

अपीलीय आयकरआयकर अपीलीय अधिकरण "के" न्यायपीठ मुंबई में।

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

श्री बी आर भास्करन, लेखा सदस्य एवं

श्री अमित शुक्ला, न्यायिक सदस्य के समक्ष ।

**BEFORE SHRI B R BASKARAN, ACCOUNTANT MEMBER AND
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

ITA No. 776/Mum/2015

(Assessment year 2010-11)

Tamasek Holdings Advisors India P Ltd, 12, 3 North Avenue Maker Maxity Bandra Kurla Complex, Bandra (East), Mumbai -400 051 सं लेखा स्थयी.:PAN: AACCM 4000 H	Vs	Deputy Commissioner of Income- tax Circle-14(3)(1), Aayakar Bhavan, M K Road, Mumbai-400 020
अपीलार्थी (Appellant)		प्रत्यर्थी (Respondent)
Appellant by	:	श्री पोरस काका Shri Porus Kaka श्री दिवेश चावला Shri Divesh Chawla
Respondent by	:	श्री येन के चाँद Shri N K Chand श्री संबित मिश्रा Shri Sambit Mishra

सुनवाईकीतारीख /Date of Hearing : 09-10-2015

घोषणाकीतारीख /Date of Pronouncement : __ -02-2016

आदेश
ORDER

श्री अमित शुक्ला, न्या.स :-

PER AMIT SHUKLA, J. M.:

The aforesaid appeal has been filed by the assessee against Final Assessment Order dated 31.12.2014, passed by Assessing officer under section 143(3) r.w.s. 144C(13) in pursuance of directions given by the Dispute Resolution Panel (DRP) vide order dated 22.12.2014, under section 144C(5) for the assessment year 2010-11. In various grounds of appeal, the assessee has mainly challenged the Transfer Pricing Adjustment of Rs. 9,41,19,278/- in determination of Arm's Length Price (ALP) for provision of investment advisory services to its associate enterprise (AE). The assessee is mainly aggrieved by exclusion of five comparable companies, (three by the Transfer Pricing officer (TPO) and two by

the DRP) and inclusion of one comparable to arrive at the mark-up margin of 37.51% as against the assessee's margin of 21.4%. The assessee in its ground no. 4 has mainly challenged the rejection of the following three comparables selected by the assessee in its TP Study report for the financial year 2009-10 relevant to assessment year 2010-11:-

- (i) ICRA Management Consultancy Services Ltd. (ICRA);
- (ii) Integrated Capital Services Ltd;
- (iii) Kinetic Trust Ltd.

The assessee has also challenged the inclusion of one company by the TPO, M/s Motilal Oswal Investment Advisors Pvt. Ltd. as a comparable company. In ground no.5, the assessee has challenged rejection of two comparable companies by the DRP namely:

- (i) Future Capital Investment Advisors Limited and
- (ii) IDC India Ltd,

which were accepted by the TPO. That apart, assessee has also challenged the addition of a further markup of 3% by the TPO over and above the comparative margin arrived at 37.51%. All other grounds revolve around these major issues only.

2. The brief facts *qua* the issue of Transfer Pricing adjustment are that, the assessee is a Private Limited Company incorporated in India and is 100% subsidiary of Tamasek Holdings Private Limited, Singapore (THPL). Assessee vide agreement dated 1st April 2004 with THPL agreed to provide Investment Advisory Services. While rendering these services, the assessee provides investment recommendation in India to THPL, whereas the later retains the right of the use of investment advice or information. Hence the advisory services provided by the assessee were in the nature of non binding advisory services for which assessee was compensated with cost plus markup. The services rendered by the assessee under the "Investment Advisory Agreement" included the following services / functions:

- a) Providing research reports, macro economic analysis and other advisory services;
- (b) Identifying, screening and investigating sectors of the Indian economy for investment opportunity;
- (c) Advising in investigation, structure, monitoring of portfolio securities/portfolio companies as the case may be;
- (d) Undertaking economic and market intelligence of the eligible portfolio companies including analysis and investigation of eligible portfolio companies, including their products, services, markets, management, financial solutions, competitive position market ranking, prospects for future performance and relevant industry sector;
- (e) Undertaking due diligence of investment opportunities and submit reports and recommendation; and
- (f) Assisting in performance review of portfolio companies, recommending the plans for managerial and business support and furnishing performance and relevant industry sector reports.

The details of international transaction, as reported in the Transfer Pricing Study report and in form 3CEB, entered by the assessee with THPL was as under:-

Sr. No.	Nature of transaction	AY 2010-11 (Rs.)	Method used as per TPRS
1	Investment Advisory services	34,31,28,197	TNMM
2	Reimbursement of salary & other cost	7,87,29,790	Not Applicable
3	Purchase of fixed asset	23,09,616	Not applicable

3. As stated above the transaction of Investment Advisory Services was disclosed by the assessee at a mark-up margin of 21.4%. To benchmark the margin, whether earned at arm's length price, the assessee carried out the FAR analysis after adopting

transactional net margin method (TNMM) as the most appropriate method (MAM) for comparing its operating margin with the external comparables engaged in financial and corporate advisory services. It has been stated before us that, assessee in its TP Study Report has under taken a very systematic approach for selection of comparables, firstly, by identifying the companies engaged in the comparable business after detailed search process using keynotes on the accepted public data (i.e. Prowess and Capital Line); secondly, by applying quantitative filter to shortlist the number of companies thrown in list; and lastly, every comparable shortlisted were analysed at qualitatively level based on the multiple year data of the financial accounts available in the public domain. The whole search process has been documented in the Transfer Pricing Study report including accept and reject matrix. The entire documentation was been stated to be done in accordance with section 92D read with Rule 10B.

4. Before us, the Ld. Senior counsel, Mr. Porus Kaka, submitted that the process for selecting the comparables by the assessee was purely transparent and was undertaken by reviewing qualitatively the nature of services provided by the companies and thereafter carried out the comparative analysis with the functions and services rendered by the assessee. The assessee has mainly selected the comparable companies which were engaged in the rendering of services similar to Corporate Advisory Services, strategic Advisory Services, Consultancy services, etc. The assessee has specifically excluded the comparable companies which were registered as merchant bankers with SEBI, asset management companies, stock brokers and like due to the reasons that their functional risk profile are significantly different from that of the assessee, which merely provides non-binding advisory services to its AE. He further submitted that, this is not the first year of transfer pricing process and the adjustments made by the TPO based on inclusion and exclusion of comparables. In the earlier years also as well as in the

AYs 2008-09 and 2009-10, by and large similar companies were selected by the assessee and on the same reasoning and ground on which the TPO has made the transfer pricing adjustment in this year was also made in the earlier years. In those years, the matter has attained finality at least from the stage of the ITAT, wherein the most of the disputed issues on comparables have been decided in favour of the assessee. Thus, on a larger perspective the issues in this year are by and large are covered by the decisions of the Tribunal in assessee's own case.

5. Like in the earlier years, after detail analysis, the assessee had chosen comparables in its TP Study report to benchmark its margins, firstly by taking weighted average of three years for determining the arithmetic mean by analysing 10 final comparables, the weighted average margin was arrived at 20.52%. Later on, when the assessee submitted the margin based on the calculation for the financial year 2009-10, 7 comparables were finally listed, the arithmetic mean of which were arrived at 14.84%. Thus it was stated that the assessee's margin was at ALP. The list of 7 comparables selected by the assessee and operating margins based on financial year data of 2009-10 are as under:

Name of the company (Comparables selected By the assessee	Operating margin FY 2009-10
Future Capital Investment Advisors Ltd.	15.71%
ICRA Management Consulting Services Ltd	0.41%
ICRA online Ltd	41.77%
IDC India Ltd	13.00%
Informed Technologies Ltd.	25.52%
Integrated Capital Services Ltd.	-2.92%
Kinetic Trust Ltd.	10.39%
Arithmetic Mean	14.84%

Shri Porus Kaka submitted that, after the computation of Arm's Length Margin by benchmarking with the comparables on scientific and qualitative analysis done in accordance with the provisions of the Act and Rules, the Ld. TPO, rejected the assessee's some of the comparables and also included his own comparable without providing any method and the process as to how he has

undertaken search process for identifying the comparable companies. He has merely cherry picked the comparable companies without undertaking any fresh search and has rejected the comparables which stood accepted in the earlier years. If the search process for selecting of comparables is to be done by the assessee in accordance with the rules, then same methodology has to be adopted by the TPO also. Law does not envisage differential procedure for assessee and revenue so far as selection methodology is concerned.

6. In the transfer pricing order the Ld. TPO, in the show cause notice required the assessee as to why ICRA Management Consultancy Services Ltd. and Integrated Capital Services Ltd. selected by the assessee should not be rejected and why two comparable companies, namely, Future Capital Holdings Ltd. and Motilal Oswal Investment Advisors Pvt. Ltd Capital should not be included. In response, the assessee filed detailed reply with regard to the each and every comparable sought to be excluded and included by the TPO. Assessee's reply in this regard has been noted by the TPO at paras 10.12 to 10.5. However, the TPO rejected the assessee's contention with regard to each and every comparable as per the detailed finding given from para 11.1 to para 11.5. The relevant facts and counter arguments of both the parties relating to the comparables which are in dispute before us are discussed hereinafter in brief:-

- (i) **ICRA Management Consultancy Services Ltd. (Rejected by the TPO):-** Mr. Porus Kaka, pointed out that ICRA Management is essentially a Professional Consultancy Services Company which provides consultancy in diverse areas such as Government, infrastructure, energy, corporate Advisory, banking and financial sector etc. It was incorporated in 2005 by taking over the entire business management consulting division of ICRA Ltd. It offers consultancy/advisory

services through different business groups and practice areas and its entire income is from consultancy fees. After referring to the annual report of the management, (appearing in the paper book pages 157 to 186) and from Directors' report, he pointed out that, this company is purely into advisory services and functions performed by this company for rendering these services are similar to that of the assessee. This is evident not only by the assessee's submissions made before the TPO, but this company was also subject matter of dispute in the earlier years by the Department, which is evident from the fact that, in assessment year 2008-09 and 2009-10 this comparable has been directed to be included for the comparability analysis by the Tribunal and on same facts this company cannot be rejected. He thus submitted that, the inclusion of ICRA Management Consultancy Services Ltd. is covered by the two decisions of the Tribunal of the immediate earlier years; therefore, no different view can be taken in this year. He also furnished a chart giving the relevant paragraphs of the Tribunals' order, whereby, this comparable has been dealt specifically in both the years by separate orders. He further submitted that, the analysis done by the TPO for rejecting the said comparable is not correct as he is trying to highlight the various fields and industries in which ICRA is rendering services, whereas assessee is not. Advisory services in financial and corporate sector are important and key function which needs to be analysed rather than the areas in which the services are being rendered. In case of the assessee also if the list of investments made by assessee's AE on the basis of recommendations provided by the assessee is to be seen, then the assessee has also provided non-binding advisory services in diverse fields, like infrastructure, telecom, media, banking, etc. The TPO is also not correct in holding that the Tribunal order was based on the earlier orders of the TPO where this company was accepted as comparable. He has taken a

divergent view without bringing any substantial material on record to show that how the facts have changed in this year. Accordingly this comparable company needs to be accepted not only on functional profile but also as a matter of consistency.

- (ii) **Kinetic Trust Ltd. (Rejected by the TPO)**:-Mr. Porus Kaka, submitted that the TPO has observed that in the annual report of the Kinetic Trust, does not specify that the said company is engaged in the investment advisory; further the said company is NBFC registered with RBI; and lastly, its turnover is only Rs. 20 lakhs. To counter this TPO's observation, Mr. Kaka pointed out that *firstly*, Directors' report for financial year 2009-10 specifically mentions that the company has concentrated on its main activity of a corporate consultancy services and financial services. This is evident from Directors' report given at page 193 of the paper book. Merely because the said company is NBFC, the same does not change the nature of activities undertaken by the company i.e., Consultancy Services. *Secondly*, while selecting the list of comparables in search criteria, the assessee has not considered the turnover criteria as one of the factor in determining or streamlining the selection of the companies. It has not cherry picked the comparables by inserting any kind of lower or higher turnover filter. The reliance placed by the TPO on the decision of Tribunal in the case of Trilogy E Business Software P Ltd vs DCIT (ITA No. 1054/Bang/2011) is not correct as the Tribunal's decision was based on the facts and in that context it has highlighted the importance to apply the turnover over filter ranging between Rs.1 crore to Rs.200 crores. The said decision does not implicate that the range of Rs.1 crore to Rs.200 crores is to be applied essentially in all the cases. Thus, the decision of the said Tribunal cannot be applied to the facts of the present case. On

the contrary in the case of Nortel Networks India P Ltd, reported in [2014] 44 taxman.com 46 the Delhi Tribunal has held that, if the functional profile of the comparable is the same with that of the assessee then, it cannot be excluded from the list of the comparables merely for the reason of low turnover. He submitted that the said decision of the Tribunal has been now been upheld by the Hon'ble High Court vide order dated 24.02.2015 in ITA No. 3043/2015, wherein, the Hon'ble High Court observed that, whether the turnover filter is appropriate one and applicable, cannot be answered in the abstract and is entirely fact dependent. *Lastly*, the Tribunal in assessee's own case for the assessment year 2008-09 & 2009-10 has accepted the Kinetic Trust Ltd as a comparable company so far as the functions performed by the assessee. The Ld. TPO in utter disregard to the Tribunal's order has stated that the said decision of the ITAT cannot be accepted, because the finding was given on the ground that the TPO has accepted this comparable in the earlier years. This cannot be the ground for rejection, rather the Kinetic Trust Ltd is to be included as the comparable company following judicial precedence and consistency in view of the Tribunal orders for two consecutive earlier years.

- (iii) **IDC India Ltd** : At the outset, the Ld. Counsel, submitted that, the Ld. TPO has taken IDC India Ltd. as a comparable company in his Transfer Pricing Order, however, the DRP has rejected the said comparable while issuing his direction for AY 2010-11 without giving any opportunity to the assessee. Further, the ITAT Mumbai Bench in the assessee's own case for the assessment year 2008-09 & 2009-10 has accepted the IDC India as comparable company to the functions comparable by the assessee. Further, the Hon'ble Bombay High Court in the case of Carlyle India Advisors Pvt. Ltd. (32 taxman.com 33) had upheld IDC India as functionally

comparable to the functions performed by an investment advisor. He further relied upon the decision of General Atlantic Pvt. Ltd. vs DCIT, reported in 32taxmann.com 178. Explaining the profile and function of the company, he submitted that IDC India is engaged in the business of market research Company primarily dealing in research and survey services and products. It provides user research, vertical research, go-to market services and consultancy services which enable IT professionals, business executives and the investment community make fact based decisions on technology purchase and business strategy. The functions performed by the assessee while rendering investment advisory services include analysing financial data of potential clients, analysing market conditions, conducting research on various sectors, markets, companies, etc.

- (iv) **Rejection of Future Capital Investment Advisory Ltd:** This comparable was also accepted by the TPO as a good comparable but has been rejected by the DRP without providing any opportunity of hearing to the assessee. From the annual report for the financial year 2009-10, it can be seen that this company is engaged in rendering Investment Advisory Services and has single reporting segment, which is advisory services.
- (v) **Rejection of Integrated Capital Services Ltd.:-** This company was part of assessee's comparable set but was rejected by the TPO for the reason that it is not functionally comparable, as it is providing consultancy services in the field of reconstruction of business, merger, amalgamation which is functionally cannot be held to be comparable with the functions performed by the assessee, that is, Investment Advisory Services. The TPO has noted that a consulting and advisory income earned by this company was only Rs.84

lakhs, which is much less as compared to the assessee's turnover of Rs. 34.31 crores. The TPO has again referred to the decision of ITAT in the case of Trilogy E Business. Mr. Kaka submitted that, assessee's case had been that the services in the field of merger/finance, which are particularly similar to the functions performed by the assessee. The Annual report of Integrated Capital indicates that it renders advisory and consultancy services and further it is operating in a single revenue segment of consultancy and advisory services. Secondly, when no turnover filter has been applied by the assessee, then without any reason and without any proper search criteria by the TPO, he cannot resort to insert low turnover filter only for the purpose of cherry picking. He referred to the decision of Norton India P. Ltd. vs. Additional CIT (ITAT Delhi bench) (*Supra*) wherein, the Tribunal held that, the company cannot be excluded from the list of comparable mainly for the reason of having low turnover. Lastly, in the AY 2009-10, the TPO has accepted integrated capital as a comparable company to the assessee and the functions performed by the said company in AY 2010-11 are exactly similar to in AY 2009-10, therefore, the same cannot be rejected in this year.

However, he submitted that the Tribunal in the case of:

- (i) Q-India Investment Advisor P Ltd vs DCIT (ITA 923/Mum/2015);
- (ii) New Silk Road P Ltd. vs DCIT (ITA 1327/M/214)

has rejected Integrated Capital as a comparable company to an Investment Advisory Services.

- (vi) **MotilalOswal Investment Advisors Pvt Ltd.**: This company has been included by the TPO and upheld by the DRP on the following points (as summarized by DRP):-

- a) The company is engaged in providing high quality strategic and financial services which are used in acquiring majority equity stake, Financial Advisory services for hundred percent acquisitions, rendering advisory services for placement of equity with investors, rendering strategic financial advisory services to enhance banking fund limits of the companies. The analysis of these services shows that the strategic and financial advisory services rendered by this company are comparable with the high quality, investment advisory services rendered by the assessee company.
- b) On going through the Balance Sheet of Motilal Oswal Investment Advisors Pvt Ltd, it is seen that the company has single reportable operational income segment and it is advisory fees of Rs. 64.94 crores. The other income is a minor component of Rs. 58.14 lacs. Further, on going through the Balance sheet, it is seen that the company has investments of Rs. 52.50 lacs only. Obviously, an investment banker or Merchant banker will have more investments in its Balance Sheet. As per the notes to the accounts, the company has given a capital commitment of Rs. 1.5 crores to Aditya Birla Pvt. Equity and Reliance Alternative Investment Fund out of which the company has contributed only Rs. 30 lacs and Rs. 22.50 lacs respectively. It has received Rs. 31.72 crores of advisory fees (48.84%) in foreign exchange. At no place there is any mention of any investment fund or investment related activity being handled by the company. The related party transactions on a/c of advisory services rendered to fellow subsidiaries is Rs. 8.33 crores (13.59%) only. Even if the rental payment of Rs. 1.20 crores is taken into account, the RPT transactions are at 14.70%. The TPO has applied the RPT filter at 25%. It has been fairly settled that, the

loan transactions, security deposit and other transactions need not be taken into account for the purpose of RPT calculation. This shows that the company is in the business for the purpose of RPT calculation. This shows that the company is in the business of rendering advisory services and not in the business of managing funds.

- c) On going through the above analysis, it is clear that MotilalOswal Investment Advisors P Ltd, is not into investment and key activity and also not in the management of assets for others. Further, the contention of the assessee that an investment bank assists corporations in mergers and acquisitions is not a correct proposition. The merger and acquisition related advisory services in fact are the advisory services which involves skill sets which are comparable to the investment advisory services. Hence the assessee's argument regarding non availability of segmental profits is not relevant.

