

**IN THE INCOME TAX APPELLATE TRIBUNAL
“K” Bench, Mumbai**

**Before Shri M. Balaganesh, Accountant Member
and Shri Ravish Sood, Judicial Member**

**ITA No.1996/Mum/2016
(Assessment Year: 2011-12)**

Bain Capital Advisors (India)
Private Limited,
215, 2nd Floor, Free Press House
Free Press Journal Marg,
Nariman Point,
Mumbai – 400 021

Assistant Commissioner of
Income Tax, Circle 3(1)(1),
Room No. 607, Aayakar Bhavan,
M.K. Marg,
Mumbai – 400 020

PAN – AADCB4464B

(Appellant)

(Respondent)

**ITA No.1776/Mum/2016
(Assessment Year: 2011-12)**

Assistant Commissioner of
Income Tax, Circle 3(1)(1),
Room No. 607, Aayakar Bhavan,
M.K. Marg,
Mumbai – 400 020

Bain Capital Advisors (India)
Private Limited,
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Mumbai – 400 021

PAN – AADCB4464B

(Appellant)

(Respondent)

Appellant by: Shri Ajit Kumar Jain &
Shri Siddhesh Chaugule, A.Rs
Respondent by: Shri Anand Mohan, D.R

Date of Hearing: 09.05.2019
Date of Pronouncement: 11.06.2019

ORDER

PER RAVISH SOOD, JM

The present cross appeals filed by the assessee and the revenue are directed against the order passed by the A.O under Sec. 143(3) r.w.s 144C(13) of the Income Tax Act, 1961 (for short 'I-T Act'), dated 28.01.2016. The assessee has raised before us the following grounds of appeal:

"1. *On the facts and in the circumstances of the case and in law, the Dispute Resolution Panel ('DRP') erred in upholding the action of the Assistant Commissioner of Income Tax, Circle 3(1)(1) ('AO') / the Additional Commissioner of Income-Tax, Transfer Pricing - 1(1) ('TPO'), Mumbai of making an adjustment of Rs.12,14,10,530/- to the Appellant international transaction of provision of Investment Advisory Services.*

The Appellant prays that the aforesaid adjustment be deleted.

2. *On the facts and in the circumstances of the case and in law, the DRP erred in upholding the action of the AO/TPO of rejecting the Transfer Pricing Study maintained by the Appellant and the fresh search subsequently submitted by the Appellant.*

3. *On the facts and in the circumstances of the case and in law, the DRP erred in upholding the action of the AO/TPO of excluding the comparables i.e. Cyber Media Research Ltd., Frontline Venture Services Private Limited and Primary Real Estate Advisors Private Limited, without appreciating the functional comparability of the said comparables.*

4. *On the facts and in the circumstances of the case and in law, the DRP erred in upholding the action of the AO/TPO of including functionally incomparable companies namely Motilal Oswal Private Equity Advisors Private Limited and Ladderup Corporate Advisory Private Limited in the final set of companies for determining the arm's length price of provision of investment advisory services.*

5. *On the facts and in the circumstances of the case and in law, the DRP erred in confirming the action of the AO/TPO in not applying multiple year data for comparable companies and using data for the financial year 2010-11 alone.*

6. *On the facts and in the circumstances of the case and in law, the A.O has erred in not allowing credit of Tax Deducted at Source ('TDS') of Rs.73,78,312/- to the appellant.*

All of the above grounds are without prejudice to each other.

The appellant craves to add to, alter, amend or withdraw all or any of the above grounds of appeal."

2. Briefly stated, the assessee company is engaged in the business of rendering investment research/investment advisory services to its Associate Enterprise (for short 'AE') i.e Bain Capital, Mauritius, in

respect of potential investment opportunity in India. The assessee had filed its return of income for A.Y. 2011-12 on 23.11.2011, declaring total income of Rs.9,59,53,320/-. Subsequently, the case of the assessee was selected for scrutiny assessment under Sec. 143(2).

3. During the course of the assessment proceedings the A.O made a reference to the Transfer Pricing Officer (for short 'TPO') for computation of the 'Arm's Length Price' (for short 'ALP') of the international transactions of the assessee for the year under consideration.

4. The TPO in the course of the proceedings observed, that the assessee had entered into the following international transactions during the year under consideration:

Sr. No.	International Transaction	Amount (INR)
1.	Investment Advisory related support services	65,01,23,315/-
2.	Reimbursement of remuneration of deputed employees	20,55,62,248/-

It was observed by him that the assessee had benchmarked the international transactions of providing investment advisory related support services to its AE by applying the Transactional Net Margin Method (for short 'TNMM'). Further, the 'Profit Level Indicator' selected by the assessee was Operating Profit/Total Cost (OP/TC). It was observed by the TPO that the assessee had initially proposed a set of 5 comparables, which were thereafter voluntarily rejected by it. Further, on undertaking of a fresh search the assessee had selected three comparables on the basis of a single year updated margin, as under :

Sr. No.	Name of the company	PLI based on single year data (%)
1.	Cyber Media Research Ltd.	10.71
2.	Frontline Venture Services Pvt. Ltd.	1.70

3.	Primary Real Estate Advisors Pvt. Ltd.	3.85
	Arithmetic Mean	5.42

It was claimed by the assessee that as its own margin of 20% was higher than the arithmetic mean of 5.42% of the aforementioned three comparables, therefore, the value of the international transactions entered into by it were at arm's length. The TPO rejected the aforesaid three comparables of the assessee and proposed a set of three comparables viz. (i). Motilal Oswal Investments Pvt. Ltd (OP/TC: 82.29%); (ii). Ladder up Corporate Advisory Pvt. Ltd. (OP/TC : 52.43%); and (iii). Motilal Oswal Pvt. Ltd. Equity advisors Pvt. Ltd. (OP/TC : 32.38%), as good comparables to the assessee. Accordingly, the TPO determined the ALP of the international transactions of the assessee with its AE and worked out a transfer pricing adjustment of Rs.19,34,11,688/-, as under:

Operating cost	Rs.54,17,69,430/-
Arms Length Mean Margin	55.70% of the Operating Cost
Arms Length Price (ALP) @ 155.70% of the operating cost	Rs. 84,35,35,003/-
Price charged	Rs.65,01,23,315/-
Shortfall being adjustment u/s 92CA	Rs.19,34,11,688/-

5. Aggrieved, the assessee filed objections with the Dispute Resolution Panel-1, Mumbai (for short 'DRP'). The assessee assailed the exclusion of its comparables viz. (i) Cyber Media Research Ltd (formerly IDC India Ltd.); (ii) Frontline Venture Services Private Ltd; and (iii) Primary Real Estate Advisors Pvt. Ltd. Further, the inclusion of the three new comparables by the DRP viz. (i) Motilal Oswal Investments Advisors Pvt. Ltd.; (ii) Ladder up Corporate Advisory Pvt. Ltd.; and (iii) Motilal Oswal Equity Advisors Pvt. Ltd. was also assailed before the DRP. The DRP was not persuaded to accept the claim of the assessee that the TPO had erred in rejecting the comparables which were selected by the assessee, and therein upheld the order of the TPO

to the said extent. Insofar the inclusion of the three new comparables by the TPO was concerned, the DRP finding favour with the claim of the assessee rejected the inclusion of one of the comparable by the TPO, viz. Motilal Oswal Investment Advisory Pvt. Ltd. However, the inclusion of the remaining two comparables which were selected by the TPO was upheld by the DRP. Accordingly, the DRP directed the AO to give effect to his directions as per the provisions of Sec.144C(13) of the I-T Act.

6. The A.O pursuant to the directions of the DRP worked out the arithmetic mean of the remaining two comparables which were selected by the TPO, as under:

Sr. No.	Name of the Company	Single Year OP/TC (%)
1.	Motilal Oswal Private Equity Advisors Pvt. Ltd.	32.38
2.	Ladderup Corporate Advisory Pvt. Ltd.	52.43
	Arithmetice Mean	42.41

On the aforesaid basis, the A.O restricted the adjustments to the ALP of the international transactions of the assessee to an amount of Rs.12,14,10,530/-. On the basis of his aforesaid deliberations the A.O assessed the income of the assessee company at Rs.21,73,63,850/-.

