". The TPO has dealt with this issue on para 2 of page 8 in his order. The TPO has picked out certain instances where even though the volume has increased there is no decrease in the brokerage rate and accordingly has not considered any adjustment for volume differences. I am unable to agree with the TPO to the extent that one cannot disregard well- settled commercial principle based on certain stray instances. The tact that 'as volume increases, the price decreases' is a well-established commercial principle and accordingly due weightage /adjustment should he given for the huge volume of business given by MSDW Mauritius.

As per the appellant, MSDW Mauritius is a dedicated client i.e. it bought and sold securities only through the appellant for the entire previous ear. Accordingly, while fixing the brokerage rate for MSDW Mauritius, the appellant has to consider the fact that MSDW Mauritius has no transactions through any of its competitors. The TPO has not considered any adjustments for the same. I am unable to agree with the TPO as certain amount of adjustment is required to loyalty factor of MSDW Mauritius.

The appellant carries out "Clearing House" and 'DVP' trades for MSDW "Clearing House" trades. As stated above, the average brokerage charged to all independent clients for "Clearing House" trades is 0.3511%. The TPO in his order has already considered an adjustment of 0.1076% on account of marketing cost. Thus, adjustment granted by the TPO amounts to approx. 30% of average brokerage charged to all independent clients.

As stated above, the appellant has contended that the discounting factor of atleast 50% should he applied as an adjustment to the brokerage rate charged to all independent clients.

Keeping the entire factual matrix in mind, I feel that the ends of justice would be met to both sides by considering a discounting factor of 40%. This discounting factor of 40% would cover the marketing cost adjustment already considered by the TPO.

Conclusion

Based on the above, this sub-ground is partly allowed. For comparability purposes, all the independent entities i.e. domestic as well as overseas should he considered, and a discounting factor of 40% as adjustment should be applied.

The calculation of the arm's length price is enclosed as Annexure 1.

Particulars	*Clearing House Trades*	*DVP Trades*
Overseas Trades	*13,513,701,695*	*62,321,033,641*
Domestic Trades	*9,741,948,998*	*2,248,476,175*
Total Uncontrolled Trades	*23,255,650,692*	*64,569,509,816*
Total Commission for Uncontrolled Trades	*81,660,811*	*298,410,339*
Weighted Average Rate	*0.3511%*	*0.4622%*
Discount @ 40%	*0.1405%*	*0.2080%*
Arm's length price (i.e., adjusted average rate for uncontrolled trades)	*0.2107%*	*0.2542%*
Trades for MSDW Mauritius	*131,622,693*	*4,735,557*
Commission Amount	*31,343,868*	*11.379*
Rate charged To MSDW Mauritius	*0.2381%*	*0.2403%*
Diff in ALP and rate charged to MSDW		*0.0139%*
Addition		*658*

Considering the arm's length price determined on the above factors, the brokerage rate charged by the appellant to MSDW Mauritius for "Clearing House" trades meets with the arm's length principle. However, the brokerage rate charged by the appellant to MSDW Mauritius for "DVP" trades does not meet with the arm's length principle and consequently, the addition of ₹ 658 is, therefore, confirmed.

The appellant gets a relief of ₹ 1,18,59,121, for the sub–ground."

6. Since the issue before us is covered by the aforesaid decision of the Tribunal rendered in assessee's own case cited supra, consistent

with the view taken therein, ground no.1.3, is decided in favour of the assessee and against the Revenue.

