

KPO Services not comparable to Investment Advisory Services

In recent ruling (M/s.Apax Partners India Advisers Pvt. Ltd.¹), the Mumbai ITAT has held that taxpayers engaged in providing Investment advisory services cannot be compared with companies providing KPO services.

Facts

The assessee is engaged in providing non binding investment advisory business to its AE in UK and is being compensated on cost plus basis. In its TP study the assessee benchmarked the international transaction relying upon transactional net margin method with operating profit to operating cost as the profit level Indicator.

Issue

The key issue revolved around classification of the appellant's services –whether they were in the nature of KPO services?

Decision by ITAT

ITAT excluded the following comparables:

- (i) Eclerx Services Limited** - Excluded as it was a KPO engaged in data analytics.
- (ii) Mold-Tek Technologies Limited** - Excluded as it was engaged in engineering design services as per its annual report.
- (iii) Acropetal Technologies** - Excluded as it was engaged in providing engineering design services and information technology services.
- (iv) Crossdomain Solutions Limited** - Engaged in data processing and insurance claim processing.

¹M/s. Apax Partners India Advisers Pvt. Ltd. v DCIT (ITA No.628/Mum/2013)

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ITAT accepted the contention of the Assessee on its non-comparability with companies providing KPO services. The assessee relied on –**KGN India Advisors Pvt. Ltd. v. DCIT**² wherein the Court held that company providing management and advisory services cannot be compared with company engaged in KPO Services, [**upheld in Carlyle India Advisors (P) Ltd. vs. ACIT (2012)**]³, **CIT v Carlyle India Advisors (P) Ltd**⁴ and **Temasek Holdings Advisors India Pvt. Ltd.**⁵ by ITAT Mumbai Benches in several cases].

Comments

The ruling enhances the catena of rulings now available on benchmarking investment advisory services. Non-binding investment advisory services ought to be viewed in correct perspective as low value research and advisory services rather than high end KPO services. It is heartening to note the maturity achieved by Indian Transfer Pricing regime as fine but important functional differences have come to be recognized and accepted. Taxpayers, need to bear in mind these fine distinctions while benchmarking non binding research and investment advisory services.

The information contained in this newsletter is solely intended to provide general guidance on matters of interest. Nothing herein constitutes professional or legal advice, nor does any information herein constitute a comprehensive or complete statement of the issues discussed. It is recommended that you seek a professional advice to confirm your understanding on the issues dealt above. For Tax/Transfer Pricing queries you may contact:

²70 Taxmann.com 219

³2012 (17) ITR(Trib) 24 (Mumbai)

⁴[2013]357 ITR 584 (Bom.)

⁵ ITA No.968/Mum/2014, ITA No.776/Mum/2015, 160 TTJ 556