

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'I-2' NEW DELHI**

**BEFORE SH. R. K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No. 908/DEL/2015 (A.Y. 2010-11)

AND

ITA No. 6555/DEL/2015 (A.Y. 2011-12)

DCIT Circle-25(1), New Delhi (APPELLANT)	Vs	M/s. TCK Advisors P. Ltd. A-117, Ambedkar Colony, MG Road, Near Andheria More, Opp. Chhattarpur Metro Station, New Delhi (RESPONDENT)
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Appellant by	Sh. Sanjiv Sapra, CA
Respondent by	Ms. Nidhi Sharma, Sr. DR

Date of Hearing	24.09.2019
Date of Pronouncement	11.11.2019

ORDER

PER SUCHITRA KAMBLE, JM

These two appeals are filed by the Revenue against the orders dated 28.01.2015 and order dated 28.10.2015 passed by DCIT, Circle 25(1), New Delhi for assessment year 2010-11 and 2011-12 u/s 143(3) read with section 144C(4) Income Tax Act, 1961.

2. The Grounds of appeal are as under :-

ITA No. 908/Del/2015

“1. On the facts and in the circumstances of the case, the DRP-II erred in directing to reduce the addition of Rs. 6,67,02,130/- on account of proposed additions of arm’s length price of the international transaction with its associated enterprises.”

2. The appellant craves, leave for reserving the right to amend, modify,

alter, add or forego any ground(s) of appeal at any time before or during the hearing of appeal.”

ITA No. 6555/Del/2015

1. *“On the facts and in the circumstances of the case, the DRP-II erred in directing to reduce the addition of Rs. 3,33,32,572/- on account of proposed addition of arm’s length price of the international transaction with its associated enterprises.*

2. *“On the facts and in the circumstances of the case, the DRP-II erred in directing TPO to apply export filter of 75% resulting in exclusion of 6 mentioned below companies from the final set of comparables :*

- a) Almondz Global (Seg.)*
- b) Lexcon Finance Ltd.*
- c)IM+Capitals*
- d)Ladderp Corporate Advisory Pvt. Ltd.*
- e)Motilal Oswal Invest. Advisors Pvt.*
- f)S R E I Capital Markets Ltd.”*

3. *“On the facts and in the circumstances of the case, the DRP-II erred in directing TPO to include ICRA Management Consulting Services Pvt. Ltd in the list of suitable comparables.”*

4. *“The appellant craves, leave or reserving the right to amend modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.”*

3. Brief facts of the case for A.Y. 2010-11 is taken up first. The assessee company was providing investment advisory services to its Associated Enterprise (“AE”) Trikona Advisors Mauritius Ltd. Funds Manager as per Consultancy Agreement dated 01/04/2008 entered between the assessee and Trikona Advisors Mauritius Ltd. The assessee was engaged to provide investment advisory services to Trikona Advisors Mauritius Ltd. as single client and accordingly 100% of its revenue of Rs. 13,43,38,418/- was derived from export of services and there was no domestic revenue. During the Financial Year 2009-10, assessee provided investment advisory services to its AE in the nature of investment recommendations primarily in real estate sector in India which were not binding in nature and served as Back Office for its AE. From the note on functions / activities undertaken by the assessee, assessee acts as back office of Trikona Advisors Mauritius Ltd.

With certain specific manpower with certain skill sets in finance, legal, engineering and asset management for providing such services, the assessee charged its AE on cost plus arrangement thereby eliminating any risks on the assessee unlike other companies carrying on advisory businesses like investment banking etc. working on multiple clients and thereby undertaking various risks. In other words, under such cost plus arrangement, all the risks in the form of market/business risk, credit and collection risk, capacity utilization risk, service liability risk, human resource management risk as well as foreign exchange fluctuation risk was borne by the AE and not by the assessee company. The assessee company was a debt free company and its entire working capital requirement was supported by its AE in the form of advances against services as provided to the assessee. In support of arm's length price charged by the Assessee Company to its AE, assessee relied upon TP study report as per which the average operating margin of 17 comparable companies worked out to 8.01% which was below the operating margin of 11.46% as declared by the tested party, therefore, the price charged by assessee company from AE was an arm's length price. The TPO recommended Rs. 3,33,32,572/- on account of transfer pricing adjustment. The Assessing Officer sustained the recommendations of the TPO. The assessee filed objection before the DRP and the DRP vide direction dated 01.12.2014 partly allowed the objections of the assessee.

5. The revenue is in appeal before us.

6. The Ld. DR submitted that the DRP erred in directing to reduce the addition of Rs. 6,67,02,130/- on account of proposed addition of arm's length price of the international transaction with its associated enterprises. The Ld. DR submitted that as regards with the comparables which was excluded by the DRP, the TPO has applied proper filter and thereafter included these comparables. Therefore, the Ld. DR submitted that the TPO's order should have been sustained and challenged the directions of the DRP wherein DRP directed to exclude six comparables and retained only two comparables. In fact, the DRP admitted in para 7.1 of the directions that no

exact comparable is available in reality The endeavor is to find out a comparable which is in the similar line of business and having similar assets and risk profiles. The Ld. DR submitted that these comparable should be retained. Following are the comparables which the Ld. DR agitated before us:

(i) **Ajcon Global Services Ltd.** : The Ld. DR submitted that the services provided by this company are broadly similar to the services being provided by the assessee company. Therefore, this company has to be used as a comparable. The Ld. DR relied upon the findings of the TPO.

(ii) **Brescon Corporate Advisors Global Services Ltd.:** Since this company is not undertaking any fund based activities earning income for it, hence, it is a correct comparable as it is providing intermediation and advisory services of Debt Resolution and Recapitalization, Debt syndication and Other Corporate Financial Services which are in the nature of financial advisory services. Hence, it is a correct comparable. The TPO further observed that a temporary dip in revenue in one year does not matter, in fact revenue had increased in FY 2008-09 and its revenue had dipped only marginally in FY 2009-10. Thus, the Ld. DR submitted that this comparable be retained.

(iii) **Karvy Investors Services Ltd.:** The Ld. DR submitted that this comparable is already rejected by the TPO.

(iv) **Kshitij Investment Advisory Co. Ltd.:** The Ld. DR submitted that realignment of this comparable is only in respect of one customer and that too has effect for 3 moths only which is 25% of the period. Hence, it will not have substantial impact. The TPO has taken corrected margin of 79.60 to chose it in final list of comparables.

(v) **Motilal Oswal Investment Advisors Pvt. Ltd.:** The company has total equity of Rs. 15.98 crores and does not have any debt. The TPO rightly rejected the supernormal profits and fluctuating margins and therefore, selected as comparable.

(vi) **Pushpak Financial Services Ltd.:** The TPO rightly considered that 90.56% revenue is from consultancy services segment only. Hence, the

company has been considered comparable at the company level and not at segmental level. Further, income from trading of shares and investing activity has not been taken into account while calculating operating margin (OP/OC). There is no substantial decrease in this year in respect of the income derived from consultancy services. Thus, this comparable was rightly selected in the final list by the TPO.

7. The Ld. AR submitted that revenue has not specifically challenged the directions of DRP for excluding the six companies from the list of comparable companies and consequently such ground is misconceived and therefore deserves to be dismissed. The Ld. AR further submitted that the DRP has given valid reasons for excluding these six companies. The Ld. AR relied upon various decisions as well. The DRP vide its order dated 01.12.2014 directed the TPO / AO to exclude the following 6 companies from the list of comparable companies for the purpose of comparing the average operating margin of comparable companies with that of the tested party.

(1) **Ajcon Global Services Limited**

The Company is engaged in stock market and DP operations, providing consultancy and advisory services and security trading activities. Higher risk undertaken by such service provider company, since total debtors is about 75.58% of total turnover of such company, whereas the total debtors of tested party are only about 0.018% of its total turnover. Further capital employed of such company is more than 17 times of capital employed of tested party. This company fails the functional test since about 50% of its income is earned from stock market and DP operations as well as profit from securities trading activities whereas the tested party does not carry out or have any income from such type of activities. This Company carries on fund based activities also and the therefore its earning is not on account of its personnel only but also on account of its capital and hence is not comparable with the tested party. This proposition/filter has been used by the TPO for rejecting Karvy Investors Services Ltd as a comparable Company but omitted to apply such proposition/ filter in this case. As held by

Mumbai ITAT in the case of Temasek Holding Advisors India P Ltd. vs. Dy. CIT, Ajcon Global Services Ltd. is not comparable to the Appellant (carrying investment advisory services) since such Company's major activities is in field other than financial advisory services. Moreover, segmental information regarding fund and non-fund based financial activities of this Co. are not available from its financial statements and hence on this basis, it cannot be considered a comparable Company. As about 50% of this Company's income was earned from stock market and DP operations as well as profit from securities trading activities, accordingly consultancy provided by this company does not meet the service revenue filter of 75% as adopted by TPO. Percentage of export income of this company is nil out of total turnover whereas income of tested party is 100% from exports. Accordingly this company is to be excluded on the basis of 75% export turnover filter. Accordingly, as per Rule 10(B)(2) of I.T. Rules, this company is to be excluded from the list of comparable companies.

