

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

BEFORE SHRI R.C.SHARMA, ACCOUNTANT MEMBER  
AND  
SHRI VIKAS AWASTHY, JUDICIAL MEMBER

ITA NO.796/Mum/2016(A.Y.2011-12)

M/s. Kitara Capital Pvt. Ltd.  
507, 5<sup>th</sup> Floor, Ceejay House,  
Shivsagar Estate, Dr.A.B.Road,  
Worli, Mumbai 400 018  
PAN:AACCH 2339E

..... Appellant

Vs.

Income Tax Officer- 6(3)(4),  
Room No.524, 5<sup>TH</sup> Floor,  
Aaykar Bhavan, M.K.Road,  
Mumbai 400 020.

..... Respondent

ITA NO.1844/Mum/2016(A.Y.2011-12)

Income Tax Officer- 6(3)(4),  
Room No.524, 5<sup>TH</sup> Floor,  
Aaykar Bhavan, M.K.Road,  
Mumbai 400 020.

... Appellant

Vs.

M/s. Kitara Capital Pvt. Ltd.  
507, 5<sup>th</sup> Floor, Ceejay House,  
Shivsagar Estate, Dr.A.B.Road,  
Worli, Mumbai 400 018  
PAN:AACCH 2339E

... Respondent

Assessee by : Shri Ajay R. Singh  
Revenue by : S/ Shri Azhar Zain V.P/Anand Mohan

Date of hearing : 03/12/2019  
Date of pronouncement : 11/02/2020

## ORDER

PER VIKAS AWASTHY, JM:

These cross appeals by the assessee and the Revenue are directed against the assessment order dated 25/01/2016 passed under section 143(3) r.w.s. 144(13) of the Income Tax Act, 1961 ( in short 'the Act').

2. The brief facts of the case as emanating from records are: The assessee company is engaged in provision of Investment Advisory Services to its group company. The assessee is a subsidiary of Kitara Capital Investments Ltd. based in Cayman Islands which in turn is held by Helcon Capital Holdings Co. SAOC Oman. During the period relevant to assessment year under appeal, the assessee entered into international transactions with its Associated Enterprise(AE) in providing investment advisory services. To benchmark its transaction, the assessee selected TNMM as the most appropriate method. The assessee applied OP/OC as its PLI. The assessee selected six companies as comparables within average weighted margin of -0.19%. The assessee claimed that since the profit margin of the assessee is 17.50%, i.e. higher than the margin of the comparables, its transactions with AE may be treated at arms length price. The Transfer Pricing Officer(TPO) rejected all the six comparables selected by the assessee and introduced two fresh comparables i.e:-

(1) Motilal Oswal Investment Advisory Pvt.Ltd,

(2) Ladderup Corporate Advisory Pvt. Ltd.

The average OP/TC of the above selected comparables was computed at 72.16% against the PLI of assessee at 17.50%. Consequently, the TPO made

adjustment of Rs.2,20,66,940/-. On the basis of adjustment proposed by TPO, the Assessing Officer framed Draft Assessment order dated 02/03/2015 under section 143(3) r.w.s. 144C of the Act. The assessee filed objections before the Dispute Resolution Panel(DRP) assailing the findings of TPO/Assessing Officer . The DRP after considering the documents furnished by the assessee concluded that Motilal Oswal Investment Advisory Pvt.Ltd, (in short 'Motilal') is engaged in the Merchant Banking activities and hence, not comparable. The DRP directed exclusion of 'Motilal' from the list of comparables. However, the DRP retained Ladderup Corporate Advisory Pvt. Ltd ( in short 'Ladderup') as good comparable.

3. The assessee in its appeal has impugned inclusion of 'Ladderup' as comparable. On the other hand, the Revenue in its appeal has assailed the findings of DRP in excluding 'Motilal' from the list of comparables.

4. Shri Ajay R. Singh, appearing on behalf of the assessee submitted that assessee is engaged in the business of providing Non-binding Investment Advisory Services to its clients based on research and analysis carried out by it. In lieu of services provided the assessee charge nominal fee. The Ld.Authorized Representative of the assessee pointed that the TPO could not appreciate business model of the assessee in right perspective and mixed it with the activities carried out by merchant /investment banking business. Consequently, the TPO rejected all the 6 comparables selected by the assessee and replaced the comparables engaged in merchant banking/investment banking activities. The Ld.Representative for the assessee filed a fact sheet explaining the difference between the activities carried out under investment advisory business i.e activities carried out by the assessee and investment

banking/merchant banking business. The relevant extract of the same is reproduced as under:-

<i>Investment Advisory Business</i>	<i>Investment Banking /Merchant Banking Business.</i>
<i>Investment advisory business, investment advice is given to the client, based on research and analysis in exchange of a nominal fee. This advice is provided irrespective of the whether its client wishes to follow the advice or not i.e. non binding.</i>	<i>In merchant banking/investment banking business activities are carried out for or on behalf of the client in order to help its fund raising activities. In this business, revenues are earned as percentage of money raised for its clients.</i>

The Ld.Representative for the assessee submitted that primary difference between Investment Advisory Services and Merchant Banking Services is that in the investment advisory services remuneration is by way of fixed nominal fee. In the case of merchant banking services the remuneration is commission based.