7. Aggrieved, both the assessee and the revenue has carried the matter in appeal before us. The ld. Authorized Representative (for short 'A.R') for the assessee submitted, that the lower authorities had erred in rejecting the comparables which were selected by the assessee for the purpose of benchmarking its international transactions. Further, it was submitted by him that the AO/DRP had erred in upholding the inclusion of two comparables which were selected by the TPO viz. (i) Ladder up Corporate Advisory Pvt. Ltd.; and (ii) Motilal Oswal Private Equity Advisors Pvt. ltd. The ld. A.R in order to drive

home his contention that the aforementioned two comparables were wrongly selected by the TPO, therein relied on certain orders of the coordinate benches of the Tribunal. Further, it was submitted by the ld. A.R that the A.O/DRP had erred in excluding the comparables which were selected by the assessee for benchmarking its international transactions. Insofar the rejection of the comparables selected by the assessee was concerned, the ld. A.R confined his contentions as regards exclusion of Cyber Media Research Ltd. (formerly IDC India Ltd.) by the lower authorities from the list of comparables.

8. Per contra, the ld. Departmental Representative (for short 'D.R') relied on the order passed by the A.O/DRP. It was submitted by him that as Cyber Media Research Ltd. (formerly IDC India Ltd.) was functionally not comparable, therefore, the same was rightly excluded from the final list of comparables. As regards seeking of exclusion of Ladder up Corporate Advisors Pvt. Ltd. by the assessee from the final list of comparables for the reason that it being engaged in investment banking was functionally incomparable to the assessee, it was submitted by the ld. D.R that the said comparable was registered as a merchant banker only in the month of July, 2010 and was not in receipt of any income from investment banking during the year under consideration.

9. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, and also considered the judicial pronouncements relied upon by them. We shall first advert to the sustainability of the inclusion of two comparables by the TPO/DRP, as under:

(A) Motilal Oswal Private Equity Advisors Pvt. Ltd.:- As is discernible from the order of the TPO, it was observed by him, that the aforementioned company viz. M/s Motilal Oswal Pvt. Equity Advisors Pvt. Ltd. was providing identical investment advisory services as were being rendered by the assessee. On the basis of information called for by the TPO under Sec.133(6), it was gathered by him that the assessee during the year had undertaken the following advisory assignments:

Sr. No.	Name	Amount	Type of Income
1.	Advisory Fee	5,30,41,908	Advisory Fee from Mauritius for IBEF
2.	IBEF Advisory Fee	3,41,73,428	Management Advisory Fee
3.	IREF Advisory Fee	3,27,40,000	Management Advisory Fee

Accordingly, the TPO being of the view that the profile of the aforementioned company with respect to its functionality was directly comparable to that of the assessee company, therefore, selected the same as a comparable for benchmarking the international transactions of the assessee. Apart there from, the TPO on the basis of the information gathered as regards the details of the employees of the aforementioned company, their exact nature of services, kind of expertise and skill-set therein employed, observed that in terms of the actual work profile, employee skill-set profile and the salary profile, the aforementioned company was an appropriate comparable to the assessee company. The assessee had objected to the inclusion of the aforementioned company in the list of comparables, on the ground that as the same was functionally incomparable, therefore, it could not have been selected as a comparable for benchmarking the international transactions of the assessee.

(i) We have considered the contentions advanced by the authorized representatives for both the parties, and also perused the orders of the lower authorities and the judicial pronouncements relied upon by them in context of the aforementioned comparable. We find that the

issue as to whether the aforementioned comparable, viz. Motilal Oswal Equity Advisors Pvt. Ltd. could be selected as a company for benchmarking the international transactions of an assessee which was providing non-binding investment advisory services, had been looked into by the Tribunal in the case of New Silk Route Advisors Pvt. Ltd. Vs. ACIT, Circle-7(2)(2), Mumbai [IT (TP) Appeal No. 1148/Mum/2016, dated 30.11.2018) for A.Y. 2011-12. In its aforesaid order, the Tribunal relying on the earlier orders of its coordinate benches viz. (i) DCIT Vs. General Atlantic Pvt. Ltd., 91 taxmann.com 406 (Mum); (ii) Temasek Holdings Advisors India Pvt. Ltd. Vs. DCIT, (2017) 87 taxmann.com 168; (iii) Well Fargo Real Estate Advisors Pvt. Ltd. Vs. DCIT, (2018) 90 taxmann.com 18; and (iv) Avenue Asia Advisors Pvt. Ltd. Vs. DCIT, (2017) 85 taxmann.com 311 (Del), had concluded that the aforementioned company could not be considered as a comparable to an investment advisory service provider due to difference in functional profile. The Tribunal while concluding as hereinabove had observed, as under:

“17. We have considered rival submissions and perused materials record in the light of the decisions relied upon. As could be seen from the facts on record, though, the aforesaid company has four business verticals, however, the segmental details are not available in the annual report. Further, in case of Temasek Holding Advisors India Pvt. (Ltd. (supra), the Tribunal, while considering the comparability of the aforesaid company to an investment advisory services provider held that this company cannot be a comparable due to differences in functional profile. The same view was reiterated by the Co-ordinate Bench while deciding this particular issue in case of Well Fargo Real Estate Advisors Pvt. Ltd. (supra). Since, the aforesaid decisions of the Co-ordinate Bench are for the very same assessment year and no distinguishing facts have been brought to our notice by the learned Departmental Representative, in our considered opinion, the ratio laid down in the above referred decisions clearly apply to the facts of the present case. There being no dissimilarity in facts brought to our notice by the learned Departmental Representative, respectively following the aforesaid decisions of the Co-ordinate bench, we hold that this company cannot be a comparable to the assessee.”

Further, we find that a similar view had also been taken by the Tribunal in the case of Tata Asset Management Ltd. Vs. DCIT, Circle-2(3)(1), Mumbai (ITA No. 933/Mum/2016 for A.Y. 2011-12) and in the

case of Black Stone Advisors India Pvt. Ltd. Vs. ACIT, Circle 3(1), Mumbai (ITA No. 1370/Mum/2016, dated 30.11.2018) for A.Y. 2011-12. We thus respectfully following the aforesaid orders of the coordinate benches of the Tribunal, therein conclude that Motilal Oswal Equity Advisors Pvt. ltd. cannot be treated as a comparable to the assessee.

(B) Ladder up Corporate Advisors Pvt. Ltd: We find that the assessee had objected to the inclusion of the aforesaid company in the list of comparables, on the ground that the latter was registered as a Category 1 Merchant Banker with SEBI, India, and was thus engaged in rendering merchant banking services since July, 2010. Apart there from, it was submitted by the assessee that as per the 'annual report' of the aforesaid company, there was only one segment. On the basis of the aforesaid facts, it was the claim of the assessee that as the aforesaid company was engaged in merchant banking/investment banking and other similar activities, which were not functionally comparable to the assessee that was engaged in rendering investment advisory services, hence, it could not have been selected as a comparable for benchmarking the international transactions of the assessee. However, the A.O/DRP did not find favour with the aforesaid contentions of the assessee. Rather, it was observed by the lower authorities, that the aforesaid company was a boutique investment banking firm that offered financial advisory services. Further, it was observed by them that as per its 'Annual Report', it was registered as a merchant banker in July, 2010 from SEBI, and had no actual income from the said activity during the year under consideration. In sum and substance, it was observed by the lower authorities that though the aforementioned company had stated itself to be an investment banking firm, however, no direct income was earned by it out of such activity. Accordingly, the lower authorities being of the view that the

aforementioned company was functionally comparable to the assessee which was providing investment advisory services, thus included the same in the list of the comparables.