(2) Brecon Corporate Advisors Ltd. (Name of the Co. has been incorrectly mentioned by TPO as Brescon Advisors and Holdings Ltd.:

The company is engaged in intermediation and advisory services of debt resolution & re-capitalisation, debt syndication and other corporate financial services. Higher risk undertaken by such service provider company, since total debtors is about 32.81% of total turnover of such company, whereas the total debtors of tested party are only about 0.018% of its total turnover. Further capital employed of such company is more than 10 times of capital employed of tested party. This company fails the functional test since 100% of its income is earned from Debt Resolution & Debt Syndication whereas the tested party does not carry out or have any income from such kind of operations/activities. As held by Mumbai ITAT in the case of Temasek Holding Advisors India P Ltd. vs. Dy. CIT, Brescon Corporate Advisors Ltd. is not comparable to the Appellant (carrying investment advisory services) since such Co.'s major activities is in field other than financial advisory services. As income from consultancy services was Nil and the entire income of Rs.19,10,48,799/- was derived from debt resolution and debt syndication,

which is generally charged as per success fee model and hence commands higher margins on account of high risk undertaken when compared with low margin non-binding investment advisory services provided by the Assessee. Percentage of export income of this company is about 1% out of total turnover whereas income of tested party is 100% from exports. Accordingly this company is to be excluded on the basis of 75% export turnover filter. Accordingly, as per Rule 10(B)(2) of I.T. Rules, this company is to be excluded from the list of comparable companies test.

(3) **Karvy Investors Services Ltd.**

This company is engaged in providing merchant banking services in India. Higher risk undertaken by such service provider company, since total debtors is about 6.68% of total turnover of such company, whereas the total debtors of tested party are only about 0.018% of its total turnover. Further capital employed of such company is more than 17 times of capital employed of tested party. This company fails the functional test since it provides merchant banking services whereas the tested party does not carry out or have any income from the above mentioned kind of services/activities. Hence, this merchant banking services Co. cannot be compared with the tested party which is providing investment advisory services as held by ITAT Mumbai in Acumen Fund Advisory Services India (P) Ltd. vs. Dy. CIT. As income from consultancy services was Rs.2,09,65,732/- (i.e. about 30.57% of this company's total income of Rs.6,85,75,179/-which included other activities, accordingly consultancy provided by this company does not meet the service revenue filter of 75% as adopted by the TPO. Percentage of export income of this company is nil out of total turnover whereas income of tested party is 100% from exports. Accordingly this company is to be excluded on the basis of 75% export turnover test. The TPO concluded that this company does not meet the services revenue filter and hence is not comparable with the tested party. However, it appears that while computing ALP, the TPO has inadvertently included this company as one of the comparable companies with the tested

party. Accordingly, as per Rule 10(B)(2) of I.T. Rules, this company is to be excluded from the list of comparable companies.

(4) **Kshitij Investment Advisory Co. Ltd. :**

The Company is engaged in investment advisory activity. Higher risk undertaken by such service provider company, since total debtors is about 40.49% of total turnover of such company, whereas the total debtors of tested party are only about 0.018% of its total turnover. Further capital employed of such company is more than 8.50 times of capital employed of tested party. Percentage of export income of this company is 55% which is less than 75% of total turnover whereas income of tested party is 100% from exports. Accordingly this company is to be excluded on the basis of 75% export turnover test. Accordingly, as per Rule 10(B)(2) of I.T. Rules, this company is to be excluded from the list of comparable companies. Moreover, this company has undertaken much higher risks by deploying capital of more than 8.50 times as compared with the capital deployed by the tested party.

(5) **Motilal Oswal Investment Advisors Pvt. Ltd. :**

The Company engaged in different business verticals viz. equity capital markets, mergers and acquisitions, private equity syndications and structured debt. Higher risk undertaken by such service provider company, since total debtors is about 31.03% of total turnover of such company, whereas the total debtors of tested party are only about 0.018% of its total turnover. Further capital employed of such company is more than 2.80 times of capital employed of tested party. This company fails the functional test since it is engaged in the equity capital markets, mergers and acquisitions, private equity syndications and structured debt and derives whereas the tested party does not carry out or have any income from the above type of services. Percentage of export income of this company is 49% which is less than 75% of total turnover whereas income of tested party is 100% from exports. Accordingly this company is to be excluded on the basis of 75% export turnover test/filter. Accordingly, as per Rule 10(B)(2) of I.T.

Rules, this company is to be excluded from the list of comparable companies.

(6) Pushpak Financial Services Ltd.

This Company is registered as NBFC with RBI. Higher risk undertaken by such service provider company, since total debtors is about 21.07% of total turnover of such company, whereas the total debtors of tested party are only about 0.018% of its total turnover. Further capital employed of such company is more than 17 times of capital employed of tested party. This company fails the functional test since it is deriving its income from NBFC activities including from trading in shares/derivative transactions, whereas the tested party is not an NBFC and accordingly is not permitted to nor it carries out or has any income from operations/activities that are carried out by NBFC. This Co. carries on fund based activities also and the therefore its earning is not on account of its personnel only but also on account of its capital and hence is not comparable with the tested party. This proposition/filter has been used by the TPO for rejecting Karvy Investors Services Ltd as a comparable Company but omitted to apply such proposition/filter in this case. Moreover segmental information regarding fund and non-fund based financial activities of this Co. are not available from its financial statements and hence on this basis, it cannot be considered a comparable Company. Percentage of export income of this company is nil out of total turnover whereas income of tested party is 100% from exports. Accordingly this company is to be excluded on the basis of 75% export turnover test/filter. Accordingly, as per Rule 10(B)(2) of I.T. Rules, this company is to be excluded from the list of comparable companies.

8. We have heard both the parties and perused all the relevant material available on record. The Ld. AR objected that there is no specific ground taken by the Revenue in respect of challenging the exclusion of the comparables. But the same is coming out from Ground No. 1 of the Revenue's appeal. Therefore, we reject this contention of the Ld. AR. Now

we come to the comparables which were excluded by the DRP. The DRP has given the following observations:

(i) Ajcon Global Services Ltd. :

The assessee has stated that this company is engaged into stock market and DP operations, providing consultancy and advisory services and securities trading activities. 50% of its income comes from stock market operations. On the other hand TPO has stated that this company has income from consultancy and advisory services amounting to Rs. 2.1 Cr out of total income of Rs.4.1 Cr.

DRP carefully considered the submission of the assessee and order of the TPO. Around 50% of the income comes from stock market operations in this company. There is no segmental accounting reported. Therefore, this company should not be taken as a comparable in this case.

(ii) Brescon Corporate Advisors Global Services Ltd.:

The assessee has objected of this company by stating that it provides non-comparable services intermediation and advisory services of debt resolution and recapitalisation, debt syndication and other corporate financial services.

DRP has considered this objection of the assessee and finds that this is in a different line of activity and therefore it should be excluded from the set of comparables.

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(v) Karvy Investors Services Ltd.:

DRP carefully examined the order of the TPO. TPO has accepted the argument and objection on the Karvy Investors Services Ltd. He has stated that "Since, the earning of the company is not on account of its personnel only but also on account of its capital also, the company will not be considered as comparable accepting the objection of the taxpayer" (on page 64 of the TP order). However, TPO has inadvertently taken it as a comparable. Therefore, it should be excluded from the list of comparables.

(vi) Kshitij Investment Advisory Co. Ltd.:

This company fails in the export turnover filter which is adopted by the TPO. This company has an export turnover of 55% of its sales. Therefore, this company should be excluded from the list of comparables.

(vii) Motilal Oswal Investment Advisors Pvt. Ltd.:

This company is engaged in equity capital markets and percentage of export income in only 49% of its total turnover. Therefore, this company should not be included in the list of comparables.

(viii) Pushpak Financial Services Ltd.:

Assessee has stated that this company is engaged in trading of shares/derivative transactions for multiple clients. The TPO has stated that the main income of this company from consultancy services which is the similar to the assessee.

DRP has considered the rival opinions. This company fails the functional test since it is deriving its income from NBFC activities including from trading in shares/derivative transactions, whereas the tested party is not an NBFC and accordingly is not permitted to nor it carries out or has any income from operations/activities that are carried out by NBFCs. Further, this company fails the export filter of having minimum revenue of 75% derived from exports as generally followed by the Department particularly where 100% of the revenue of tested party as in our case is derived from exports. In view of this, this company should not be taken in the list of comparables.”

Thus, the DRP has given the detailed findings as to why these comparables were excluded from the final list. Besides that the functional dissimilarity of each of the above mentioned comparable companies are set out in the submissions of the Ld. AR which are not contradicted by the Ld. DR during the hearing. Therefore, we are not interfering in the findings of the DRP. The appeal of the Revenue being ITA No. 908/DEL/2015 for A.Y. 2010-11 is dismissed.

9. Now we are taking up ITA No. 6555/DEL/2015 for ASSESSMENT YEAR 2011-12:

10. The Assessee company was providing investment advisory services to its Associated Enterprise (AE) Trikona Advisors Mauritius Ltd. (TAL) which is Fund Manager as per Consultancy Agreement dated 01.04.2008 entered between the assessee and TAL. During the F.Y. 2010-11 i.e. A.Y. 2011-12, assessee provided investment advisory services to its AE in the nature of investment recommendations primarily in real estate sector in India which were not binding in nature and served as Back Office for its AE. Assessee was engaged to provide investment advisory services to TAL as single client and accordingly 100% of its revenue of Rs. 9,29,01,576/- was derived from export of services and there was no domestic revenue. The TPO rejected 12 comparable companies as selected by the assessee on the basis of functional dissimilarity and instead selected 6 other companies as comparable companies and worked out the average operating margin for 6 comparable companies at 56.74%. On this basis, the proposed upward adjustment of Rs.3,33,32,572/- to ALP was worked out by the TPO which was adopted by the Assessing Officer in draft assessment order u/s 144C of the Act. The DRP vide direction dated 15.09.2015 directed the TPO/AO to exclude all the 6 companies as taken by TPO/AO from the list of comparable companies and instead directed the TPO/AO for considering M/s ICRA Management Consulting Services Ltd. which was also considered in immediate preceding AY 2010-11 to be a suitable comparable vis-à-vis the tested party for the purpose of comparing the average operating margin of such comparable company with that of the tested party.

11. The Ld. DR submitted that following comparables should have been included by the DRP as the functional aspect as well as the filters applied by the TPO was right:

i. **IM + Capitals (Brescon Advisors & Holding Ltd.):** The Ld. DR submitted that this company is advising and facilitating clients in respect of their equity and debt raising. The company is not taking any fund based activities. Therefore this comparable was rightly included by the TPO.

ii. **Motilal Oswal Investment Advisors Pvt. Ltd.:** The Ld. DR submitted

that the company has total equity of Rs. 16.77 crores and does not have any debt. This company is purely advisory services company. Hence, TPO rightly included this as comparable.

iii. **Ladderup Corporate Advisory Pvt. Ltd.:** The Ld. DR submitted that this comparable is an advisory services company and earns its major income from Financial & management consultancy fees. Hence, the TPO rightly included this company as comparable.

iv. **SREI Capital Markets Limited:** This company's annual report shows that 87.94% revenue is from services segment only therefore, the TPO rightly included it as comparable.

v. **Lexicon Finance Limited :** This company's annual report shows that 87.94% revenue is from services segment only therefore, the TPO rightly included it as comparable.

vi. **Almondz Global Securities Limited:** This company has investment advisory services segment which was recognized by the Assessee as well. Therefore, the Ld. DR submitted that the assessee cannot object this comparable as all the other parameters of the comparable has been fulfilled by this comparable. Thus, TPO rightly included this comparable.

12. Further as regards to inclusion of ICRA Management Consulting Services Pvt. Ltd., the Ld. DR submitted that the said comparable company was not before the TPO and the DRP has not taken cognizance of the functional aspect as well as the filters applied by the TPO while excluding or including the comparables. Therefore, this comparable be excluded.

13. The Ld. AR submitted that from the note on functions/activities undertaken by the Assessee as assessee company acts as back office of TAL with certain specific manpower with certain skill sets in finance, legal, engineering and asset management. For providing such services, the Assessee charged its AE on cost plus arrangement thereby eliminating any risks on the assessee unlike other Cos. Carrying on advisory businesses like

investment banking etc. working on multiple clients and thereby undertaking various risks. In other words, under such cost plus arrangement, all the risks in the form of market/business risk, credit and collection risk, capacity utilization risk, service liability risk, human resource management risk as well as foreign exchange fluctuation risk was borne by the AE and not by the Assessee Company. Further, the assessee company was a debt free company and its entire working capital requirement was supported by its AE in the form of advances against services as provided to the assessee. In support of the arm's length price (ALP) charged by the assessee company (TCK) to its AE (TAL), the assessee relied upon TP study report carried out in immediate preceding year and updated working sheet for the year under consideration as filed before TPO/AO/DRP, as per which the average operating margin of 12 comparable companies worked out to 2.89% which was below the operating margin of 15.35% as declared by the tested party. Hence, the price charged by TCK from TAL was an arm's length price.

13. The Ld. AR submitted that the assessee relies on the findings as recorded by DRP where valid reasons are given for excluding the 6 companies from the list of comparable companies since they fail the functional test, service revenue filter test as well as export filter test. DRP has also recorded a finding that the facts during the year under consideration are those that were prevailing in the immediate preceding year. Further, DRP has found M/s ICRA Management Consulting Services Ltd. to be a suitable comparable vis-à-vis the tested party as was the case in the immediate preceding year. The details of the comparables are as follows:

i. **Brescon Corporate Advisors Limited (name changed to Brescon Advisors & Holdings Ltd. And then again changed to IM+ Capitals):** This Company was found to non-comparable by DRP in AY 2010-11 also. The company is engaged in intermediation and advisory services of debt resolution & re-capitalisation, debt syndication and other corporate financial services. Higher risk undertaken by such service provider company since total debtors is about 56.53% of total turnover of such company, whereas

the total debtors of tested party are only about 0% of its total turnover. Further capital employed of such company is more than 10 times of capital employed of tested party. This company fails the functional test since 100% of its income is earned from Debt Resolution & Debt Syndication and M&A Advisory whereas the tested party does not carry out or have any income from such kind of operations/ activities. As held by Mumbai ITAT in the case of Temasek Holding Advisors India P. Ltd. Vs. Dy. CIT reported in 148 ITD 1, Brescon Corporate Advisors Ltd. Is not comparable to the Appellant (Carrying investment advisory services) since such Co.'s major activities is in field other than financial advisory services. In the case of Carlyle India Advisors (P) Ltd. Reported in 153 ITD 400 (Mumbai ITAT), it has been held that the business of investment, merchant banking, corporate finance and similar activities cannot be compared to investment advisory activities of the Assessee. M&A Advisory income was only 2.6% while the balance 97.4% income was derived from debt resolution & debt syndication, which is generally charged as per success fee model and hence commands higher margins on account of high risk undertaken when compared with low margin non-binding investment advisory services provided by the Assessee. Advisory fee, if any, is reflected as part of overall one single segment and hence in the absence of segment information, this Company cannot be considered as comparable to the tested party. Percentage of export income of this company is Nil whereas income of tested party is 100% from exports. Accordingly this company is to be excluded on the basis of 75% export turnover filter. Accordingly, as per Rule 10(B)(2) of I.T. Rules, this company was rightly excluded from the list of comparable companies.

ii. **Motilal Oswal Investment Advisors Pvt. Ltd.** : This Company was found to non-comparable by DRP in AY 2010-11 also. The company is engaged in different business verticals viz. equity capital markets, mergers and acquisitions, private equity syndications and structured debt. Higher undertaken by such service provider company since total debtors is about 37.18% of total turnover of such company, whereas the total debtors of tested party are only about 0% of its total turnover. Further capital

employed of such company is more than 2.80 times of capital employed of tested party. This company fails the functional test since it is engaged in the equity capital markets, mergers and acquisitions, private equity syndications and structured debt and derives whereas the tested party does not carry out or have any income from the above type of services. In the case of Carlyle Indian Advisors (P) Ltd. Reported in 153 ITD 400 (Mumbai ITAT), it has been held that the business of investment, merchant banking, corporate finance and similar activities cannot be compared to investment advisory activities of the Assessee. On this basis, Mumbai Tribunal held that Motilal Oswal Investment Advisors P. Ltd. is dissimilar with the Assessee. Percentage of export income of this company is 15% which is less than 75% of total turnover whereas income of tested party is 100% from exports. Accordingly this company is to be excluded on the basis of 75% export turnover test/filter. Accordingly, as per Rule 10(B)(2) of I.T.Rules, this company was rightly excluded from the list of comparable companies.

iii. **Ladderup Corporate Advisory Pvt. Ltd.:** The Company is engaged in financial and management consultancy services including debt syndication, private equity deals etc. Higher risk undertaken by such service provider company, since total debtors is about 35.21% of total turnover of such company, whereas the total debtors of tested party are only about 0% of its total turnover. From Schedule 16A Note 4, the Ld. AR pointed out that the financial and management consultancy services provided by this Co. are in the nature of corporate advisory services, which are materially different from the tested party activity of investment advisory services. Moreover, unlike the tested party, this Co. is also engaged in business of fund based activities and has made its own investments and as at 31/03/2011, it had investments of Rs. 2.27 Crs. as against a share capital of Rs. 29 Lacs. Hence, this Co. fails the functional test particularly, since it had used up its entire capital in investments and therefore it fails the test as laid down by TPO in AY 2010-11. Further, during AY 2011-12, TPO himself has considered such type of Cos. to be functionally dissimilar. In the case of Carlyle India Advisors (P) Ltd. Reported in 153 ITD 400 (Mumbai ITAT), it

has been held that the business of investment, merchant banking, corporate finance and similar activities cannot be compared to investment advisory activities of the Assessee. Percentage of export income of this company is nil whereas income of tested party is 100% from exports. Accordingly this company is to be excluded on the basis of 75 % export turnover test/filter. Accordingly, as per Rule 10(B)(2) of I.T. Rules, this company was rightly excluded from the list of comparable companies.

iv. **SREI Capital Markets Limited** : The company is engaged in three business verticals i.e. (i) IPO & SEBI related vertical dealing with public issues, delisting, Buy-back, Open Offers, (ii) private equity and M&A vertical primarily dealing with fund raising from private equity funds, advisory on mergers, acquisitions and disinvestments and (iii) debt syndication vertical. Higher risk undertaken by such service provider company since total debtors is about 59.67% of total turnover of such company, whereas the total debtors of tested party are only about 0% of its total turnover. Further capital employed of such company is more than 14.60 times of capital employed of tested party. This company fails the functional test since 100% of its income is earned from three verticals viz. IPO & SEBI related vertical, private equity and M&A vertical and debt syndication vertical whereas the tested party does not carry out or have any income from such kind of operations / activities. As held by Mumbai ITAT in the case of Temasek Holding Advisors India P. Ltd. Vs. Dy. CIT reported in 148 ITD 1, a Co. whose activities are in the field other than financial cannot be compared to the Assessee carrying investment advisory services. In the case of Carlyle India Advisors (P) Ltd. Reported in 153 ITD 400 (Mumbai ITAT), it has been held that the business of investment, merchant banking, corporate finance and similar activities cannot be compared to investment advisory activities of the Assessee. Advisory fee is reflected as part of overall one single segment and hence in the absence of segment information, this Co. cannot be considered as comparable to the tested party. Percentage of export income of this company is Nil whereas income of tested party is 100% from exports. Accordingly this Company is to be excluded on the basis of 75%

export turnover filter. Accordingly, as per Rule 10(B)(2) of I T. Rules, this company was rightly excluded from the list of comparable companies

v. **Lexicon Finance Limited** : The Company is an NBFC Co. and is engaged in making its own investments along with providing advisory and consultancy services. Higher risk undertaken by such service provider company, since total debtors is about 72.75% of total turnover of such company, whereas the total debtors of tested party are only about 0% of its total turnover. Further capital employed of such company is more than 40 times of capital employed of tested party. From Schedule 10, it will be observed that this Company is a registered NBFC and functionally dissimilar. From the P & L A/c, it will be observed that it is providing financial and management consultancy services which are in the nature of corporate advisory services and the same are materially different from the tested party's activity of investment advisory services. Moreover, unlike the tested party, this Co. is engaged in business of making its own investments (fund based activities) and as at 31/03/2011, it had investments of Rs.10.81 Crs. as against a share capital of Rs. 13.98 Crs. Moreover, this Co. has only four employees as against 14 employees of the tested party. This clearly shows that this Co. is primarily engaged in investment activities. Hence, this Co. fails the functional test as laid down by TP in his order in AY 2010-11. Further, during AY 2011 -12, TPO himself has considered such type of Cos. to be functionally dissimilar. In the case of Carlyle India Advisors (P) Ltd reported in 153 ITD 400, it has been held that the business of investment, merchant banking, corporate finance and similar activities cannot be compared to investment advisory activities of the Assessee. Moreover, in the absence of segment information between investment and management consultancy services, this Co. cannot be considered as comparable. Percentage of export income of this company is nil whereas income of tested party is 100% from exports. Accordingly this company is to be excluded on the basis of 75% export turnover test/filter. Accordingly, as per Rule 10(B)(2) of I T. Rules, this company was rightly excluded from the list of comparable companies.

vi. **Almondz Global Securities Limited** : The company is engaged in the following business segments (i) Debt and equity market operations, (ii) Corporate finance and advisory services (iii) Distribution Operations and (iv) Equity. Higher risk undertaken by such service provider company, since total debtors is about 24.28% of total turnover of such company, whereas the total debtors of tested party are only about 0% of its total turnover. Further capital employed of such company is more than 44 times of capital employed of tested party. This company fails the functional test since corporate finance and advisory services vertical as taken by the TPO comprises of the following activities i.e. merchant banking, underwriting commission, corporate and infrastructure advisory and loan syndication fees and arranger of debts/bonds etc. whereas the tested party does not carry out or have any income from such kind of operations/activities. Moreover, TPO in his own order has held share broking & share trading Cos. to be dissimilar with the Assessee. As held by Mumbai ITAT in the case of Temasek Holding Advisors India P. Ltd. Vs. Dy. CIT reported in 148 ITD 1, a Co. whose activities are in the field other than financial advisory services cannot be compared to the Assessee carrying investment advisory services. In the case of Carlyle IndianAdvisors (P) Ltd. Reported in 153 ITD 400 (Mumbai ITAT), it has been held that the business of investment, merchant banking, corporate finance and similar activities cannot be compared to investment advisory activities of the Assessee. This company fails 75% Revenue filter test, as applied by TPO in AY 2010-11. The Ld. AR further pointed out from the P & L accounts that advisory and consultancy activities was much less than 75% of total revenue. Percentage of export income of this company is 0.03% whereas income of tested party is 100% from exports. Accordingly this company is to be excluded on the basis of 75% export turnover filter. Accordingly, as per Rule 10(B)(2) of I.T. Rules, this company was rightly excluded from the list of comparable companies.

vii. **TCK Advisers Private Limited (Tested Party)** : Company is engaged in consultancy advisory services. Captive service provider and no risk assumed. As regards assessment year 2011-12, the revenue is submitting

that by excluding all the comparables finalized by the TPO and giving totally new comparable without any detail discussions and without any application of filters taken into account by the TPO was rightly excluded by the DRP. The Ld. AR relied upon the order of DRP.

14. We have heard both the parties and perused all the relevant material available on record. Ground No. 1 and 4 are general hence dismissed. The DRP has given the following observations:

“As regards objection no 2(3) challenging the action of the TPO in not applying the export filter while selecting the six comparable companies, the Panel gave an anxious consideration. It was noticed upon a perusal of the facts of the case that the same issue formed the subject matter of consideration before the erstwhile DRP in respect of AY 2010-11. It was adjudged by the said DRP in favour of the a’ by holding that the TPO was unwarranted in ignoring the export filter while selecting the same 6 companies figuring during the AY 2011-12. It was also held by them that the a’ being a company earning 100% of its revenue from exports deserved to be compared with companies having at least 75% of its income from exports. Aside from the above criteria, it was also held by such DRP that the above said 6 companies functionally dissimilar did not meet the service revenue filter test.

The present Panel weighed the findings of the DRP dealing with the same issue in the immediately preceding previous year against the facts obtaining in the impugned AY.

The Panel found the facts to be the same as those prevailing in the previous year. Hence the Panel does not see any reason to depart from the position taken by the erstwhile DRP. Since no essential difference in terms of functions and service filters were noticed by the DRP in relation to the current FY also, the Panel has no hesitation in allowing the objection of the a’. Accordingly objection 2(e) is allowed.

Thus, the DRP has given the detailed findings as to why these comparables were excluded from the final list. The functional dissimilarity of each of the above mentioned comparable companies are set out in the

submissions of the Ld. AR which are not contradicted by the Ld. DR during the hearing. Besides that the filters applied by the TPO has not been strictly followed by the TPO while including these comparables which is not permissible. The DRP has given a detailed finding to that extent. Therefore, we are not interfering in the findings of the DRP. Hence, Ground No. 2 is dismissed.

15. As regards to Ground No 3, the DRP observed as under:

“The objection 2(f) pressed by the a’ was analysed by the Panel. The a’ sought to challenge the rejection by the TPO of M/s ICRA Management Consulting Services Ltd. as a suitable comparable vis-à-vis the a’. It was observed by the Panel that the same issue was agitated by the a’ before the earlier DRP in respect of AY 2010-11. Upon a consideration of the entire facts the said DRP arrived at the conclusion that M/s ICRA Management deserved to be included in the list of comparables. Having found the facts prevailing in the current AY to be the same as those during AY 2010-11, the DRP feels compelled to follow the findings of the said DRP. Operating profit over operating cost percentage of ICRA Management Consulting Services (P) Ltd. was 15.79% during the relevant AY. The operating profit over operating cost of the a’ was 15.35%. The difference thus being within the tolerance band of 5% as laid down u/s 92C(2) proviso fails to make any adverse impact on the arm’s length price (ALP) of the international transaction as far as benchmarking with the company goes.”

Thus, the DRP has given the detailed findings as to why this comparable should be included. The DRP has given a detailed finding to that extent. Therefore, we are not interfering in the findings of the DRP. Hence, Ground No. 3 is dismissed. The appeal of the Revenue being ITA No. 6555/DEL/2015 for A.Y. 2010-11 is dismissed.

16. In result, both the appeals filed by the Revenue are dismissed.

Order pronounced in the Open Court on 11th November, 2019.

Sd/-

**(R.K.PANDA)
ACCOUNTANT MEMBER**

Dated: 11/11/2019
Binita

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
- 5.

DR: ITAT

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

ASSISTANT REGISTRAR
ITAT NEW DELHI