

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

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

ITA No.6808/Del/2015
Assessment Year : 2011-12

Standard & Poorø South Asia
Services Pvt. Ltd.,
B-92, 9th Floor,
23, KG Marg,
New Delhi.

Vs DCIT,
Circle-24(2),
New Delhi.

PAN: AALCS0858G

(Appellant)

(Respondent)

Assessee by	:	Shri Ved Jain, Advocate, Shri Rishabh Jain, CA & Shri Himanshu Aggarwal, CA
Revenue by	:	Ms Nidhi Sharma, Sr. DR
Date of Hearing	:	14.10.2019
Date of Pronouncement	:	02.01.2020

ORDER

PER R.K. PANDA, AM:-

This appeal filed by the assessee is directed against the order dated 30.10.2015 passed by the AO u/s 143(3) r.w.s. 144C of the IT Act, 1961, relating to assessment year 2011-12.

2. Facts of the case, in brief, are that the assessee is a company engaged in the business of providing information services related to credit rating and back office support services to its group companies. It filed its return of income on 29.11.2011 declaring total income at Rs.2,31,63,026/- which was subsequently revised to Rs.2,33,43,822/- on 28th March, 2013. Since the assessee had entered into certain international transactions with its AEs, the AO made a reference to the TPO for determining the ALP of the international transactions undertaken by the assessee during the year. The TPO, during the course of TP assessment proceedings, noted that the assessee had entered into the following international transactions with its AE during the year:-

S.No.	Type of International transaction	Method Selected		Total value of transaction (Rs.)
		MAM	PLI	
i.	Provision of rating support services	TNMM	OP/OC	72,737,844
ii.	Availing of services	TNMM	OP/OC	1,205,798
iii.	Reimbursement of expenses to AEs	TNMM	OP/OC	16,240,953
iv.	Provision of support services	TNMM	OP/OC	103,130,435

3. From the various details furnished by the assessee, he noted that The McGraw Hill Companies Inc., USA is the major shareholder holding 9,999 shares which is 99.99% of the total percentage of shareholding. Standard & Poorø India LLC is holding only one share which amounts to 0.01% of the total shareholding. From the various details furnished by the assessee, the TPO further noted that the assessee has benchmarked the international transactions relating to provision of

support services by considering them in the nature of software development services using TNMM as the most appropriate method with OP/OC as PLI. He noted that the assessee has worked out profit margin of 3.17% after working capital adjustment in respect of comparables as against 15% in its own case relating to 'provision of rating support services.' Further, the assessee has worked out profit margin of 6.18% after working capital adjustment in respect of comparables as against 10% in its own case in respect of provision of 'other support services.' The TPO rejected the economic analysis done by the assessee and worked out adjusted profit margin of 39.17% in respect of 'provision of rating support services' and an adjusted margin of 18.15% in respect of 'provision of other support services' and accordingly made addition of Rs.1,52,87,598/- in case of Other support services and an addition of Rs.76,41,028/- in respect of rating support services, the details of which are as under:-

OTHER SUPPORT SERVICES

S.No.	Company name	OP/OC (%)	Working capital adjusted OP/OC (%)
i.	Akshay Software Technologies Ltd.	0.86%	-2.84%
ii.	e-Infochips	56.44%	49.95%
iii.	Evoke Technologies Pvt. Ltd.	8.11%	3.76%
iv.	E-Zest Solutions	39.98%	31.72%
v.	Infosys Ltd.	43.39%	38.64%
vi.	Larsen & Toubro Infotech Ltd.	18.40%	14.75%
vii.	LGS Global Limited	14.11%	7.11%
viii.	Persistent Systems & Solutions Ltd. (Merged)	21.51%	16.33%
ix.	Persistent Systems Ltd.	23.08%	17.63%
x.	RS Software (India) Ltd.	16.20%	11.60%
xi.	Sasken Communication Technologies ltd.	24.33%	20.20%
xii.	Wipro Technology Services Ltd. (Merged)	54.42%	48.90%

xiii.	Celstream Technologies Pvt. Ltd	13.20%	8.80%
xiv.	Acropetal Technologies Ltd. (Seg.)	22.06%	14.87%
xv.	Mindtree Ltd. (Seg.)	10.29%	4.75%
xvi.	Sankhya Infotech Limited (Seg.)	26.20%	17.66%
xvii.	Tata Elxsi Ltd. (Seg.)	12.94%	6.87%
xviii.	Thirdware Sol (Seg)	18.30%	13.07%
xix.	Zylog Systems Limited	28.74%	21.09%
	Average	23.82%	18.15%