7. Mr. Porus Kaka, submitted that, on the perusal of the annual report of the company, it can be seen that Motilal Oswal operates in four different business verticals, viz.,:

- Equity Capital Markets;
- Mergers and Acquisitions;
- Private Equity Syndications; and
- Structured Debt.

The annual report for FY 2009-10 indicates the Motilal Oswal has earned its income evenly from all these four business verticals. The annexure to the auditor's report indicates that Motilal Oswal is engaged in the business of 'merchant banking and investment/business advisory services'. The web portal of Motilal Oswal shows that it offers comprehensive investment banking solutions and transaction expertise covering private placement of equity, debt and convertible instruments in international and

domestic capital markets, mergers and acquisitions advisory and restructuring advisory and implementations. Further, the web portal also indicates that, during FY 2009-10, Motilal Oswal has, *inter alia*, acted in various professional capacities such as arranger, merchant banker, book running leading manager, etc. The above services have been rendered by Motilal Oswal to various clients namely, Jindal Polyfilms Limited, GMR Energy Limited, Pipavav Shipyard, Jai Balaji Industries Limited, DHFL Limited, etc. Thus, it is evident from the above that Motilal Oswal is engaged in merchant banking and other similar activities, which are not at all functionally comparable to the assessee, which is engaged in rendering of investment advisory services. Mr. Porous Kaka, further submitted that, in the following decisions of the Tribunal, it has been held that Motilal Oswal Investment Advisors Pvt. Ltd. cannot be held to be a comparable company with the Investment Advisors.

- *Carlyle India Advisors Private Limited v. Additional Commissioner of Income-tax 43taxman.com 184 (Mumbai)*
- *Carlyle India Advisors Private Limited v. Deputy Commissioner of Income-tax 49taxman.com 476 (Mumbai)*
- *Bain Capital Advisors vs. DCIT (ITA No. 1083/Mum/2014)*
- *DCIT vs. Arisaig Partners India (ITA NO. 1083/Mum/2014)*

The decision of Carlyle India Advisors Private Limited has also been affirmed by the Hon'ble Bombay High Court. Not only that, there are catena of decisions where it has been held that merchant banker cannot be compared by an Investment Advisor. The lists of such judicial decisions are as under:

- *Carlyle India Advisors Private Limited v. Additional Commissioner of Income-tax 24 taxman.com 176 (Mumbai);*
- *General Atlantic Pvt Ltd v DCIT 32 taxman.com 178 (Mumbai – Trib);*
- *Goldman Sachs (India) Securities Private Limited v ACIT (ITA No. 7724/Mum/2011)*

Thus, Motilal Oswal should not be considered as comparable to the functions performed by the assessee.

8. Mr. Porus Kaka submitted that, the TPO after inclusion and exclusion of the comparable companies and applying higher profit margin of 37.51%, went further to hold that assessee is providing more than investment advisors services as it is also monitoring the investment of its AEs. Thus, for providing such personalized investment services and non-discretionary portfolio management services, a mark-up of 3% over and above is required to be added to the average PLI of the comparable companies which was determined at 37.51% by the TPO and accordingly, the Arm's Length PLI was determined by him at 40.51%, as against assessee's operating profit of 21.4%. Thereafter, the TPO has tried to justify such an adding of a mark-up by referring to the definitions of Portfolio management services from the dictionaries came to a conclusion that, assessee is rendering an additional function which is not included in the investment advisory function. Such an action of the TPO is wholly arbitrary, because there are no additional functions or services rendered by the assessee in this year *qua* the assets employed, functions performed and risks assumed. Cost plus mark-up compensation is received for all the investment advisory services. The monitoring activity is part and parcel of the same advisory services. Moreover the activities of the assessee have also remained the same and FAR Analysis has been done on investment advisory services. Such an additional mark-up applied by the TPO is without any FAR analysis or without any benchmarking exercise with any comparables and more importantly without any analysis of assessee's own facts. Nowhere the assessee has provided any portfolio management services. The assessee only renders non-binding investment advisory services to its AE. These services include; identifying and analyzing potential investment opportunities, evaluating and making recommendations to THPL with respect to investment

opportunities and monitoring and making recommendation to THPL with respect to specified investments. The monitoring functions performed by the assessee are part and parcel of the portfolio advisors services rendered by it. The activities carried out by the assessee while undertaking portfolio monitoring activities included analysis of the latest development in the industry ongoing performance of the industries companies and providing necessary information to its AE from time to time. The portfolio management functions are part and parcel of investment advisor services and this point has been noted by the ITAT, Mumbai Bench in the case of Carlyle India Advisors Private Limited (*supra*). He also analysed the applicability of decision of Carlyle India in the case of the assessee. He further placed reliance on following judicial decisions where monitoring of investment was considered part of investment advisory services. The lists of such decisions are as under:

- i) *TPG Capital India Pvt. Ltd. vs ACIT (ITA No. 880/Mum/ 2013)*
- ii) *NVP Venture Capital India Pvt. Ltd. Vs. DCIT(ITA No.1564/Mum/2015)*

Lastly, he submitted that, the TPO has gone beyond the scope of provisions of rules for adding extra mark-up of 3% and such an action cannot be upheld, because the comparative analysis has to be done as per the rules only.

9. On the other hand, the Ld. CIT DR, Mr. N.K. Chand, submitted that, the Transfer Pricing Officer (TPO) can always improve upon its case from earlier years especially, the selection of comparables which has to be done on the basis of information and proper qualitative analysis for each year. The TPO is well within the jurisdiction and power to reject the comparables which has been chosen earlier if he had analysed the facts more deeply. After referring to the decision of Hon'ble Supreme Court in the case of Baroda Distributor vs UOI, 155 ITR 120, he submitted that, if a mistake has been committed then same should not be perpetuated. Further, the principles of *res judicata* does not apply to Income-tax Proceedings and this view finds due support from

decision of Hon'ble Supreme Court in the case of New Jahanghir Valal Mills Co. Ltd. vs CIT, reported in [1963] 49 ITR 137 which has been followed in several decisions. He further relied upon a decision of Kerala High Court in the case of CIT v. Kalpetta Estates Ltd, reported in [1995] 211 ITR 635 for the proposition that, if a fresh look is necessitated on the existing facts on a closer and more intelligent analysis then a different view can be taken. Thus, here in this case, the comparables chosen by the TPO or his reasons for the exclusion of the comparables chosen by the assessee needs to be examined afresh based on the information and factual analysis carried out in this year and one cannot be guided by the precedence of earlier years alone. In support of this proposition he referred and relied upon the decisions of ITAT Delhi Bench in the case of Toluna India P Ltd in ITA No. 5645/Del/2011, wherein the Tribunal expressed its reservation in accepting a broad proposition that, if certain benches of the Tribunal have taken a particular view for a particular comparable company, then same cannot be held to be automatically a good comparable or not comparable. The same has to be done on the functional analysis alone. Similar view was expressed in the case of Advance Power Display in ITA 6732 and 6542/Mum/2011, wherein, it has been held that, comparability of the case is to be tested for each and every year independently and separately for the purpose of determination of ALP. The international transaction has to be compared with uncontrolled and unrelated transaction for using data relating to financial year in which international transaction has been entered into and not merely on the basis of earlier years. Thereafter, he proceeded to give his counter submission with regard to each and every comparables rejected/included by the TPO.