4.1 The Id. Authorized Representative for the assessee supporting the findings of DRP qua exclusion of 'Motilal' from the list of comparables submitted that Tribunal in the case of Carlyle India Advisors Pvt. Ltd. vs. DCIT in ITA No.7367/Mum/2012 for assessment year 2008-09 decided on 07/02/2014 has held that 'Motilal' is not good comparable with a company engaged in investment advisory services. The Tribunal thereafter, in the case of Carlyle India Advisors Pvt. Ltd. vs. ACIT in ITA No2410/Mum/2017 for assessment year 2011-12 decided on 20/11/2018 reiterated its view by placing reliance on its earlier decision rendered for the assessment year 2008-09. The Id. Authorized Representative for the assessee submitted that the DRP directed exclusion of 'Motilal' by following the decision of Tribunal in the case of Carlyle India Advisors Pvt. Ltd., assessment year 2008-09 (supra).

4.2 In respect of 'Ladderup', the Id. Authorized Representative for the assessee submitted that the DRP while upholding inclusion of said company the list of comparables has erred in observing that there is no evidence that the company had received income from merchant banking activities. The Id. Authorized Representative for the assessee submitted that Tribunal in the case of DCIT vs. General Atlantic Pvt. Ltd. reported as 91 taxmann.com 406(Mum-Trib) for assessment year 2011-12 has held that 'Ladderup' being category one merchant banking company cannot be compared with a company engaged in Investment advisory services. Similar view has been taken by Tribunal in the case of SUN-Ares India Real Estate Pvt. Ltd. vs. DCIT in ITA No.621/Mum/16 for assessment year 2011-12 decided on 09/02/2018 (Mum-Trib). The Id. Authorized Representative of the assessee further contended that in the case of Carlyle India Advisors Pvt. Ltd., assessment year 2011-12(supra), the Tribunal directed exclusion of 'Ladderup' holding that it is not comparable to a company engaged in rendering non-banking investment advisory services.

5. Per contra, Shri Azhar Zain, representing the Department submitted that 'Motilal' should be included in the list of comparables as the activities carried out by the said company are akin to the activities of the assessee. In respect of 'Ladderup', the Id.Departmental Representative submitted that no material has been placed on record by the assessee to show that the said company earned income during the relevant period from merchant banking activities. The Id.Departmental Representative prayed for modifying the directions of DRP to include 'Motilal' in the list of comparables.

6. We have heard the submissions made by rival sides and have perused the orders of authorities below. The only issue raised in the respective appeals by the assessee and the Revenue is exclusion/inclusion of comparables. The TPO has rejected all the comparables selected by the assessee and has introduced fresh two comparables i.e. 'Motilal' and 'Ladderup'. The DRP has directed to remove 'Motilal' from the list of comparables and has upheld inclusion of 'Ladderup'. Now, the assessee in appeal is seeking exclusion of 'Ladderup' from the list of comparables and the Revenue in cross appeal wants inclusion of 'Motilal'.

**Ladderup Corporate Advisory Pvt. Ltd.**

7. The DRP has upheld inclusion of 'Ladderup' merely on the ground that the said company has not reported segment wise breakup of income and no income has been reported from merchant banking advisory activities. We find that the Co-ordinate Bench of the Tribunal in the case of SUN-Ares Real Estate Pvt. Ltd.(supra) has directed exclusion of 'Ladderup' in assessment year 2011-12 as is not functionally comparable with the entity engaged in providing non-binding Investment Advisory Services. The relevant extract of the findings of Tribunal on this issue are as under:-

*" 4.1 We have carefully heard the rival contentions and perused relevant material on record including the decisions cited by respective representatives for exclusion / inclusion of the comparable. First of all, both sides converge on the point that the assessee was engaged in providing investment advisory services of non-binding in nature. The fact is not in dispute before the lower authorities. On this backdrop, we find that so far as the selection of final comparable namely Ladderup is concerned, this Tribunal in the case of Temasek Holding Advisors India P. Ltd. Vs. DCIT [87 Taxmann.com 168] for identical Assessment year observed that Ladderup was registered as Category-1 Merchant Banker with SEBI and was engaged in rendering merchant banking services w.e.f. 01/07/2010 which fact was duly substantiated by the website of the company as well as its Annual Reports and therefore, not functionally comparable with an entity which was engaged in the business of rendering non-binding investment advisory services. The*