32.2. According, the arm's length price of the international transaction related to support services is computed as below:

Particulars	Amount (INR)
Operating Cost	93754941
Arm's length margin (%)	18.15%
Arm's length margin (Rs.)	17016522
Arm's length price	110771463
Price charged by the assessee	103130435
International transaction	103130435
5% of Price charged in international transaction	5156522
Difference between ALP and Price charged by assessee	7641028
Percentage of sales made to AEs to total revenue (Rs.103130435/Rs.103130435*100)	100.00%
Proportionate Difference for which adjustment is required to be made	7641028

RATING SUPPORT SERVICES

S.No.	Company Name	OP/OC(%)	Working Capital adjusted OP/OC (%)
i.	Almondz Global Securities Limited	17.45	17.69
ii.	IM + Capitals Ltd.	92.01	81.86
iii.	ICRA Management Consulting Services Ltd.	15.71	10.14
iv.	Ladderup Corporate Advisory Pvt. Ltd.	53.09	49.41
v.	Motilal Oswal Investment Advisors Pvt. Ltd.	82.61	78.42
vi.	SREI Capital Markets Ltd.	5.96	-2.53
	Average	44.47%	39.17%

48.2 Accordingly, the arm's length price of the international transaction related to Rating Support Services is computed as below:

Particulars	Amount (INR)
Operating Cost	63,250,300
Arm's length margin (%)	39.17%
Arm's length margin (Rs.)	24775143
Arm's length price	88,025,443
Price charged by the assessee	72,737,845
International Transaction	72,737,844
5% of Price charged in international transaction	3636892
Difference between ALP and Price charged by assessee	15,287,598
Percentage of sales made to AEs to total revenue (Rs.72737845/Rs.727378465*100)	100%
Proportionate Difference for which adjustment is required to be made	15287598

4. The assessee filed objections before the DRP who deleted the addition in respect of provision of Other support services of Rs.76,41,028/-. So far as the addition on account of provision of rating support services of Rs.1,52,87,598/- is concerned, the DRP gave partial relief to the assessee. It is pertinent to mention here that the TPO included five new comparables, namely,

- i. Almondz Global Securities Limited;
- ii. IM + Capitals Ltd.;
- iii. Ladderup Corporate Advisory Pvt. Ltd.;
- iv. Motilal Oswal Investment Advisors Pvt. Ltd.; and
- v. SREI Capital Markets Ltd.

5. However, the DRP provided partial relief to the assessee by upholding the inclusion of IDC (India) Limited and exclusion of IM + Capitals Limited and considering the foreign exchange as operating in nature.

6. Aggrieved with such order of the AO/TPO/DRP, the assessee is in appeal before the Tribunal by raising the following grounds:-

On the facts and circumstances of the case and in law, the learned Assessing Officer ("AO") has erred in passing the assessment order under section 143(3) read with section 144C of the Income-tax Act, 1961 (the Act) after considering the adjustments proposed by the learned Transfer Pricing Officer ("TPO") in his order passed under section 92CA(3) of the Act and subsequently confirmed by the Honorable Dispute Resolution Panel ("DRP").

Each of the ground is referred to separately, which may kindly be considered independent of each other.

That, on facts and circumstances of the case and in law:

Ground No. 1

The learned AO / TPO / DRP have erred in making an adjustment of INR 7,450,885 to the total income of the appellant in respect of international transaction pertaining to provision of rating support services by the appellant to its associated enterprises ("AEs") (hereinafter referred to as "impugned transaction").

Ground No. 2

The learned AO / TPO / DRP have erred in not accepting the economic analysis undertaken by the appellant in accordance with the provisions of the Act read with the Income-tax Rules, 1962 (the Rules), and modifying the same for the determination of the Arm's Length Price ("ALP") of the appellant's impugned transaction to hold that the same is not at arm's length.

Ground No. 3

The learned AO / TPO / DRP have erred in:

- a. Not accepting the use of multiple year data, as adopted by the appellant in TP documentation; and
- b. Determining the arm's length margins / prices using data pertaining only to financial Year ("FY") 2010-11, which was not available to the appellant at the time of complying with the Indian TP documentation requirements.

Ground No. 4

The learned AO / TPO / DRP have erred in rejecting certain comparable companies identified by the appellant by applying inappropriate comparability criteria such as

- a. Different accounting year;
- b. Employee cost lesser than 25 percent of total cost; and
- c. Diminishing revenues

Ground No. 5

The learned TPO/ AO/ DRP have erred in wrongly rejecting certain companies from and adding certain companies to the final set of comparables for the impugned transaction on an ad-hoc basis, thereby resorting to cherry picking of comparable to determine ALP thereof.

Ground No. 6

The learned TPO/ AO/ DRP have erred in selecting certain companies (which are earning supernormal profits) as comparable to the appellant to benchmark the impugned transaction.

Ground No. 7

The learned TPO/ AO/ DRP have erred in not making suitable adjustments to account for differences in the risk profile of the appellant vis-a-vis the comparable companies.

Ground No. 8

The learned AO has erred in levying consequential interest under section 234B and 234C of the Act

Ground No. 9

The learned AO has erred in initiating penalty proceedings under section 271 (1)(c) of the Act.

The appellant craves leave to add, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time or at the time of hearing the appeal.

The appellant prays for appropriate relief based on the said grounds of appeal and the facts and circumstances of the case.ö

7. The Id. Counsel for the assessee submitted that grounds of appeal No. 1 to 4 being general in nature do not require any argument.

8. So far as grounds of appeal No.5 and 6 are concerned, the Id. Counsel for the assessee mainly argued exclusion of Ladderup Corporate Advisory Private Limited and Motilal Oswal Investment Advisors Private Limited which were included by the TPO and upheld by the DRP. So far as inclusion of Ladderup Corporate Advisory Private Limited is concerned, he submitted that the TPO has included the above comparable on the ground that it is functionally similar as it is engaged in providing financial management consultancy services. He submitted that this company should be rejected from the list of comparables since it is functionally different. He submitted that from a perusal of the website it can be seen that Ladderup Corporate Advisory Private Limited operates as an investment banking firm. This company is a fast growing boutique investment banking firm formed in 2007 offering high-quality investment banking, corporate finance and corporate advisory services to clients in the mid-market space. It is also a category 1 merchant banker registered with SEBI and requires a separate license to operate. This shows that it is absolutely different from the assessee. Referring to page 14 of the annual report of the said company, the Id counsel drew the attention of the Bench to Schedule 11 of the Profit & Loss Account and submitted that the same reveals that the main source of income of the said comparable was by way of financial and management consultancy fees and, thus, was entirely different from

the activities of the assessee which was not into the business of financial and management consultancy. Referring to page 9 of the annual report, he drew the attention of the Bench to segment information and submitted that the same reveals that the aforesaid comparable was into financial and management consultancy and, therefore, it is functionally different. Referring to the decision of the Honøble Delhi High Court in the case of M/s Mckinsey Knowledge Centre India Pvt. Ltd., vide ITA No.461/2017 and batch of other appeal, order dated 9th August, 2018, he submitted that the Honøble High Court has upheld the decision of the Tribunal in excluding this company from the list of comparables on the ground that this company provides a one stop financial advisory and fund raising solutions in investment banking, capital markets, wealth management, project finance and growth stage investing. Referring to the following decisions, he submitted that Ladderup Corporate Advisory Private Limited was excluded from the list of comparables on the ground that this company is engaged in merchant banking/investment banking and is a registered merchant banker with SEBI:-

- i) Blackstone Advisors India Private Limited (ITA No.928/Mum/2016 and ITA No.1370/Mum/2016) (A.Y. 2011-12)
- ii) ITAT Mumbai in the case of Temasek Holdings Advisors India Pvt. Ltd. Vs. DCIT in ITA No.477/Mum/2016 and ITA No.816/Mum/2016 (AY 2011-12), dated 11.08.2017.

iii) ITAT Mumbai in the case of Wells Fargo real Estate Advisors Pvt. Ltd. Vs. DCIT in ITA No.1520/Mum/2016 dated 17.01.2018.