ICRA MANAGEMENT CONSULTANCY SERVICES LTD.

10. Ld. DR submitted this comparable was chosen by the assessee and rejected by the TPO. Merely because the revenue of this company is from consulting fee that does not mean, it is functionally comparable also. The TPO has carried out detailed comparability analysis on FAR basis with this company vis-à-vis the assessee. Such a comparison has been given in tabular form in Para 11.1 of the TPO's order. Thus on the basis of such an analysis, it is amply clear that, functions performed by ICRA are different from that of the assessee and so also the assets employed to perform the functions as well as the risk involved. If a criterion of the revenue from consultancy fee is to be taken into consideration, then on same logic, Motilal Oswal should also be included in the list as it has also shown the income from consultancy and so also in other cases also. Thus, this comparable cannot be included on account of single segment of revenue alone, that is, from consultancy fee but has to be analyse on FAR analysis which the TPO has done in a very elaborate manner at pages 9 to 11 of the order. Thus, this comparable has rightly been rejected by the TPO. Thereafter, he pointed out various other aspects as given in the Directors report of ICRA from pages 162 to 164 and submitted that the fields in which it is operating is very diverse and has also advised in cross border M&A. Further, if the skill set of the employees of the assessee is taken into consideration, then it would be seen that the average salary is very high which is evident from the fact that 22 to 25 employees salary paid was more than Rs. 20 crores as compared to the average salary cost of ICRA. Thus, going by the qualitative human asset, then there is a huge variation, which fails the comparability tests. Accordingly, this company should not be included.

11. Kinetic Trust Ltd. :

Regarding this comparable, Mr. Chand submitted that, firstly, the total revenue of the company is only Rs.24 lakhs,

whereas that of the assessee is Rs. 34.3 Crores. Thus, there is a huge gap of turnover, which affects its comparability. Secondly, this company is registered with RBI as NBFC, therefore, its functions are also different. The TPO has analysed this comparable at page 11 to 13 of the order and has noted that, this company is primarily engaged investments in capital market on its own behalf and there is a huge difference in the turnover. The Ld. DR submitted that for carrying out FAR analysis, there has to be some basic critical mass, otherwise, the whole FAR tests fails. Regarding, Ld. Counsels plea that assessee has not taken any criteria of turnover, he submitted that TPO can very well apply the turnover criteria and in support of his contention, he relied upon the decision of ITAT in the case of Sand Stone Capital Advisors Private Ltd. vs. DCIT, reported in 147 ITD 240. *Lastly*, he submitted that, if turnover is taken as criteria then turnover of Motilal Oswal is twice the turnover of the assessee for which the assessee has objected for inclusion. Thus there cannot be divergent approach and accordingly, this company has rightly been rejected by the TPO.

12. **Integrated Capital Services Limited:**

With regard to this comparable, Ld. CIT DR submitted that, the Ld. Counsel has admitted that, this comparable has been held to be a not a good comparable for investment advisory services by the Tribunal in some decisions which has been referred by the Counsel, therefore, this should be removed from the comparability list.

13. **IDC India Ltd & Future Capital Advisors Ltd.:-**

For these comparables, Mr. Chand relied upon the order of the DRP and referred to the direction given by the DRP at para 26 and 27 of the order. Alternatively, he submitted that, if the assessee's contention is accepted that DRP has not given opportunity to the assessee while rejecting these comparables, then matter should be

restored back to DRP for considering the assessee's objection on these two comparables.

14. **Motilal Oswal Investment Advisors Pvt. Ltd.**: Regarding this comparable, which has been included by the TPO, he submitted that the annual report of the company suggests that its revenue is only from advisory fees during the year and other than this, there is no other income, therefore, the functions performed by the assessee for investment advisory is quite comparable with this company. In support, he referred to page 135 of the paper book which shows income from operations is from advisory fees only. It has a single segment and there is no other reportable segment as defined in AS-17. Regarding remarks of auditor's report that it was engaged in the business of merchant banking and bank advisory services, he submitted that, the same has to be treated as investment advisory services only, because this company is particularly into investment advisory for which it receives advisory fees. Under TNMM only the similarity of the functions is to be compared and if there is some product diversity then it cannot be held that same is not comparable if the overall functions are the same. Thus, this comparable has rightly been included by the TPO.

15. In the rejoinder, Mr. Porus Kaka submitted that, if there are no new materials in this year, then there cannot be any deviation from the earlier years on the issue of comparables especially when matter has been decided from the stage of the Tribunal on same facts. If any comparable has been included or excluded by the Tribunal then same should be accepted in this year also if there are no material changes. The onus is on the Department to bring on record what is the new material fact which has come in this year, if they want to take a different stand. Otherwise, the Tribunal order has to be followed as judicial precedence especially when rendered in assessee's own case, not once but twice in the preceding assessment years. Regarding each and every

comparable, he made his detailed rejoinder and submitted that not only they have been considered to be good comparable in the earlier years but also found to be from the records. In nut shell, regarding ICRA he submitted, what is required to be seen is a core competence in which company is functioning and whether it is rendering core investment advisory services or not. Similarly in the case of Kinetic Trust Ltd, he relied upon the decision of Nortel, which has been affirmed by the Hon'ble Delhi High Court and submitted that, once no filter has been applied then one side filter cannot be applied by the TPO. The TPO is trying to cherry picked the comparables by applying filter arbitrarily for selection. Regarding Motilal Oswal, he submitted that this company is purely into investment banker and a merchant banker which is entirely different not only on functions but also on assets and risks. The assessee is giving non-binding investment advice to its own AE for which it is reimbursed at cost plus markup, whereas the functions of a merchant banker are entirely different altogether. None of the activities carried out by the Motilal Oswal, is done by the assessee. He reiterated that in light of several judicial precedence wherein Motilal Oswal has been held to be not comparable with investment advisory companies should be followed and therefore, same should not be included.

16. We have heard the rival submissions, perused the relevant findings given in the impugned orders as well as material referred to before us. In this case it is not the first year of transfer pricing analysis for the provision of services rendered by the assessee to its AE, albeit in earlier year's also by and large similar dispute had arisen with regard to same set of comparables. The assessee is providing non-binding investment advisory services to THPL and the later retains the right to use such investment advisory services. As noted above the functions performed by the assessee for rendering advisory services for the AE to take decision for making the investments are as under:-

- a) Providing research reports, macro economic analysis and other advisory services;
- (b) Identifying, screening and investigating sectors of the Indian economy for investment opportunity;
- (c) Advising in investigation, structure, monitoring of portfolio securities/portfolio companies as the case may be;
- (d) Undertaking economic and market intelligence of the eligible portfolio companies including analysis and investigation of eligible portfolio companies, including their products, services, markets, management, financial solutions, competitive position market ranking, prospects for future performance and relevant industry sector;
- (e) Undertaking due diligence of investment opportunities and submit reports and recommendation; and
- (f) Assisting in performance review of portfolio companies, recommending the plans for managerial and business support and furnishing performance and relevant industry sector reports.

For rendering these services to its AE the assessee is remunerated with cost plus markup. In this year the assessee has earned markup margin of 21.4% which is the subject matter of transfer pricing analysis and benchmarking of the margin by carrying out comparability analysis. In this case, it is undisputed that, the most appropriate method (MAM) for determination of Arm's Length Price is Transactional Net Margin Method (TNMM) whereby ALP is determined by comparing the operating profit relevant to an appropriate base like cost, sales and assets of the tested party with the operating profit of an uncontrolled party engaged in the comparable transactions. It measures the net margin or profit earned in an uncontrolled transaction by independent entities. The assessee's margin which is based on operating profit/

operating cost was at 21.4% which have been worked out in the following manner:

Total revenue as per P&L	
Income	
Investment advisory income	343,128,197
Other income	1,473,267
Total Income	344,601,464
Less: Non operating income	
Director's sitting fees	(340,000)
Dividend received	(1,122,187)
Provision for diminution in the value of Investment	(11,080)
Total operating income	343,128,197
Expenditure	
Personnel expenses	192,827,925
Administrative & Other expenses	84,266,329
Depreciation	3,622,798
Prior period expenses	2,859,971
Total expenditure	283,577,023
Less: Non operating expenditure	
Donation	(925,000)
Total Operating Expenditure	282,652,023
Operating Profit	60,476,174
Operating Profit/Operating Cost	21.4%

Like in the earlier years, the whole dispute revolves around inclusion or exclusion of certain comparables, some of which have already come up for consideration up till the stage of the Tribunal. However, before us the Ld. CIT DR has vehemently opposed the following of the judicial precedence of the earlier years and contended that, the entire issue of inclusion or exclusion of the comparables should be analysed afresh, firstly because, principles of *res judicata* cannot be applied in income tax proceedings, especially in such matters and secondly, on a deeper scrutiny of facts if it is found that certain aspect has not been considered in the earlier years, then different view or conclusion can be taken.

17. The entire substratum of transfer pricing process is the identification of the comparable transactions or the companies which are to be used for comparability analysis for benchmarking the international transaction so as to arrive at arm's length margin

or the price. The comparables can be internal, based on the information available internally i.e. the AE may be rendering or receiving similar services to or from an independent enterprise; or from the information obtained externally from the public domain of the entities involved in similar business and functions. The comparability analysis is basically a comparison of a controlled transaction with the uncontrolled transaction so as to arrive at the appropriate price or margin for making the accurate adjustments. Rule 10B (2) to (4) provides such mechanism for conducting the comparability analysis with the uncontrolled transactions. But before carrying out the comparability analysis as provided in the rules, the first and foremost requirement is the identification of the comparables from the data sources available in the public domain like Prowess or Capital Line or like. While identifying the potential comparables, the key characteristics and the features has to be identified before the search is carried out on the databases. This is a very critical process of selection which has to be done on a rational basis and scientific methodology. While carrying out the search, certain key words are to be inserted to shortlist the similar category of companies and from results thrown, quantitative filters are applied so that the unwanted comparables are weaned out and a certain range is available for carrying out qualitative comparability analysis from the comparables based on the parameters laid down in Rule 10B(2). The comparability is carried out on FAR analysis; the special characteristics of the property transferred or services provided along with the contractual terms and the economic conditions prevailing in the market. Comparability has to be established with reference to the product or services, the conditions and the enterprises. It is therefore necessary to compare the attributes of the transactions or enterprise that would affect the conditions in arms' length dealings.

18. From the perusal of the material placed before us, especially, the accept and reject matrix of the comparables for the provision of investment advisory services, we find that from nearly 2000 companies which were thrown in the search process, the assessee has finally selected seven comparables after carrying out qualitative analysis. These seven comparables with their operating margin for financial year 2009-10 were as under:

Name of the company (Comparables selected By the assessee)	Operating margin FY 2009-10
Future Capital Investment Advisors Ltd.	15.71%
ICRA Management Consulting Services Ltd	0.41%
ICRA online Ltd	41.77%
IDC India Ltd	13.00%
Informed Technologies Ltd.	25.52%
Integrated Capital Services Ltd.	-2.92%
Kinetic Trust Ltd.	10.39%
Arithmetic Mean	14.84%

In support of these seven selected comparables, the assessee has provided the entire financial data for the relevant financial year and annual report of these comparable companies which have been placed in the paper book. Out of these comparables, three of them have been rejected by the TPO and two have been additionally rejected by the DRP and two new comparables have been included by the TPO. Before analyzing each and every comparables, in the background of the arguments made before us and material placed on record, it is noticed that nowhere in the TPO's order it is mentioned what selection process has been adopted for including the two comparables by the TPO. What are the criteria, key words, quantitative and qualitative filters applied for selecting the comparables. If rules provides for selection criterion of comparables, then same has to be adhered to strictly by either parties. If a particular mechanism of search process is to be done scientifically by the assessee then same applies to the TPO also, otherwise it will always create suspicion of cherry picking of the comparables by the parties. There cannot be two different standards under the law, one for the assessee and one for the TPO. So far as selection of the comparables by the TPO, nothing has

been brought on record before us, that TPO has adopted any scientific method for selection of his two comparables, i.e. Motilal Oswal Investment Advisory Pvt Ltd. and Future Capital Holdings Ltd. From the perusal of para 9.2 of the TPO's order it appears that, he has tried to pick-up the two comparables from the accept and reject matrix of companies by the assessee during its search process. Such an approach clearly indicates cherry picking, which approach cannot be accepted.

19. Here in this case, we have to analyse the comparables which are in dispute under the TNMM method, where comparability is focused on transactions rather than comparability in product as required in traditional methods. TNMM is based on net profit margin relative to an appropriate base, viz., costs, sales, assets, which the assessee makes from controlled transactions. The profitability derived from uncontrolled party engaged in similar line of business activity under similar circumstances, is the measure of arm's length results. If cost or sale is used as the base, then profitability depends largely upon the functions performed, therefore, in such a situation closer functionality is required preferably to an appropriate business segment or transaction. Now we will analyse the impugned comparables before us in light of the submissions made and in view of the background discussed above.

ICRA Management Consulting Services Limited:

20. At the outset, this comparable was subject matter of consideration before the Tribunal in AY 2008-09 & 2009-10 , wherein this company was held to be good comparable both on the ground of functional similarity and in view of principles of consistency as it was held to be a good comparable by the TPO in the earlier years. From the perusal of the annual report, which is appearing from pages 156 to 187 of the paper book, we find that it is essentially providing consultancy services in diversified areas, like in government sectors, infrastructure, energy, corporate

advisory, banking and financial services, etc. It focuses on consultancy and advisory which is its core area and competency. The revenue generation is purely from consultancy fees which is evident from profit and loss account as on 31st March 2010 (appearing at page 176 of the paper book). The TPO in his order has noted that its consultation or advisory operations ranges in various fields which have been tabulated by him at pages 9 to 11 of the order, which according to him assessee is not performing. On the perusal of the directors' report and also the remarks of the TPO, we find that the ICRA Management is providing consultancy services in a myriad areas ranging from development, transportation, urban infrastructure, energy sector, banking and financial services and advising cross border M&A transaction etc. Some other observation made by the TPO is that ICRA has participated in various international forums, partnered with foreign company in multiple projects and has a very big client base unlike assessee. However all these facts do not affect the core competency and functions of the said company, which is advisory, because in all the fields it is rendering only advisory and consultancy services. The whole revenue is again from consultancy/advisory fees. In the instant case also, the assessee is providing Investment Advisory Services to its AE in diverse industries like, infrastructure, telecom, media, banking etc. to enable the AE to take decision for making investments. The functions of consultancy/advisory have to be seen as its core competence area and not in the field in which such consultancy is given. Under the TNMM, one has to see the transaction undertaken are comparable or not and whether any adjustment is required to obtain a reliable result, because under TNMM the net margin are less affected by transactional differences and is more tolerant to some minor functional differences between controlled and uncontrolled transactions. However, if any unique function or property significantly affects the operating costs or net margin or has a bearing in the generation of revenue itself, then it cannot be considered to be a fit comparable for benchmarking the

net margins. Here it is not the case where there is any unique functions materially affecting the revenue or net margins vis-a-vis the functions performed by ICRA. Hence on functional level it is a good comparable. As stated earlier, in the earlier years, the TPO has accepted ICRA to be a comparable and in later years the Tribunal in AY 2008-09 & 2009-10 has held ICRA Management to be good comparable qua the functions of the assessee and there being no material change on facts, functional profile or any other factor in this year, then as matter of consistency, we do not want do deviate from our findings given in the earlier years. There cannot be a pick and choose of comparables every year unless there are some material difference in facts and circumstances compelling to take a different conclusion. Thus, we hold that ICRA Management is a good comparable and should be included in the list of final comparables.

Kinetic Trust Ltd. :-

21. This company has been rejected by the TPO on the ground that its turnover is only 24 lakhs and it is registered with the RBI as NBFC. On a lower turnover, the TPO has mainly relied upon the decision of ITAT in the case of Triology E Business. At the outset, it is noticed that in the earlier two years, the Kinetic Trust Ltd has been held to be good comparable based on its functional profile. So far as functions are concerned, it is evident from the Directors' reports, which are placed in the paper book from pages 187 to 230. It is seen that, the company is concentrating on its main activity of corporate consultancy services and financial services. Being a NBFC has not changed the nature of activity undertaken by the company and its core business competency and its revenue is from consultancy services. So far as the turnover filter applied by the TPO, we find that, first of all at the time of selection process, the assessee has not considered the turnover filter for accepting or rejecting the comparables. The turnover filter cannot be one of the tool for cherry picking by either of the parties at a later stage, as it

has to be done at the threshold level only, i.e. at the time of search process and by applying quantitative filter. However, once turnover filter has not been applied then comparability has to be done at qualitative level based on FAR Analysis. If on FAR analysis there are differences on account of either assets deployed and risk assumed materially affecting costs or margins then probably such comparability can be rejected. But here in this case, merely on the ground that it has a low turnover cannot be the reason or criteria for rejection. Moreover, from the perusal of the decision of Triology E. Business India Pvt Ltd.(supra), it is seen that the Tribunal on the facts of the case highlighted the importance of applying turnover filter between the range of Rs. 1 crore to 200 crores. This does not lead to any inference that in all the matters the same criteria for applying the turnover filter should be taken between 1 crore to 200 crores. Thus, the ratio of the Tribunal decision cannot be applied universally in all the cases. Rather in the case of Nortel India Pvt Ltd vs Addl. CIT (*supra*), the Tribunal held that a company cannot be excluded from the comparable list merely for the reason of low turnover especially, when no turnover filter was applied by either parties. The analysis in such cases has to be carried out on functional basis. Before us, it has also been brought on record that the said decision of the Tribunal in the appeal filed by the Revenue before the High Court has been upheld that is, revenue's appeal has been dismissed. Further as stated above, in the earlier years, this comparable has been held to be a good comparable by the TPO himself and Tribunal in two years have accepted to be a good comparable. Thus as a matter of consistency, we hold that Kinetic Trust Ltd. should be included in the comparability list.

IDC India Ltd :

22. This comparable though accepted by the TPO as a good comparable, however, the DRP has additionally rejected this comparable. In assessment year 2008-09, the Tribunal has held to

be a good comparable, *firstly*, on the ground that this company is also engaged in the advisory and consultancy services for the purpose of investment made in various sectors and *secondly*, it has been found to be good comparable by the TPO in the assessment year 2007-08 and 2009-10. Once company has been held to be good comparable consistently for three years then without any change in the material facts, it cannot be held that this comparable could be rejected in this year. Moreover, in the case of Carlyle Advisory India Ltd., ITAT Mumbai Bench, reported in 43 taxman.com 184, the Tribunal held that this company is a good comparable with the companies rendering investment advisory services. This decision of the Carlyle Advisors have also upheld by the Hon'ble Bombay High Court. Moreover, we have already discussed the functions performed by the IDC India Ltd while dealing with Ld. Counsel's argument that functions of advisory services are quite similar to the functions of the assessee and, therefore, we accept the assessee's contention that this comparable cannot be rejected. Accordingly, same is directed to be included in the comparability list.

Future Capital Investment Advisory Ltd:

23. This company is also accepted by the TPO as good comparable, however, the DRP has rejected the same. Such a rejection by the DRP is without giving any opportunity to the assessee. From the perusal of the annual report, which has placed in the paper book from pages 263 to 272, it is seen that it is primarily engaged in rendering investment advisory services only and its operating in a single segment. Thus, there cannot be any genuine reason for rejecting the said comparable. The DRP has rejected this comparable on the ground that it is in the process of shutting down its business. However, during the year, it has continued to render the investment advisory services and the realignment agreement was effective from 1st January, 2010, the realignment is also for investment advisory activities. Thus, there

is not much impact on the net margins especially in the assessment year 2010-11, therefore, this company cannot be rejected and TPO is directed to include the same in the final comparability list.

Integrated Capital Services Ltd:

24. This comparable has been admitted by the Ld. Counsel to have been rejected by the Tribunal Q India Pvt Ltd. (*supra*) and New Consolidate Advisory Ltd. (*supra*) therefore, this comparable company has not been contested by him. Accordingly, we hold that this comparable has rightly been rejected and shall not be included in the final comparables.

Motilal Oswal Investment and Advisor Ltd :

25. This comparable has been included by the TPO and while including the said comparable he has observed that its income is only from Advisory fees during the year and it is performing advisory services in that field of investment like assessee. Before us, Ld. CIT DR arguing for its inclusion submitted that, if the ICRA Management services can be included for having revenue from advisory services then on same analogy this company should also be given the same treatment. From the perusal of the directors' report, it is seen that this company derives its business income from four different business verticals, i.e. Equity capital markets, merger and acquisitions, profit equity syndications and structured debt. It also give advises on cross border acquisition. Its core competence is in the field of merchant banking. It also provides comprehensive investment banking solutions and transaction expertise covering private placement of equity, debt and convertible instruments in international and domestic capital markets, monitoring mergers and acquisitions and advising M&A as professional and restructuring advisory and implementations. It is also involved in various professional activities of the merchant banking. A Merchant Banker provides capital to companies in the

form of share ownership instead of loans. It also provides advisory on corporate matters to the companies in which they invest. The focus is on negotiated private equity investment. The wide range of activities include portfolio management, credit syndication, counseling on M&A, etc. This whole range of functions and activities carried out by Motilal Oswal is definitely are far wider and much different from investment advisory services where core functions is to give advices for making the investments in diversified fields. A company which is engaged in merger and acquisitions, private equity syndication, loan/credit syndication and performing most of the function of a Merchant Banker, then the entire functions and transactions affects the generation of revenue and margins. Such functions are entirely different from investment advisory services. Mere classification of revenue as 'advisory fees' will not put the company in a comparable basket sans functional similarity and transactional analysis. In case of Carlyle India Advisors Pvt. Ltd (supra), it has been held that, the merchant banking functions are entirely different from investment advisory services and this decision of the Tribunal has been upheld by the Hon'ble Bombay High Court. Thus, in view of plethora of judicial decisions as referred to by Ld. Counsel and in view of functional differences as discussed as above, we hold that Motilal Oswal cannot be put into the comparability list and is directed to be excluded.

26. Lastly, coming to the addition of 3% markup additionally made over and above the comparative margin arrived at by, the TPO, we find that same is not tenable from any quarters. The TPO has added this markup on the ground that assessee in addition to investment advisory services has rendered portfolio management services, that is, it is monitoring the funds for its AE, hence for such a distinct function further upward adjustment should be made. First of all for making such transfer pricing adjustment a comparability analysis has to be done and then only margins can

be benchmarked. He has not brought on record that, assessee is rendering any additional function which is not included in the investment advisory function. The TPO has to show that there are additional functions or services rendered by the assessee in this year *qua* the assets employed, functions performed and risks assumed. As submitted by Ld. Counsel, cost plus mark-up compensation is received for all the investment advisory services and the monitoring activity is part and parcel of the same advisory services. Moreover if the activities of the assessee have remained the same and FAR Analysis has been done on investment advisory services as in the earlier years, then how such services have become different in this year without any new material fact has not been elaborated by the TPO. We agree that such an additional mark-up applied by the TPO is without any FAR analysis or without any benchmarking exercise with any comparables and more importantly without any analysis of assessee's own facts. The assessee is providing non-binding investment advisory services to its AE and such services as highlighted by Ld. Counsel include; identifying and analyzing potential investment opportunities, evaluating and making recommendations to THPL with respect to specified investments. The monitoring functions performed by the assessee are part and parcel of the portfolio advisory services rendered by it because, the activities carried out by the assessee while undertaking portfolio monitoring activities include analysis of the latest development in the industry, ongoing performance of the industries and providing necessary information to its AE from time to time. This aspect has been noted by the ITAT, Mumbai Bench in the case of Carlyle India Advisors Private Limited (*supra*) and in other decisions cited above by the Ld. Counsel. Thus, we hold that no such addition or adjustment on account of extra markup can be made. Accordingly, we direct to delete the addition.

27. In the result the appeal of the assessee is allowed in part.
Order pronounced in the open court on 25th February, 2016.

Sd/-
(बी आर भास्करन)
लेखा सदस्य
(B R BHASKARAN)
ACCOUNTANT MEMBER

Sd/-
(अमित शुक्ला)
न्याईक सदस्य
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai, Date: 25th February, 2016

प्रति/Copy to:-

- 1) अपीलार्थी /The Appellant.
- 2) प्रत्यर्थी /The Respondent.
- 3) The CIT(A) -27, Mumbai.
- 4) The Commissioner of Income Tax- 16 Mumbai.
- 5) प्रतिनिधि विभागीय "K", अधिकरण अपीलीय आयकर, मुंबई/
The D.R. "K" Bench, Mumbai.
- 6) गार्डफाईल
Copy to Guard File.

आदेशानुसार/By Order

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उप/सहायकपंजीकार
आयकरअपीलीयअधिकरण, मुंबई
Dy./Asstt. Registrar
I.T.A.T., Mumbai

*व चव्हाण.नि.स

*Chavan, Sr.PS