10. We find that the issue that the aforementioned company viz. Ladder up Corporate Advisory Pvt. Ltd. could not be treated as a comparable to an investment service provider, had been looked into by the Tribunal in the case of New Silk Route Advisors Pvt. Ltd. Vs. ACIT, Circle-7(2)(2), Mumbai [IT (TP) Appeal No. 1148/Mum/2016, dated 30.11.2018] for A.Y. 2011-12. The Tribunal in the aforementioned case taking cognizance of the functional profile of the aforementioned company which was registered as a Category-1 Merchant Banking company with SEBI, and was engaged in Merchant Banking Services with effect from July, 2010, had therein held that the same could not be treated as a comparable to a company engaged in the activity of rendering investment advisory services. The Tribunal while concluding as hereinabove, had relied on the earlier decisions of the coordinate benches of the Tribunal viz. (i) DCIT Vs. General Atlantic Pvt. Ltd., 91 taxmann.com 406 (Mum); (ii) Temasek Holdings Advisors India Pvt. Ltd. Vs. DCIT, (2017) 87 taxmann.com 168; (iii) Well Fargo Real Estate Advisors Pvt. Ltd. Vs. DCIT, (2018) 90 taxmann.com 18; and (iv) Avenue Asia Advisors Pvt. Ltd. Vs. DCIT, (2017) 85 taxmann.com 311 (Del). The Tribunal while concluding as hereinabove, had observed as under:

“14. We have considered rival submissions and perused materials on record. From the functional profile of the aforesaid company it appears that it is registered as Category-i Merchant Banking Company with SEBI and is engaged in merchant banking services w.e.f. July 2010. Considering the aforesaid factual aspect, the Co-ordinate Bench in the decisions cited by the learned Authorised Representative for the assessee has held that this company cannot be a comparable to a company engaged in the activity of investment advisory services. Since, the aforesaid decisions are for the very same assessment year and no distinguishing fact in the present appeal was brought to our notice by the learned Departmental Representative, respectfully following the consistent view of the Tribunal, we hold that this company cannot be treated as comparable to the assessee.”

Apart there from, we find that a similar view had also been taken by the coordinate benches of the Tribunal viz. (i) M/s Guggenheim Capital Management (Asia) Pvt. Ltd. Vs. ACIT, Circle 3(1)(2), Mumbai (ITA No. 423/Mum/2016, dated 18.02.2019) for A.Y. 2011-12; (ii) Tata Asset Management Ltd, Vs. Dy. CIT, Circle 2(3)(1), Mumbai [IT (TP) A. No. 933/Mum/2016, dated 15.03.201] for A.Y. 2011-12; and (iii) Black Stone Advisors India Pvt. Ltd. Vs. ACIT (ITA No. 1370/Mum/2016, dated 30.11.2018 for A.Y. 2011-12). We thus respectfully following the aforesaid orders of the coordinate benches of the Tribunal, therein conclude that the aforementioned company viz. Ladder up Corporate Advisors Pvt. ltd. cannot be treated as a comparable to the assessee.

11. Now, we shall advert to the comparables which were selected by the assessee but were excluded by the TPO/DRP. At this stage, we may herein observe that the ld. A.R has assailed before us the orders of the lower authorities to the extent they had excluded Cyber Media Research Ltd. (formerly IDC India Ltd.) from the final list of comparables. Accordingly, we restrict our adjudication to the aspect, as to whether the TPO/DRP had rightly excluded the comparable selected by the assessee i.e Cyber Media Research Ltd. (formerly IDC India Ltd.) from the final list of the comparables.

12. As is discernible from the orders of the lower authorities, we find that it was the claim of the assessee before them that as the aforementioned company i.e Cyber Media Research Ltd. (formerly IDC India Ltd.) was engaged in rendering market research and management consultancy services, and was also a premier provider of market intelligence and advisory services, therefore, it was functionally comparable to investment advisory providers. However,

the TPO was not persuaded to subscribe to the aforesaid claim of the assessee. It was observed by him, that the market research and management consultancy services provided by the aforementioned company were not similar to investment advisory services which were being rendered by the assessee company. Accordingly, the TPO held a conviction that as the functions performed, assets used and risks undertaken by the aforementioned company were not comparable with that of the assessee, therefore, it could not be feasibly selected as a comparable for benchmarking the international transactions carried out by the assessee during the year.

13. We find that the issue that the aforementioned company viz. Cyber Media Research Ltd. (formerly IDC India Ltd.) could safely be selected as a comparable to an investment advisory service provider, was looked into by the Tribunal in the case of New Silk Route Advisors Pvt. Ltd. Vs. ACIT, Circle-7(2)(2), Mumbai [IT (TP) A No. 1148/Mum/2016, dated 30.11.2018] for A.Y. 2011-12. The Tribunal while concluding as hereinabove, had relied upon the earlier orders of the coordinate benches, viz. (i) DCIT Vs. General Atlantic Pvt. Ltd., 91 taxmann.com 406; (ii) AGM India Advisors Pvt. Ltd. Vs. DCIT, (2017) 79 taxman.com 86; and (iii) Goldman Sachs (I) Securities Pvt. Ltd. Vs. ACIT, (2017) 78 taxman.com 142 (Mum). In the aforementioned case, it was observed by the Tribunal that the lower authorities were in error in excluding the aforementioned company as a comparable in the case of an assessee which was into rendering of investment advisory services, on the ground of functional dissimilarity. The Tribunal while concluding as hereinabove had observed as under:

“9. We have considered rival submissions and perused materials on record. It is evident the departmental authorities have excluded this company selected by the assessee on the ground of functional dissimilarity. However, the Tribunal in a number of decisions, including, decisions pertaining to the impugned assessment year has held that this company is a

comparable to an investment advisory service provider. In this context, we may refer to the following observations of the Co-ordinate Bench in case of General Atlantic Ltd. (Supra): -

“15. Insofar as IDC (India) Ltd. is concerned, it is observed, in assessee's own case for assessment year 2006-07, the Tribunal accepted this company as a comparable which was upheld by the Hon'ble Jurisdictional High Court while dismissing the appeal filed by the assessee. While upholding the decision of the Tribunal, the Hon'ble Jurisdictional High Court observed that since the non-binding advisory service provided by the assessee is similar to the service provided by Carlyle India Ltd., wherein, IDC (India) Ltd. is accepted as a comparable there is no reason to defer with the decision of the Tribunal. It is necessary to observe, in case of other assesses engaged in providing non-binding investment advisory services akin to the assessee for the very same assessment year, the Tribunal has held that IDC (India) Ltd. is a good comparable. In this context, we refer to the decisions of the Tribunal in case of AGM India Advisory Pvt. Ltd. (supra) and Temasek Holdings Advisors India Pvt. Ltd. v/s DCIT, 87 taxmann.com 168 (Mum.). Moreover, in assessee's own case in the earlier assessment years, this company having been found to be functionally similar was accepted as a comparable. In view of the aforesaid, we direct the Assessing Officer to include this company as a comparable.”

Since, the aforesaid observations of the Tribunal pertain to the very same assessment year, respectfully following the same, we direct the Assessing Officer to include this company as a comparable.”

Apart there from, we find that a similar view had also been taken by the coordinate benches of the Tribunal viz. (i) M/s Guggenheim Capital Management (Asia) Pvt. Ltd. Vs. ACIT, Circle 3(1)(2), Mumbai (ITA No. 423/Mum/2016, dated 18.02.2019) for A.Y. 2011-12; (ii) Tata Asset Management Ltd, Vs. Dy. CIT, Circle 2(3)(1), Mumbai [IT (TP) A. No. 933/Mum/2016, dated 15.03.201] for A.Y. 2011-12; and (iii) Black Stone Advisors India Pvt. Ltd. Vs. ACIT (ITA No. 1370/Mum/2016, dated 30.11.2018 for A.Y. 2011-12). Accordingly, finding ourselves to be in agreement with the view taken by the aforesaid coordinate benches of the Tribunal, we are of the considered view that the A.O/DRP had erred in excluding Cyber Media Research Ltd. (formerly IDC India Ltd.) from the final list of comparables.

14. In terms of our aforesaid observations, we direct the A.O to exclude the two comparables which were selected by the TPO viz. (i) Motilal Oswal Pvt. Equity Advisors Pvt. Ltd; and (ii) Ladder up Corporate Advisors Pvt. Ltd. from the final list of the comparables. At

the same time, the A.O is directed to include Cyber Media Research Ltd. (formerly IDC India Ltd.) in the final list of comparables.

15. The appeal of the assessee is allowed in terms of our aforesaid observations.

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A.Y. 2011-12

16. We shall now take up the appeal of the revenue. The revenue has assailed the order passed by the A.O pursuant to the directions of the DRP-1, Mumbai, by raising the following effective grounds of appeal:

- “1. *Whether on the facts and circumstances of the case and in law, the Hon'ble DRP-1 was correct in rejecting the comparable taken by the TPO i.e. Motilal Oswal Investment Advisors Ltd. despite TPO having established the functional similarity and allowing relief of Rs.7,20,55,334/- to the assessee from the addition made of Rs.19,34,11,688/- by the TPO/AO, while determining Arm's Length Price (ALP) of International Transaction of the assessee with its Associated Enterprises (AE).*
2. *The appellant prays that the order of CIT(A) on the above ground be set aside and that of Assessing Officer be restored.*
3. *The appellant craves leave to amend or alter any ground or add a new ground which may necessary.”*

17. The revenue is aggrieved, with the exclusion by the DRP of one of the comparable viz. (i) Motilal Oswal Investment Advisors Ltd., which was selected by the TPO for benchmarking the international transactions of the assessee.

18. On a perusal of the order of the DRP, we find that he had observed that the aforementioned company, viz. M/s Motilal Oswal Investment Advisors Pvt. Ltd. was held by the Tribunal in the assessee's own case for A.Y. 2010-11 in ITA No. 413/Mum/2015, dated 15.05.2015 as not a good comparable. The DRP observing that as the facts during the year under consideration were identical as against

those for A.Y. 2010-11, thus directed the A.O to exclude the aforementioned company from the final list of comparables.

19. We have perused the order of the DRP, and are persuaded to subscribe to the view taken by him that now when the aforementioned company i.e Motilal Oswal Investment Advisors Pvt. Ltd. was excluded by the Tribunal in the assessee's own case for A.Y. 2010-11 in ITA No. 413/Mum/2015, dated 15.05.2015 from the list of the comparables, on the ground that the same was not a good comparable, therefore, in the absence of there being any shift in the during the year under consideration i.e A.Y. 2011-12, it would not be permissible to adopt an inconsistent approach and therein take a contrary view. Apart there from, we find that the aforesaid order of the Tribunal in the assessee's own case for A.Y. 2010-11 had been upheld by the Hon'ble High Court of Bombay in Pr. CIT-3, Vs. M/s Bain Capital & Advisors (I) P. Ltd. (ITA No. 541 of 2016, dated 24.11.2018). The Hon'ble High Court in its aforesaid order had upheld the view of the Tribunal, wherein it was observed that as M/s Motilal Oswal Investment Advisors Pvt. Ltd. was a merchant banker and not an investment advisor, therefore, the same being functionally different could not have been selected as a comparable in the case of the assessee. Apart there from, we find that the aforementioned company i.e Motilal Oswal Investment Advisors Pvt. Ltd. was also held as incomparable to an assessee engaged in providing non-binding investment advisory services by the Tribunal in case of viz. (i) New Silk Route Advisors Pvt. Ltd. Vs. ACIT, Circle-7(2)(2), Mumbai [IT (TP)A. No. 1148/Mum/2016, dated 30.11.2018) for A.Y. 2011-12; and (ii). Black Stone Advisors India Pvt. Ltd. Vs. ACIT, Circle 3(1), Mumbai (ITA No. 1370/Mum/2016, dated 30.11.2018) for A.Y. 2011-12. We thus respectfully following the aforesaid order of the Hon'ble High Court and those of the coordinate benches of the Tribunal, therein conclude that Motilal Oswal Investment Advisory

Pvt. Ltd. could not have been selected as a comparable for benchmarking the international transactions of the assessee, which was providing non-binding investment advisory services. Accordingly, we uphold the order of the DRP, who we find had rightly directed the A.O to exclude Motilal Oswal Investment Advisory Pvt. Ltd. from the final list of comparables. We thus not finding any merit in the appeal of the revenue, dismiss the same.

20. The appeal of the revenue is dismissed.

21. The appeal of the assessee is allowed in terms of our aforesaid observations and the appeal of the revenue is dismissed.

Order pronounced in the open court on 11.06.2019

Sd/-
(M.Balaganesh)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक 11.06.2019
Ps. Rohit

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,
उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT,
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