

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

**BEFORE SHRI VIKAS AWASTHY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 502/Mum/2016
Assessment Year: 2011-12**

Goldman Sachs Asset
Management (India) Pvt.
Ltd., 951A, Rational House,
Appasaheb Marathe Marg
Prabhadevi, Mumbai-
400025.

PAN No. AADCG0789J

Appellant

Vs. Asst. Commissioner of
Income Tax, Range 7(1)(1),
Room No. 23, Ground Floor,
Aayakar Bhavan, MK Road,
Mumbai-400020.

Respondent

**ITA No. 835/Mum/2016
Assessment Year: 2011-12**

Asst. Commissioner of
Income Tax, Range 7(1)(1),
Room No. 23, Ground Floor,
Aayakar Bhavan, MK Road,
Mumbai-400020.

Appellant

Vs. Goldman Sachs Asset
Management (India) Pvt. Ltd.,
951A, Rational House,
Appasaheb Marathe Marg
Prabhadevi, Mumbai-400025.

PAN No. AADCG0789J

Respondent

Assessee by : Mr. Madhur Aggarwal, AR
Revenue by : Mr. Anand Mohan, CIT-DR

Date of Hearing : 07/07/2020
Date of Pronouncement : 09/09/2020

ORDER

PER N.K. PRADHAN, A.M.

The captioned cross appeals-one filed by the assessee and the other by the Revenue - are directed against the order passed by the Assistant

Commissioner of Income Tax, Circle 7(1)(1), Mumbai [hereinafter 'the AO'] u/s 143(3) r.w.s. 144C(13) of the income Tax Act, 1961 (the Act). Since common issues are involved, we are proceedings to dispose them off them through a consolidated order.

ITA No. 502/Mum/2016
Assessment Year: 2011-12

2. The grounds of appeal filed by the assessee read as under :

Aggrieved by the order passed by the AO in pursuance of the directions issued by Dispute Resolution Panel - 1 ('DRP'), Mumbai dated 28 December 2015 u/s 143(3) r.w.s. 144C(13) of the Act, the Appellant submits that the AO erred in passing the order on the following grounds:

1. In making an upward transfer pricing adjustment of Rs.5,99,98,350/- by re-computing the arm's length price (ALP) of the international transaction pertaining to provision of non-binding investment advisory services by the Appellant to its overseas associated enterprise (AE) using Transactional Net Margin Method (TNMM) as the most appropriate method, *inter alia*, on the following grounds:
 - a. Rejecting the documentation maintained by the Appellant for the international Transaction entered into by the Appellant with its AE without giving any cogent reasons;
 - b. Not sharing the search process conducted by the transfer pricing officer (TPO) to arrive at the final set of comparable company;
 - c. Identifying a new comparable company without following a scientific search process, namely, Ladderup Corporate Advisory Private Limited, engaged in providing merchant banking/ investment banking services, which is functionally not comparable to the non-binding investment advisory services provided by the Appellant;
 - d. In arbitrarily selecting a company as a comparable, namely, Ladderup Corporate Advisory Private Limited which earned super-normal profits (52.43%) during the financial year (FY) 2010-11 relevant to AY 2011-12.

- e. Rejecting the following companies selected as comparables by the Appellant in the transfer pricing documentation:
- ICRA Management Consulting Services Limited,
 - IDC (India) Limited;
 - Informed Technologies Limited;
 - Integrated Capital Services Limited;
 - Kinetic Trust Limited.
 - Access India Advisors Limited; and
 - Future Capital Investment Advisors Limited.
- f. Rejecting the use of contemporaneous and multiple year data available for computing the ALP as on the date of filing of return of income and relying only on the single year data (i.e. for the FY ended 31 March 2011) for the purpose of determining the ALP.

3. Briefly stated, the facts of the case are that the assessee filed its return of income for the assessment year (AY) 2011-12 on 21.11.2012 declaring total income of Rs.10,93,07,170/-. The assessee is engaged in providing non-binding investment advisory services to its Associated Enterprise ('AE') viz Goldman Sachs Asset Management International, UK.

The assessee earned a cost plus margin of 22%. It had benchmarked the said transaction using TNMM as the most appropriate method. The single year margin of the comparable companies selected by the assessee for the provision of non-binding investment advisory services is stated below:

Sr. No.	Company Name	Operating Margin for FY 2010-11
1.	ICRA Management Consulting Services Limited	15.90%
2.	IDC (India) Limited	10.33%
3.	Informed Technologies Limited	11.70%
4.	Integrated Capital Services Limited	6.61%
Arithmetic Mean		11.13%

The margin of the comparables adopted by the TPO is mentioned below:

Sr. No.	Company Name	Operating Margin for FY 2010-11
1.	Motilal Oswal Investment Advisors Private Limited	82.29%
2.	Ladderup Corporate Advisory Pvt. Limited	52.43%
3.	New Berry Advisors Limited (earlier known as SSP Advisors Ltd.)	35.62%
Arithmetic Mean		56.78%

The Dispute Resolution Panel (DRP) upheld the rejection of all the comparables selected by the assessee and further rejected Motilal Oswal Investment Advisors Pvt. Ltd. and New Berry Advisors Ltd., selected as comparable by the TPO, thus retaining only Ladderup Corporate Advisory Pvt. Ltd. as the sole comparable with operating margin at 52.43%. Accordingly, the AO passed an order u/s 143(3) r.w.s. 144C(13) determining an adjustment of Rs.5,99,98,349/- in the case of the assessee for the impugned assessment year.

4. Before us, the Ld. counsel for the assessee submits that the comparable selected by it viz. (i) ICRA Management Consulting Services Limited, (ii) Informed Technologies India Ltd. and (iii) IDC (India) Ltd. be included.

Explaining further, it is stated by him in respect of ICRA Management Consulting Services Ltd. that the same is accepted as comparable by the Tribunal in assessee's own case in AY 2010-11 (ITA No. 6989/Mum/2014) and also by the TPO in assessee's own case for AY 2013-14 and AY 2014-15. Further, the Ld. counsel submits that ICRA Management Consulting Services Ltd. is accepted as a comparable in the following orders for AY 2011-12 :

- *Goldman Sachs (India) Securities Private Limited v. DCIT* (ITA No. 927/Mum/2016 & ITA No. 902/Mum/2016),

- *Principal CIT-14 v. AGM India Advisors Private Limited* (ITA No. 1377 of 2017) (Bombay High Court decision)
- *Carlyle India Advisors Pvt. Ltd. v. Asst. CIT* (ITA No. 2410/Mum/2016 and ITA No. 2506/Mum/2016)
- *Temasek Holdings Advisors India Private Limited v. DCIT* (ITA No. 477 & 816/Mum/2016)

4.1 Arguing for the inclusion of Informed Technologies India Ltd., the Ld. counsel submits that this company is accepted as comparable by the Tribunal in assessee's own case for AY 2012-13 (ITA No. 1427/Mum/2017) and also by the TPO in assessee's own case for AY 2013-14 and AY 2014-15. It is further explained by him that Informed Technologies India Ltd. is accepted as comparable in the following orders for AY 2011-12 :

- *Temasek Holdings Advisors India Private Limited v. DCIT* (ITA No. 477 & 816/Mum/2016)
- *Wells Fargo Real Estate Advisors Pvt. