

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI 'K' BENCH, MUMBAI**

**[Coram: Pramod Kumar AM and Pawan Singh JM]**

**I.T.A. No.1000/Mum/2015  
Assessment year: 2010-11**

**Sandstone Capital Advisors Pvt. Ltd.** .....**Appellant**  
Regus, 6<sup>th</sup> Floor, Mafatlal House,  
H.T. Parekh Marg,  
Backbay Reclamation,  
Mumbai.  
[PAN: AAICS 8031 L]

**Vs.**

**Dy. Commissioner of Income Tax** .....**Respondent**  
Circle 3(3), Mumbai.

**Appearances by:**

**Porus Kaka**, for the appellant  
**N.K. Chand**, for respondent

Date of concluding the hearing : January 12<sup>th</sup>, 2016  
Date of pronouncing the order : March 31<sup>st</sup>, 2016

**ORDER**

**Per Pramod Kumar, AM:**

By way of this appeal, the assessee appellant has challenged correctness of the order dated 7<sup>th</sup> November, 2014 passed by the Id. CIT(A) in the matter of assessment under section 143(3) read with section 92C(3) of the Income Tax Act, 1961 ('the Act' hereinafter) for the assessment year 2010-11, on the following grounds :-

***"A. Grounds relating to transfer pricing adjustment:***

1. *On the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) ['CIT(A)'] grossly erred in upholding the upward adjustment of Rs.1,00,58,827 made by Ld. Assessing Officer ('AO') u/s. 92 of the Act by re-computing the arm's-length price of the international transaction of*

provision of investment advisory services at Rs.6,73,94,027 instead of book value of Rs.5,73,35,200.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) grossly erred in upholding that the company Motilal Oswal Investment Advisory Private Limited is functionally comparable to Appellant.

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) grossly erred in upholding rejection of the Appellant's comparable, Future Capital Holdings Ltd - Investment Advisory segment on the basis that it has Related Party Transaction ['RPT'], even though its RPT are less than 25% and is otherwise functionally comparable.

4. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) grossly erred in not appreciating the difference between the risk profile of the Appellant and companies/segments selected as comparable by the Ld. AO and in not making suitable adjustment thereof to ensure better comparability between the Appellant and the comparables.

5. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) grossly erred in upholding the Ld. AO's action of considering fresh comparable at the time of assessment proceedings, the data pertaining to which was not available to the Appellant at the time of determining the arm's length price for complying with the TP documentation requirements.

6. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) grossly erred in upholding the Ld. AO's action of not accepting the economic analysis undertaken by the Appellant in accordance with the provisions of the Act read with the Rules.

7. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) grossly erred in upholding Ld. AO's action of determining the arm's length margin/price using data for financial year 2009-10 only and rejecting prior two years data (as contemplated under Rule 106(4) of the Rules) which was considered by the Appellant in the TP Documentation.

8. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) grossly erred in not considering that the arm's length price of international transaction of investment advisory services was determined by the Appellant in its TP Documentation in accordance with provisions of Sections 92C of the Act read with relevant Rules and consequently in not appreciating that none of the conditions set out in Section 92C(3) of the Act are satisfied in Appellant's case for invoking Ld. AO's power u/s. 92C(3) of the Act.

9. On the facts and in the circumstances of the case and in law, ld. CIT(A) grossly erred in not considering that the Appellant is entitled to the benefit of the 5% range as envisaged in the proviso to Section 92C(2) of the Act in determining the arm's length price of the international transactions of the Appellant.

*The Appellant prays that the book value of the impugned international transaction be held to be the arm's length price of the impugned international transaction and the additions made by the Ld. AO in this regard be deleted in toto.*

**B. Grounds relating to other additions:**

10. *On the facts and circumstances of the case and in law, the Ld. CIT(A) grossly erred in upholding disallowance of Rs.1,25,775 under section 14A of the Act. The Appellant prays that the Ld. AO be directed to accept the contention of the Appellant that it has not incurred any expenditure in relation to earning of exempt income and delete the disallowance of Rs.1,25,775."*

2. As all the transfer pricing related grounds essentially seek to challenge addition on account of arm's length price adjustment of Rs 1,00,58,827, we will take up all these grounds together.

3. To adjudicate on this appeal only a few material facts need to be take note of. The assessee before us is a wholly owned subsidiary of Sandstone Capital LLC (**Sandstone LLC**, in short) – a Delaware Company with it's registered office in Boston USA. Sandstone LLC in turn is general partner of Sandstone group funds and is primarily responsible for managing and investing resources generated by Sandstone Group. Sandstone Capital Investment Manager (**Sandstone Capital**, in short) is a Mauritius based group company which advises another group company, Sandstone Capital Management, a Cayman, Island Company, and provides it investment advisory services. The assessee before us, i.e. Sandstone Capital Advisors Limited (**Sandstone India**, in short) is a sub-advisor to Sandstone Capital. The services rendered by the assessee include "analysing, investigating and researching investment opportunities in India and providing recommendations on such investment opportunities".

4. During the course of assessment proceedings, the Assessing Officer noted that the assessee has earned a mark-up of 17.46% on provision of investment sub-advisory services so rendered to the associated enterprises. It was also noted that the assessee has adopted transactional net margin method (TNMM) with the following comparables for justification of arm's length price having been received from associated enterprises for services so rendered. The table below shows the computation by the assessee :-

<b>Sr. No.</b>	<b>Name of the Company</b>	<b>Operating Margin on operating Costs (%)</b>
		<b>2010</b>
1.	<i>Future Capital Investment Advisors Limited</i>	23.46
2.	<i>Kshitij Investment Advisory Co. Limited</i>	23.46
3.	<i>Quantum Advisors Pvt. Limited</i>	6.42
4.	<i>Crisil Limited</i>	47.81
5.	<i>Future Capital Holdings Ltd.</i>	(-)2.71
6	<i>Indian Venture Capital Limited</i>	(-)4.39
	<b>Mean</b>	<b>15.68</b>

5. Of the comparable given above, the Assessing Officer rejected Future Capital Holdings Limited and Indian Venture Capital Limited on the ground that the comparables have related party transactions greater than 25% and that company is not functionally comparable, respectively. Crisil Limited as a comparable was also rejected on the ground that the related party transactions are greater than 25%. For the reasons we will set out in a short while, it is not really necessary to go any deeper in respect of the comparables. Suffice to note that the Assessing Officer introduced an additional

comparable Motilal Oswal Investment Advisory Pvt. Ltd. which was found to be comparable to the functions performed by the assessee. While he noted the assessee's submission that the company is not functionally comparable, he added the same on the ground that "the company is engaged into advisory services and provides investment advisory services". Based on this exercise, arithmetical mean of the margin of comparable was recomputed as follows :-

<b>Sno.</b>	<b>Name</b>	<b>OP/OC</b>
1	<i>Motilal Oswal Investment Advisors Pvt. Ltd.</i>	97.84
2	<i>Future Capital Investment Advisors Ltd.</i>	16.75
3	<i>Quantum Advisors Pvt. Ltd.</i>	6.09
4	<i>Kshitij Investment Advisory Co. Ltd.</i>	31.59
	<b>Arithmetical Mean</b>	<b>38.07</b>

6. It was in this backdrop that an addition of Rs.1,00,58,827/- was made to the arm's length price of the consideration received by the assessee from its associated enterprises on account of investment advisory services. Aggrieved, the assessee carried the matter in appeal before the learned CIT(A) but without any success. The assessee is not satisfied and is in appeal before us.

7. When this appeal was called out for hearing, Shri Porus Kaka, learned Counsel for the assessee submitted that the appeal can be decided on a short ground on whether or not Motilal Oswal Investment Advisory Pvt. Ltd. can be taken to be a valid comparable. It was submitted that in the event of Motilal Oswal Investment Advisory Pvt. Ltd. being taken to be of the comparable adopted by the Assessing Officer, the

arithmetic mean of the margins of the comparable will come down to 18.14% as against assessee's margin of 17.46%. Taking into account the permissible adjustment of 5%, the price charged by the assessee from its associated enterprises will be arm's length price. It is in this background that the learned Counsel for the assessee has addressed us on the short point about this one comparable.

8. Learned counsel submits that while the assessee has given investment advisory services, the nature of service rendered by Motilal Oswal Investment Advisory Pvt. Ltd. is altogether different. He first invited our attention to categorical confirmation vide letter dated 18.03.2014 by Motilal Oswal Investment Advisory Pvt. Ltd. that the actual work done by the Motilal Oswal Investment Advisory Pvt. Ltd. was in the nature of investment banking activity and not investment advisory activity. Our attention is thus invited to a series of orders passed by the Tribunal which hold that Motilal Oswal Investment Advisory Pvt. Ltd. is an investment banking company and not comparable to investment advisory companies. These decisions include the following:

<i>Sr. No.</i>	<i>Name of the case</i>	<i>Citation</i>	<i>Tribunal/Court</i>	<i>A.Y.</i>
1	<i>Carlyle India Advisors Pvt. Ltd. vs. ACIT</i>	<i>ITA No.1040/Mum/2015</i>	<i>Mumbai Tribunal</i>	<i>2010-11</i>
2	<i>Bain Capital Advisors (India) Pvt. Ltd. Vs. DCIT</i>	<i>A) (2015) 44 CCH 0664 Mum Trib</i> <i>B) ITA No.413/Mum/2015</i>	<i>Mumbai Tribunal</i>	<i>2010-11</i>
3	<i>Q-India Investment Advisors vs. DCIT</i>	<i>A) (2015) 44 CCH 0251 Mum Trib</i> <i>B) ITA No.923/Mum/2015</i>	<i>Mumbai Tribunal</i>	<i>2010-11</i>
4	<i>NVP Venture Capital India Pvt. Ltd. vs. DCIT</i>	<i>A) (2015) 44 CCH 0250 Mum Trib</i> <i>B) ITA No.1564/Mum/2015</i>	<i>Mumbai Tribunal</i>	<i>2010-11</i>
5	<i>Carlyle India Advisors Pvt. Ltd.</i>	<i>A) (2014) 41 CCH 0423 Mum</i>	<i>Mumbai Tribunal</i>	<i>2009-10</i>

	vs. DCIT	Trib B) ITA No.2200/Mum/2015		
6	Bain Capital Advisors (India) Pvt. Ltd.	ITA No.1360/Mum/2014	Mumbai Tribunal	2009-10
7	General Atlantic Pvt. Ltd. Vs. DCIT	ITA No.1019/Mum/2014	Mumbai Tribunal	2009-10
8	Acumen Fund Advisory Services India (P) Ltd. vs. DCIT	A) (2014) 66 SOT 0047 (Mumbai (URO)) B) ITA No.143/Mum/2014	Mumbai Tribunal	2009-10
9	M/s Goldman Sachs (India) Securities Pvt. Ltd. vs. DCIT	IT No.222/Mum/2014	Mumbai Tribunal	2009-10
10	DCIT vs. M/s Arisaig Partners India Pvt. Ltd.	ITA No.1083/Mum/2014	Mumbai Tribunal	2009-10
11	Wells Fargo Real Estate Advisors Pvt. Ltd. Vs. DCIT	ITA No.1093/Mum/2014	Mumbai Tribunal	2009-10
12	Actis Advisors Pvt. Ltd. Vs. ACIT	ITA No.1998/Del/2014	Delhi Tribunal	2009-10
13	Carlyle India Advisors Pvt. Ltd. Vs. DCIT	ITA No.7367/Mum/2012	Mumbai Tribunal	2008-09
14	Lehman Brothers Advisers Pvt. Ltd. vs. ACIT	ITA No.7722/Mum/2012	Mumbai Tribunal	2008-09

9. Learned counsel also invited our attention to several other decisions of the Tribunal which hold that investment banking companies are not comparable to investment advisory companies. These decisions are listed below :-

Sr. No.	Name of the case	Citation	Tribunal/Court	A.Y.
1	CIT vs. Carlyle India Advisors Pvt. Ltd.	A) (2013) 357 ITR 0584 (Bom) B) ITA(L) No.1286 of 2012 (Bom HC)	Bombay High Court	2007-08
2	Carlyle India Advisors Investment Pvt. Ltd. ACIT	A) (2012) 17 ITR 0024 B) ITA No.7901/Mum/2011	Mumbai Tribunal	2007-08
3	General Atlantic Pvt. Ltd. Vs. DCIT	A) (2013) 57 SOT 0027 (URO) B) ITA No.8914/Mum/2010	Mumbai Tribunal	2006-07
4	New Silk Route Advisors Pvt.	A) (2015) 43 CCH 0327 Mum	Mumbai Tribunal	2009-10

	<i>Ltd. Vs. DCIT</i>	<i>Trib</i> <i>B) ITA No.1327/Mum/2014</i>		
5	<i>Temasek Holdings Advisors (I) Pvt. Ltd. Vs. DCIT</i>	<i>A) (2013) 27 ITR (Trib) 0125 (Mumbai)</i> <i>B) ITA No.4203/Mum/2012 and ITA No.6504/Mum/2012</i>	<i>Mumbai Tribunal</i>	<i>2007-08 &amp; 2008-09</i>

10. It is in the strength of these arguments, ld. counsel for the assessee submits that the nature of work which was done by the assessee was not at all comparable to the work done by Motilal Oswal Investment Advisory Pvt. Ltd. A lot of emphasis has been placed on the fact that the work done by the assessee for its associated enterprises was in the nature of advisory and research work whereas the nature of activity carried out by Motilal Oswal Investment Advisory Pvt. Ltd. is qualitatively different such as Equity Capital Markets, Mergers & Acquisitions, Private Equity Syndications and structured debt. It is submitted that the nature of work done by Motilal Oswal Investment Advisory Pvt. Ltd. is far greater entrepreneurial in nature and in rewards whereas the work done by the assessee is primarily in the nature of support service. We are thus urged to delete Motilal Oswal Investment Advisory Pvt. Ltd. from the list of comparables.

11. Learned Departmental Representative, on the other hand, relied upon the authorities below and reiterated the same.

12. We have heard the rival submissions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

13. We find that this issue is very well covered by the decision of a co-ordinate bench of this Tribunal in the case of Carlyle India Advisors Private Limited vs. ACIT (supra). In

this decision the co-ordinate bench has taken note of the point of distinction made out between the work done by Motilal Oswal Investment Advisory Pvt. Ltd. vis-a-vis a pure investment advisory work and then came to the conclusion that these two are incomparable. We can do no better than quote the following observations made by the co-ordinate bench:-

*"In the context of the Motilal Oswal Investment Advisors Pvt. Ltd., the Representative for the assessee has canvassed that the plea of the assessee for excluding the same from the final set of comparables has been unjustly rejected by the lower authorities. The fundamental point raised by the assessee is that the said concern is involved in multiple set of activities which are functionally incomparable to the activity of Provision of investment advisory related support services undertaken by the assessee for its associate enterprise. In support, a reference has been made to page 512 of the Paper Book, wherein is placed a copy of the Annual Report of the said concern for the instant year and in particular, our attention was invited to the contents of the Directors report in order to emphasize that the said concern is deriving income from four different business verticals, viz., Equity Capital Markets, Mergers & Acquisitions, Private Equity Syndications and structured debt. The Directors report has been further referred to substantiate that the said concern is also engaged in advising Indian clients on cross-border acquisitions and in providing equity placements and managing IPOs. On this basis, the Id. Representative for the assessee justified the exclusion of the said concern from the final set of comparables inasmuch as according to him the assessee's international transaction of Provision of investment advisory related support services does not involve any activity in relation to structured debt, private equity syndications or IPOs. Secondly, it has also been emphasized that though the said concern was deriving income from four different business verticals but separate reportable segments have not been drawn out in the Annual Financial statements. In this regard our attention has been invited to the notes to accounts annexed to the financial statements, copy of which has been placed in the Paper Book. Therefore, it was contended that even if some of the activities performed by the said concern are similar to that of the assessee, but in the absence of any segmental reporting, it was not possible to cull out the financial results of the activity undertaken by the assessee. Apart from his aforesaid assertions, the Ld. Representative pointed out that the said concern has been held to be excludible from the final set of comparables in assessee's own case for assessment years 2008-09 and 2009-10 by the Tribunal, copies of the orders of the Tribunal dated 07.02.2014 & 22.08.2014 vide ITA No.7367/Mum/2012 for assessment year 2008-09 & ITA No.2200/Mum/2014 for assessment year 2009-10 respectively have been placed on record. Further the Ld. Representative relied on the following decisions of the Mumbai Bench of the Tribunal to support the exclusion of Motilal Oswal Investments Advisors Pvt. Ltd. as a comparable while benchmarking transactions which are similar to the assessee :-*

- (i) *Acumen Fund Advisory Services Pvt. Ltd. (ITA 143/Mum/2014) dated 04.07.2014*
- (ii) *Bain Capital Advisors (India) Pvt. Ltd. (ITA 1360/Mum/2014) dated 05.01.2015*
- (iii) *Q-India Investment Advisors Pvt. Ltd. (ITA 923/Mum/2015) dated 20.04.2015*
- (iv) *NVP Venture Capital India Pvt. Ltd. (ITA 1564/Mum/2015) dated 30.04.2015*
- (v) *Bain Capital Advisors (India) Pvt. Ltd. (ITA 413/Mum/2015) dated 15<sup>th</sup> May 2015*
- (vi) *Wells Fargo Real Estate Advisors Pvt. Ltd. (ITA 1093/Mum/2015) dated 27.05.2015*

13. *On the other hand, the Ld. CIT(DR) appearing for the Revenue has referred to the relevant discussion in para 9.1.3 of the order of the TPO to justify the inclusion of Motilal Oswal Investments Advisors Pvt. Ltd. The Ld. CIT(DR) pointed out that the said concern was found to be engaged in providing high quality strategic financial advisory services used for acquiring major equity stakes, acquisitions, placement of equity with inventors, etc. and that such-like services are comparable with the investment advisory related support services rendered by the assessee company. Further, it is pointed out that the Financial statements of the said concern indicate that there is a single reportable operational income segment and, therefore, the absence of segmental reporting cannot be a ground to exclude the said concern from the list of comparables. The Id. CIT(DR) also referred to the discussion made by the TPO in para 9.1.2 (iii) to emphasize that there was no mention of any investment fund or investment related activity being undertaken by the said concern and, therefore, the said concern was essentially in the business of rendering advisory services and not in the business of managing funds, so as to be excluded from the final set of comparables.*

14. *We have carefully considered the rival submissions. At the outset, we note that the points of distinction made out by the Ld. Representative of the assessee vis-a-vis Motilal Oswal Investments Advisors Pvt. Ltd is quite evident from the material on record. Pertinently, the activities undertaken by Motilal Oswal Investments Advisors Pvt. Ltd. stand on a different footing than the pure investment advisory services rendered by the assessee to its associate enterprise. The contents of the Directors report for year under consideration clearly establish that its activities are qualitatively distinct and much more diversified than what is being undertaken by the assessee for its associate enterprise. The plea of the Revenue before us that because it has "single reportable operational income segment" of advisory fee, therefore, the same is comparable with the assessee's activity is devoid of any analytical support from the information available in the public domain. In fact, the aforesaid argument of the Revenue has already been considered by the Tribunal in the assessee's own case for assessment year 2008-09 vide ITA No.7367/Mum/2012 (supra), wherein, the Tribunal duly noted that though the said concern was declaring income from a solitary stream of advisory fee, but factually it was found engaged in diversified activities and financial data was not available for each*

*segment. It was noticed that the said concern was registered with SEBI as a merchant banker that it was indeed carrying out merchant banking activities. The aforesaid factual aspect exist during the year under consideration also and, in our view, the same makes the said concern as incomparable with assessee's international transaction of Provision of investment advisory related support services. Therefore, considering the precedent in the assessee's own case as also the fact position for the year under consideration, the assessee company is justified in seeking exclusion of the said concern from the final set of comparables on account of its functional dissimilarities. Thus, on this aspect assessee succeeds."*

14. In view of the above observations made by the co-ordinate bench with which we are in respectful agreement, the nature of work done by Motilal Oswal Investment Advisory Pvt. Ltd. cannot indeed be compared with normal support work done by investment advisory as rendered by the assessee in the nature of research analysis and investment advice. In view of these discussions and bearing in mind entirety of the case, we are inclined to hold that Motilal Oswal Investment Advisory Pvt. Ltd. deserves to be excluded from the list of comparables. We have also noted that upon this comparable being excluded from the list of comparables for the purpose of applying TNMM, the margin earned by the assessee will very well be within the permissible range of arm's length price. In this view of the matter, we deem it fit and proper to uphold the plea of the assessee and direct the Assessing Officer to delete the impugned arm's length price adjustment of Rs.1,00,58,827/-.

15. In the result, appeal is allowed in the terms indicated above. Pronounced in the open court today on 31<sup>st</sup> day of March, 2016.

*Sd/-*

**Pawan Singh**  
(Judicial Member)

*Sd/-*

**Pramod Kumar**  
(Accountant Member)

***Dated: 31<sup>st</sup> day of March, 2016.***  
*PBN/\**

*Copies to:*

<i>(1)</i>	<i>The appellant</i>	<i>(2)</i>	<i>The respondent</i>
<i>(3)</i>	<i>Commissioner</i>	<i>(4)</i>	<i>CIT(A)</i>
<i>(5)</i>	<i>Departmental Representative</i>	<i>(6)</i>	<i>Guard File</i>

*By order*

*Assistant Registrar  
Income Tax Appellate Tribunal  
Mumbai benches, Mumbai*