*ratio of this decision has subsequently been followed in recent decision of the Tribunal rendered in Wells Fargo Real Estate Advisors Private Ltd. Vs DCIT [ITA No. 1520/M/2016 17/01/2018]. We also find that the reliance of the revenue on the case of AGM India Advisors Pvt. Ltd. Vs DCIT [supra] was misplaced since no findings regarding this comparable has been given by the Tribunal in that order since the assessee came within the range of +/-5% even with inclusion of this comparable. Therefore, finding identical facts in the present case and respectfully following the judicial precedent, we direct exclusion of this comparable from final analysis.”*

7.1 Similar view has been taken by the Tribunal for exclusion of ‘Ladderup’ in the case of General Atlantic Pvt. Ltd.(supra). The relevant extract of the finding of the Tribunal reads as under:-

*“ 16. Insofar as Ladderup Corporate Advisory Pvt. Ltd. is concerned, it is seen that the comparability of this company to an investment advisory service provider came up for consideration before the Tribunal, Mumbai Bench, in Temasek Holding Advisors India Pvt. Ltd. (supra). The Bench after considering the submissions of the parties having found that the company is registered as a Category-1 Merchant Banking Company with SEBI and is engaged in Merchant Banking service w.e.f. July 2010 held that the company cannot be treated as comparable to non-binding investments advisory provider. Respectfully following the aforesaid decision of the Co-ordinate Bench, we exclude this company from the list of comparables.”*

8. Therefore, in view of the finding of the Tribunal excluding Ladderup from the list of comparables, in the case of companies engaged in Non-binding investment advisory services, we direct the Assessing Officer /TPO to exclude the said company from the list of comparables being functionally different. The grounds of appeal by the assessee are thus, allowed.

9. In the result, assessee succeeds in its appeal.

**Motilal Oswal Investment Advisors Pvt.Ltd.**

10. The contention of the assessee is that 'Motilal' is engaged in Merchant Banking Advisory Services, whereas, the assessee is engaged in providing non-binding investment advisory services. In so far as nature of activities carried out by the assessee, the Revenue is not in dispute. The DRP has excluded Motilal from the list of comparables by placing reliance on the decision of the Tribunal in the case of Carlyle India Advisors (P) Ltd. vs. DCIT for assessment year 2008-09 (supra). We find that the Co-ordinate Bench of the Tribunal in the case of Carlyle India Advisors (P) Ltd.(supra) for assessment year 2011-12 has directed exclusion of 'Motilal', from the list of comparables. In the case of DCIT vs. General Atlantic (P) Ltd., the Tribunal has held that 'Motilal' cannot be treated as comparables to an investment advisory service provider. The relevant extract of the finding of the Tribunal reads as under:-

*17. As far as Motilal Oswal Investment Advisors Ltd. is concerned, different Benches of the Tribunal including Mumbai Benches have decided against including this company as a comparable to an investment advisory service provider. In fact in the case of AGM India Advisory Pvt. Ltd. (supra), which is for the very same assessment year, the Tribunal has excluded this company as a comparable finding that it is engaged in four different business verticals such as equity capital markets, merger and acquisition, profit equity syndications and structure debts. The Tribunal found that company's core competence is in the field of merchant banking. Considering the aforesaid aspects, the Tribunal held that this company cannot be treated as comparable to an investment advisory service provider. Respectfully following the consistent view of the different Benches of the Tribunal, we uphold the decision of the DRP on this issue.*

11. Thus, in view of the facts of the case and various case laws referred above, we are of the considered opinion that 'Motilal' engaged in Merchant Banking Advisory activities is functionally different from the assessee, whose

activities are purely non-binding investment advisory services. We do not find any merit in the appeal by Revenue. The directions, of the DRP in excluding 'Motilal' from the list of comparables are upheld and the appeal of the Revenue is dismissed.

12. To sum up, the appeal of assessee is allowed and the appeal of revenue is dismissed.

Order pronounced in the open court on Tuesday, the 11<sup>th</sup> day of February, 2020.

Sd/-  
(R.C.SHARMA)  
ACCOUNTANT MEMBER

Sd/-  
(VIKAS AWASTHY)  
JUDICIAL MEMBER

Mumbai, Dated 11/02/2020  
Vm, Sr. PS(O/S)

**Copy of the Order forwarded to :**

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**