9. He accordingly submitted that Ladderup Corporate Advisory Private Limited should be excluded from the list of comparables.

10. So far as Motilal Oswal Investment Advisors Private Limited is concerned, he submitted that the TPO has included this comparable on the ground that it is functionally similar and it is engaged in providing advisory and merchant banking, equity placement, mergers and acquisition, restructuring, etc. He submitted that this company also should be excluded from the list of comparables on account of functional dissimilarity. Referring to the copy of the annual report placed at pages 28 to 48 of the paper book, the Id. Counsel for the assessee drew the attention of the Bench to page 1 of the Director's Report (page 26 of the paper book compilation) and submitted that the company operates in four different business verticals, viz., equity capital markets, mergers and acquisitions, private equity syndication and structured debt. He submitted that despite the aforesaid multiple sectors/verticals of operations, no segmental data is available in the annual report. Referring to clause 1.14 Segment reporting, he drew the attention of the Bench to the report of the auditors which reads as under:-

1.14 Segment Reporting:

The Company is engaged in single segment and there are no separate reportable segments as defined in AS-17.

11. He submitted that the company is engaged in providing high end rating support and would require skilled personnel in the field of merchant banking actuary, financial advisory, etc. The functions performed by Motilal Oswal Investment Advisors Private Limited which is into merchant banking activities cannot be compared to the assessee whose functions are strictly limited to that of providing rating support services. Referring to the following decisions, he submitted that Motilal Oswal Investment Advisors Private Limited was excluded from the list of comparables on account of functional dissimilarity:-

- i) Carlyle India Advisors Private Limited (ITA No.2410/Mum/2017 and ITA No.2506/Mum/2017 (A.Y. 2011-12);
- ii) Carlyle India Advisors Private Limited (ITA No.7367/Mum/2012 (A.Y. 2008-09);
- iii) ITAT Delhi in case of D.E. Shaw India Advisory Services Pvt. Ltd. Vs. DCIT, ITA No.1681/Del/2015 dated 04.09.2017;
- iv) ITAT Mumbai in ACIT vs. Blackstone Advisors India Pvt. Ltd., ITA no.928 & 1370/Mum/2016 dated 30.11.2018; and
- v) ITAT Mumbai in Carlyle India Advisors Private Limited (ITA No.2410 & 2506/Mum/2017 dated 20.11.2018.

12. He submitted that if the above two comparables are excluded from the list of comparables, the entire adjustment stands deleted and, therefore, the other arguments become academic at this stage.

13. The Id. DR, on the other hand, heavily relied on the orders of the AO/TPO/DRP. He submitted that none of the comparables selected either by the assessee or the Revenue provide exactly for rating services, therefore, on account of mere difference of functionality, none of the comparables should be excluded. He submitted that the TPO has selected the comparables on his understanding as there are different functionality permissible under TNMM. Therefore, if on a minor difference of functionality any comparable is being excluded, then, the TPO should be given a chance to examine the entire comparability afresh and to examine the exact functionality of the assessee vis-à-vis the comparables.

14. The Id. Counsel for the assessee, in his rejoinder, strongly objected to the above argument of the Id. DR. He submitted that it was the allegation of the TPO that the comparable selected by the assessee are not functionally similar or that the comparables adopted by the TPO are functionally similar to that of the assessee company. Therefore, it is incorrect on the part of the Id. DR to say that the TPO has not done his work in proper manner. He submitted that since the coordinate Benches of the Tribunal have excluded both Ladderup Corporate Advisory Private Limited and Motilal Oswal Investment Advisors Private Limited on account of

functional dissimilarity, therefore, the above two companies should be excluded from the list of comparables.