7. Ground no.1.4, relates to comparability analysis on the basis of overseas and domestic independent clients.

8. During the course of hearing both the learned Counsel appearing for the parties agreed that the issue for our adjudication has been decided by the Co–ordinate Bench of the Tribunal, Mumbai Bench, in assessee's own case for the assessment year 2002–03, vide order dated 25th February 2020, ACIT v/s Morgan Stanley India Company Pvt. Ltd., ITA no.266/Mum./2006, etc., wherein the issue has been decided against the Revenue and in favour of the assessee. The issue was specifically discussed by the Co–ordinate Bench in Para–22 and 23 reproduced below and thereafter at Para–26, 27 and 28 of the order, the Bench has given its concluding findings, which are reproduced below:–

> *"22. The Ld.AR explained that TPO granted an adjustment of marketing cost to the extent of 0.1076%, which is approximately 30% of weighted average rate charged to third party client. However, Ld. CIT(A) granted adjustment of 40% with respect to marketing cost adjustment for significant volume and research cost and granted relief to the assessee. The Ld.AR further subunit that geographical location of market is of no consequence in judging comparability of an uncontrolled transaction for purpose of applying CUP method. The difference in geographical location cannot be reason enough to discard comparables. Geographical location of service recipient to be irrelevant consideration, because the consulting services provided by the assessee would*

remain the same whether the service receiver is located in 'X' country or 'Y' country as long as service provider is in India. Reliance is placed on the following judicial precedents to support the said contention:-

- *SI Group-India Ltd v. DCIT (2016) 68 taxmann.corn 158 (Mumbai-Trib)*
- *Bharti Airtel Ltd v. ACIT (2014)43 TAXMANN.COM 50 (Delhi-Trib)*
- *Tower Watson India Pvt Ltd vs DCIT [TS-260-ITAT-20 I 9(DEL)-TP]*
- *Inslico Ltd v. DC ITTs-623-ITAT-2015(DEL)-TP*
- *Clear Plus India Pvt Ltd vs DCIT 30 CCH 0652 Del Trib*
- *BMW India Pvt Ltd vs ACIT (TS-401-ITAT-201 8 (Del Trib)*
- *M/s Garware Pokester vs Dv.CIT-8(1), Mumbai ITA No.6169/Mum/2011*
- *ADIT, Circle 1(1), International Taxation, New Delhi vs ABB Lummus Heat Transfer BV [2015] 64 taxrnanitcom 210 (Delhi-Trib)*

23. The Ld.AR accordingly submits that the Ld.CIT(A) was justified in taking the average brokerage rate charged by assessee to its overseas and Indian clients irrespective of geographical location of service recipients. The Ld. AR further submits that volume discount / adjustment should be allowed in computing arm's length price. It was explained that volume traded / executed by assessee on behalf of Mauritius entity was ₹ 1.316 crores for CH trade, which constitute approximately 34% of total CH trade executed by assessee of its clients. And on the other the highest third party client had executed volume of CH trade of ₹ 396.84 Crore which constitute 10% of the total CH trades executed by assessee to all its clients. In support of his submissions the ld AR for the assessee relied on the following case laws;

- *Clariant Chemical (I) Ltd. v/s JCIT [2014] taxmann. com 421 (Mum. Trib.);*
- *Dresser–Rand India (P) Ltd v/s ACIT [2011] 13 taxmann.com 82 (Mumbai Trib);*
- *Livingstones v/s DCIT [2014] 41 taxmann.com 499 (Mumbai–Trib.)*

"26. We have considered the submissions of both the parties, perused the record. While filing the return of income, the assessee reported transactions with its A.E. as reported in Form no.3CEB. Consequent to that, the A.O. made reference to the TPO vide reference dated 25–09–2003 for computation of arm's length price. The TPO vide his order dated 22–02–2005 suggested the adjustment of ₹ 1,18,559,779/–. The TPO rejected the TNMM method applied by assessee for bench marking its transaction with its A.E. The TPO computed the arm's length

price by applying CUP method. And suggested adjustment of ₹ 18,59,779 in arm's length price. On receipt of report of TPO, the A.O. made addition of ₹ 1,18,59,779/– in respect of arm's length price while passing the assessment order. The assessee filed appeal before the CIT(A). Before the CIT(A), the assessee besides other contentions, stated that CUP method cannot be used as it is for determination of ALP of assessee's transaction with its A.E. as it is difficult to make accurate adjustments for itself as compared to other trades / transactions and TNMM on the overall basis should have been considered being more reliable and accurate method in assessee's case. The Ld.CIT(A), after considering the submissions of assessee concluded that CUP is the most appropriate method which should be applied to the proper adjustment instead of using TNMM which is an indirect method.

27. On the grounds of comparability of comparables, concluded that domestic independent client should be considered for comparability purpose. The assessee further stated that if CUP is to be applied, then appropriate adjustment needs to be made for lesser function performed / asset utilised and risk assumed. It may further stated that assessee did not perform any marketing and sales activities while executing trade for A.E. in Mauritius. Even the levels of other activities like research, trade relationship, etc., are lower as compared to independent client. In addition, Mauritius A.E. is the trusted client of assessee and provided substantial volume of business. Mauritius A.E. is dedicated client of the assessee. While fixing the brokerage rate of Mauritius A.E., the assessee has to consider all the above factors. Accordingly, the assessee urged that if CUP has to be applied, then discounting factor of 50% should be applied as an adjustment to the brokerage rate charged to all Indian clients.

28. The contention of assessee was accepted by Ld. CIT(A) by taking view that if CUP method has to be applied, then appropriate adjustment need to be made for all differences. The Ld. CIT(A) further noted that TPO has carried out adjustment for marketing function by making adjustment considering part of marketing cost and has not made any adjustment to research activities on the premise that Mauritius AE would he getting research related services from assessee. Thus, the Ld. CIT(A) not agreed with the view of TPO that no adjustments are required to he made for research activities based on assumption and possibility and not on actual facts. The Ld.CIT(A), after considering the high volume of business profit of Mauritius A.E. to assessee which is 15% of the total business volume of assessee and the other highest client account is only 3.7% of total business volume the Ld. CIT(A) took his view that it is

settled commercial principle that "volume increase the price decrees". The Ld.CIT(A), after considering the facts, passed the following order:–

I agree with the appellant that if CUP method has to he applied then appropriate adjustments need to be made for all differences. The TPO has carried out adjustments for marketing functions by making an adjustment considering part of marketing cost. The TPO has not made any adjustments for research activities on the premise that MSDW Mauritius would be getting research related services from the appellant. I am unable to agree with the TPO who has formed a view that no adjustments are required to be made for research activities based on certain assumptions and possibilities and not on actual facts.

Further, the TPO has not considered any adjustment for the high volume of business given by MSDW Mauritius to the appellant. The total volume of trades (for purchases and sale) generated by MSDW Mauritius is Rs.1316 crores. As noted by the TPO on page 8 of his order, the business provided by MSDW Mauritius is approximately 15% of the total business volume of total trades. The next highest client accounts for only 3.77% of the total business volume. It is well settled commercial principle that "as volume increases, the price decreases". The TPO has dealt with this issue on para 2 of page 8 in his order. The TPO has picked out certain instances where even though the volume has increased there is no decrease in the brokerage rate and accordingly has not considered any adjustment for volume differences. I am unable to agree with the TPO to the extent that one cannot disregard well- settled commercial principle based on certain stray instances. The tact that 'as volume increases, the price decreases' is a well-established commercial principle and accordingly due weightage /adjustment should he given for the huge volume of business given by MSDW Mauritius.

As per the appellant, MSDW Mauritius is a dedicated client i.e. it bought and sold securities only through the appellant for the entire previous ear. Accordingly, while fixing the brokerage rate for MSDW Mauritius, the appellant has to consider the fact that MSDW Mauritius has no transactions through any of its competitors. The TPO has not considered any adjustments for the same. I am unable to agree with the TPO as certain amount of adjustment is required to loyalty factor of MSDW Mauritius.

The appellant carries out "Clearing House" and 'DVP' trades for MSDW "Clearing House" trades. As stated above, the average brokerage charged to all independent clients for "Clearing House" trades is 0.3511%. The TPO in his order has already considered

an adjustment of 0.1076% on account of marketing cost. Thus, adjustment granted by the TPO amounts to approx. 30% of average brokerage charged to all independent clients.

As stated above, the appellant has contended that the discounting factor of atleast 50% should he applied as an adjustment to the brokerage rate charged to all independent clients.

Keeping the entire factual matrix in mind, I feel that the ends of justice would be met to both sides by considering a discounting factor of 40%. This discounting factor of 40% would cover the marketing cost adjustment already considered by the TPO.

Conclusion

Based on the above, this sub-ground is partly allowed. For comparability purposes, all the independent entities i.e. domestic as well as overseas should he considered, and a discounting factor of 40% as adjustment should be applied.

The calculation of the arm's length price is enclosed as Annexure 1.

Particulars	Clearing House Trades	DVP Trades
Overseas Trades	13,513,701,695	62,321,033,641
Domestic Trades	9,741,948,998	2,248,476,175
Total Uncontrolled Trades	23,255,650,692	64,569,509,816
Total Commission for Uncontrolled Trades	81,660,811	298,410,339
Weighted Average Rate	0.3511%	0.4622%
Discount @ 40%	0.1405%	0.2080%
Arm's length price (i.e., adjusted average rate for uncontrolled trades)	0.2107%	0.2542%
Trades for MSDW Mauritius	131,622,693	4,735,557
Commission Amount	31,343,868	11.379
Rate charged To MSDW Mauritius	0.2381%	0.2403%
Diff in ALP and rate charged to MSDW		0.0139%
Addition		658

> *Considering the arm's length price determined on the above factors, the brokerage rate charged by the appellant to MSDW Mauritius for "Clearing House" trades meets with the arm's length principle. However, the brokerage rate charged by the appellant to MSDW Mauritius for "DVP" trades does not meet with the arm's length principle and consequently, the addition of ₹ 658 is, therefore, confirmed.*
>
> *The appellant gets a relief of ₹ 1,18,59,121, for the sub–ground."*

9. Ground no.1.5, relates to brokerage rates entered into between MS Mauritius (i.e., MSDW) and third party brokers.

10. During the course of hearing, the learned Counsel for the assessee did not wish to press this ground due to non–availability of data pertaining to the year under consideration. Consequently, this ground is dismissed as not pressed.

11. Ground no.2, is with regard to confirmation of A.O./TPO's order without appreciating the fact that the appellant company is a joint venture JM Group and Morgan Staney 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.

12. This ground is also not pressed by the learned Counsel for the assessee, hence, the same is dismissed as not pressed.

13. Ground no.5, being general in nature no separate adjudication is needed.

14. In the result, assessee's appeal is allowed.

ITA no.1582/Mum./2011
Revenue's Appeal – A.Y. – 2004–05

15. Ground no.1, relates to disallowance of remuneration under section 40A(2) of the Act.

16. After hearing both the learned Counsel appearing for the parties and on a perusal of the material on record, we find that this issue has been decided by the Co–ordinate Bench of the Tribunal in assessee's own case for the assessment year 2002–03, in assessee's own case for the assessment year 2002–03, vide order dated 25th February 2020, ACIT v/s Morgan Stanley India Company Pvt. Ltd., ITA no.266/Mum./ 2006, etc., wherein the issue has been decided against the Revenue and in favour of the assessee. The relevant portion of the findings of the Tribunal is reproduced below for reference:–

> *"14. We have considered the submissions of the parties and perused the order of the lower authorities. We noted that during the assessment before A.O. the assessee stated that they have paid remuneration of ₹ 48,88,261/– to Shri Ashish Kampani for the year under consideration. The remuneration consists of basic salary of ₹ 10 lakhs p.a. allowance of ₹ 5.00 lakh p.a. bonus of ₹ 32,41,261/–. The assessee also furnished the interest bearing housing loan of Rs.66.50 lakhs. The assessee also contended before the AO that they have obtained the approval of Central Government u/s 314(1B) for payment of salaries of Rs.10 lakhs p.a., bonus and perquisites was subject to a maximum value of Rs.7.67% and allowance of Rs.5 lakhs and bonus of 15.71%. The AO disallowed only Rs.10,49,299 u/s 40A(2)(b) by taking view*

that remuneration paid is in excess of limit prescribed by Ministry of Law in its letter dated 24-02-2001 and 05-09-2005, having regard to his qualification, experience and the nature of service rendered being more than reasonable. The AO treated the 10% of housing loan as interest. Accordingly, the AO disallowed Rs.10,49,299 and interest on housing loan of Rs.64,500/- totaling Rs.16,94,299/-. The Ld. CIT(A) deleted the addition by taking view that the person is in the field of capital markets, command a very high price. Further, the payment made to employee is within the limits prescribed by Companies Act and satisfies the test of reasonableness. We have noted that the AO, while making the disallowance disregarded the approval granted by central government under the statutory provisions of Companies Act. The AO made addition / disallowance without considering the qualification, experience and reasonableness with regard to his past and position in the field of capital market. So far as interest disallowance of Rs.645,000/- is concerned, we have noted that the housing loan was not interest free the assessee charged interest on such loan as evident from page No. 446 of the paper book. Which has not been disputed by ld. DR while making his submissions before us. Therefore, we do not find any justifiable reason to interfere with the order of the Ld. CIT(A) which we affirm. In the result, this ground of appeal is also dismissed."

17. Since the issue before us is covered by the aforesaid decision of the Tribunal rendered in assessee's own case cited supra, consistent with the view taken therein, ground no.1, is decided in favour of the assessee and against the Revenue.

18. Ground no.2, relates to disallowance of notional interest on deposits under section 40A(2) of the Act.

19. Having considered the rival submissions and having perused the material on record, we find that the issue of disallowance of notional interest on deposits claimed under section 40A(2) of the Act has been decided by the Co–ordinate Bench of the Tribunal in assessee's own

case for the assessment year 2002–03, in assessee's own case for the assessment year 2002–03, vide order dated 25th February 2020, ACIT v/s Morgan Stanley India Company Pvt. Ltd., ITA no.266/Mum./ 2006, etc., wherein the issue has been decided against the Revenue and in favour of the assessee. The relevant portion of the findings of the Tribunal is reproduced below for reference:–

> *"7. We have considered the submissions of parties and perused the order of lower authorities. During the assessment, the AU noted that assessee has paid rent of Rs.1.41 crores to its sister concern for occupying of 12.030 sq.ft. of office premises in Forbes building. The assessing officer further noted that assessee has paid deposit of Rs.3.00 crore with its sister concern. The A.O. noted that no explanation was given for such deposit with sister concern. The AO calculated interest @10% amounting to Rs.30 lakhs and made addition on account of interest free deposit. The AO concluded that even the rent paid is reasonable, the interest on deposits has to be considered as an excess within the meaning of section 40A(2) of the Act. On appeal before ld. CIT(A), ld. CIT(A) took his view that the AO has not made a case for disallowance of any expenditure and made addition for notional return of interest from deposit. It was further held that the AO made addition to the income of assessee which has not been earned and, therefore, deleted the addition. Before us, neither the Ld. DR brought any contrary law nor any comparable rate of rent in similarly situated property. Moreover, the AU has not made a case of disallowance on the basis of any comparable and simply made addition for notional return of interest free deposit. The Hon'ble Bombay High Court in Karma Energy [2015] 57 taxmann.com 235 (Bom) held that where assessee paid lease rent to a group company in respect of wind farm taken on lease, since lease rent was fixed in accordance with formula provided by Indian Renewable Energy Development, a Government of India Company, impugned disallowance made by Assessing Officer under section 40A(2)(b) was to be set aside. Thus, keeping in view the decision of Bombay High Court (supra) and when no contrary fact or law is brought to our notice, we affirm the finding of ld.CIT(A). In the result the Ground no.4 is dismissed."*

20. Consistent with the view taken therein, ground no.2, is decided in favour of the assessee and against the Revenue. Accordingly ground no.2, raised by the Revenue is dismissed.

21. Ground no.3, relates to transfer pricing adjustment.

22. This issue is similar to the issue raised in ground no.1.3, by the assessee in its appeal being ITA no.1164/Mum./2011, vide Para–5 & 6 above. Consistent with the view taken therein, similar directions are issued on this issue also. Thus, ground no.3, raised by the Revenue is dismissed.

23. Ground no.4, relates to deletion of disallowance pertaining to adjustment under the head payment of overseas support fees.

24. After hearing both the parties on this issue, we find that similar issue has been decided by the Co–ordinate Bench in assessee's own case for the assessment year 2002–03, vide order dated 25th February 2020, ACIT v/s Morgan Stanley India Company Pvt. Ltd., ITA no.266/Mum./ 2006, etc., wherein the issue has been decided against the Revenue and in favour of the assessee. The relevant portion of the findings of the Tribunal is reproduced below for reference:–

> *"6. We have considered the submission of both the parties and perused the record. We have seen that the assessee claimed an amount of Rs.10,94,87,945/- as a business expenditure on*

account of overseas support fees paid to Morgan Stanley India Securities Private Limited. The AO held that overseas support services are not in the business interest of the assessee. These expenses were neither necessitated nor justified by commercial expediency. The AO further held that no businessman will part its income by way of overseas support fees. The AO held that these are the transactions between sister concerns and covered by provisions of section 40A(2) being not incurred wholly and exclusively. The AO also held that no businessman will part its income by way of overseas Support fees. The AO held that no businessman will part its income by way of overseas support fees. The AO held that these are the transactions between sister concerns and covered by provisions of Section 40A(2) being not incurred wholly and exclusively. On appeal, the Ld. C1T(A) deleted the addition by following the decision of his predecessor far AYs 2000-01 and 2001-02.

7. We have noted that in assessee's own case for AYs 2000-01 and 2001-02. the Tribunal on similar ground of appeal (ITA No.7070/Mum/2004 – A.Y. 2001-02 order dated 25-01-2008) while fallowing the decision in assessee's own in assessee's own case for AY 2000-01 in ITA no.3053/Mum./2014 deleted similar disallowance. We have note that facts for the year under consideration are not at variance. Otherwise, no contrary facts or material has been brought before us to take a different view. Therefore, respectfully following the earlier decision o the Tribunal we do not find any infirmity in the order passed by the Ld. CIT(A), which we hereby affirm. In the result this ground of appeal is dismissed."

25. Consistent with the view taken therein, ground no.2, is decided in favour of the assessee and against the Revenue. Accordingly ground no.2, raised by the Revenue is dismissed.

26. Ground no.5, is consequential to the findings given in ground no.1.4 and 1.5 raised by the assessee in its appeal being ITA no.1164/Mum./2011. The Assessing Officer is directed to give

consequential effect in view of our findings given in grounds no.1.4 and 1.5 as aforesaid.

27. In the result, Revenue's appeal is dismissed.

Order pronounced in the open Court on 05/10/2021.

Sd/-	Sd/-
MAHAVIR SINGH	**S. RIFAUR RAHMAN**
VICE PRESIDENT	**ACCOUNTANT MEMBER**

MUMBAI, DATED: 05/10/2021

Copy of the order forwarded to:

(1) The Assessee;
(2) The Revenue;
(3) The CIT(A);
(4) The CIT, Mumbai City concerned;
(5) The DR, ITAT, Mumbai;
(6) Guard file.

By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Assistant Registrar
ITAT, Mumbai