15. We have considered the rival arguments made by both the sides, perused the orders of the AO/TPO/DRP and the paper book filed on behalf of the assessee. We have also considered the various decisions relied on by both the parties. We find the assessee, in the instant case, is engaged in providing rating support services and other support services to its AEs. It functions as a risk mitigated contract service provider. During the current assessment year, the assessee has undertaken the international transactions with its AEs, the details of which are given at para 2 of this order. We find the TPO, in the instant case, suggested an upward adjustment of Rs.2,29,28,626/- to the ALP of the international transaction being provision of rating support services at Rs.1,52,87,598/- and other support services at Rs.76,41,028/-. We find the DRP directed the TPO/AO to delete the addition in respect of provision of support services of Rs.76,41,028/- and the Revenue is not in appeal before the Tribunal. So far as the adjustment on account of provision of rating support services is concerned, it is the submission of the Id. Counsel for the assessee that if Ladderup Corporate Advisory Private Limited and Motilal Oswal Investment Advisors Private Limited are excluded from the list of comparables, the profit margin of the assessee would fall within the +/- 5% and the entire addition would stand deleted.

15.1 So far as Ladderup Corporate Advisory Private Limited is concerned, we find this company was included by the TPO on the ground that it is functionally similar as it is engaged in providing financial and management consultancy services. However, in our opinion, this company should be excluded from the list of comparables on account of different functionality. A perusal of the details filed by the assessee shows that Ladderup Corporate Advisory Private Limited operates as an investment banking firm offering high quality investment banking, corporate finance and corporate advisory services to clients in the mid-market space. It is also a category 1 merchant banker registered with SEBI and requires a separate license to operate which is absolutely different from the activities of the assessee company. A perusal of Schedule 11 of the Profit & Loss Account of Ladderup Corporate Advisory Private Limited shows that the main source of finance of the said comparable was by way of financial management and consultancy fees. We, therefore, find merit in the argument of the Id. Counsel for the assessee that the activities of this company was undoubtedly different from the activities of the assessee which was not into the business of financial and management consultancy fees. Further, a perusal of the annual report shows that as per the segment information Ladderup Corporate Advisory Private Limited is into financial and management consultancy. Clause 7 of Notes to Accounts reads as under:-

ø7. Segment information:

In accordance with the requirements of Accounting Standard-17 øøSegment Reportingö, issued by ICAI/Companies (Accounting Standards) Rules, 2006, Companyø business is one reportable business segment being Financial and

Management Consultancy and hence no separate disclosure attributable to Revenues, Profits, Assets, Liabilities and Capital Employed are given.ö

16. We find, the Honøble Delhi High Court in the case of Mckinsey Knowledge Centre India Pvt. Ltd. (supra) has upheld the decision of the Delhi Bench of the Tribunal wherein it was held that Ladderup Corporate Advisory Private Limited provides one stop financial advisory and fund raising solutions in investment banking, capital markets, wealth management, project finance and growth stage investment. The Mumbai Bench of the Tribunal in the case of Blackstone Advisors India Private Limited (supra), Temasek Holdings Advisors India Pvt. Ltd. (supra) and Wells Fargo Real Estate Advisors Pvt. Ltd. (supra) has excluded Ladderup Corporate Advisory Private Limited from the list of comparables on the ground that the above company is engaged in merchant banking/investment banking and is a registered merchant banker with SEBI. In view of the above discussion, we are of the considered opinion that Ladderup Corporate Advisory Private Limited should be excluded from the list of comparables on account of functional dissimilarity.

17. Now, coming to the inclusion of Motilal Oswal Investment Advisors Private Limited, we find the TPO included the above comparable on the ground that it is functionally similar as it is engaged in providing advisory on merchant banking, equity placement, mergers and acquisition, restructuring, etc. However, in our opinion, this company also should be excluded from the list of comparables on

account of different functionality. From the copy of the Director's Report, we find this company operates in four different business verticals. A perusal of the Director's Report shows that the company derives its business income from four different business verticals viz., equity capital markets, mergers and acquisitions, private equity syndication and structured debt.

18. Despite the aforesaid multiple sectors/verticals of operations, we find no segmental data is available in the annual report. A perusal of the segment reporting shows that the company is engaged in single segment and there are no reportable business segment as per AS-17. We find the assessee company is engaged in providing high end rating support and would require skilled personnel in the field of merchant banking, actuary, financial advisory, etc. The functions performed by Motilal Oswal Investment Advisors Private Limited which is into merchant banking activities, in our opinion, cannot be compared to the functions of the assessee whose functions are strictly limited to that of providing rating support services.

18.1 We find the Delhi Bench of the Tribunal is the case of D.E. Shaw India Advisory Services Pvt. Ltd. (supra) while excluding Motilal Oswal Investment Advisors Private Limited has observed as under:-

ō(iii) Motilal Oswal Investment Advisors Pvt. Ltd.

In the case of this company, it is the assessee's assertion that this company earns revenue from equity and derivatives, investment banking, mergers and acquisitions, portfolio management services, private wealth management and syndication and structured debt. It is seen that this company was excluded as a

comparable in the case by ITAT Mumbai Bench in the case of Carlyle India Advisors Pvt. Ltd. (supra). This was also followed by the ITAT Delhi Bench and this company was excluded in the case of Actis Advisers Pvt. Ltd. vs ACIT in I.T.A. No. 1998/Del/2014. This company was also excluded as a comparable in the case of Ms/ Blackstone Advisors India Pvt. Ltd. by ITAT Mumbai in I.T.A. No. 1581/Mum/2014 wherein this company was directed to be excluded in page 11 of the order. The relevant portions are being reproduced for a ready reference:-

ōMotilal Oswal Investment Advisors Pvt Ltd:-

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 various field and industries including advisory services 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 ranges 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 advice 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 as 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.ö

10.4 The department also could not bring any new fact on record which could controvert the assertion made by the Ld. Authorised Representative except for the plea that only a broad comparability has to be seen in case of selecting comparables. However, we are unable to agree with the contentions of the Ld. CIT DR as this company has been excluded on the basis of functional dissimilarity in many cases and the department has not been able to demonstrate with evidence, cases where this company was accepted as a comparable in another entity providing investment advisory services. Accordingly, we direct the Assessing Officer/TPO to exclude this company also from the final list of comparables. The assessee has submitted that if the three comparables viz. M/s Brescon Corporate Advisors Pvt. Ltd., Motilal Oswal Investment Advisors Pvt. Ltd. and Keynote Corporate Services Limited were excluded from the final list of comparables. The assessee's transaction will come within the arm's length. The assessee has also provided a chart in which the adjusted OP/TC has been calculated after the exclusion of these three comparables and it works out to 14.84% as compared to assessee's margin of 19.47%. As we have directed the Assessing Officer/TPO to exclude these three comparables, we are not adjudicating on the other comparables contested by the assessee for Assessment Year 2010-11 and direct the Assessing Officer/TPO to verify the working of the assessee at the time of excluding these three comparables and working out the new margins. The assessee will also be given proper opportunity by the Assessing Officer /TPO while finalizing the margins.ö

19. We find on appeal by the Revenue, the Hon'ble Delhi High Court has upheld the order of the Tribunal and dismissed the appeal of the Revenue by observing as under:-

ö Having carefully considered the submissions of the Revenue, this Court is of the opinion that no substantial question of law arises in this case. What the Revenue urges here is that even though the three entities (M/s Brescon Advisors & Holdings Ltd.; Keynote Corporate Services Ltd. and Motilal Oswal Investment Advisors Pvt. Ltd.) do not carry out business activities which are similar as to be called as 'comparable entities', nevertheless, the assessee's transgression, if one may so categorize it, in including other entities as comparables which did not per se or primarily carry out investment advisory activity but carried it out partly, is a sufficient ground for the inclusion of these three entities (M/s Brescon Advisors & Holdings Ltd.; Keynote Corporate Services Ltd. and Motilal Oswal Investment Advisors

Pvt. Ltd.). This Court is of the opinion that the exercise of inclusion or exclusion of the comparables per se does not involve a question of law unless the approach of any of the Revenue authorities or the Tribunal, is unreasonable or excludes some relevant factors or takes into account relevant factors, extraneous to Rule 10B, IOC and 10D of the Income Tax Rules.

For the above reasons, this Court is satisfied that there is no merit in these appeals which are accordingly dismissed.ö

20. The various other decisions relied on by the Id. Counsel for the assessee also support his case to the proposition that Motilal Oswal Investment Advisors Private Limited should be excluded from the list of comparables on account of different functionality. We, therefore, direct the AO/TPO to exclude Motilal Oswal Investment Advisors Private Limited from the list of comparables. Since the assessee did not argue the various other grounds being academic in nature, therefore, these grounds are not being adjudicated.

21. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 02.01.2020.

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 2nd January, 2020

dk

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi`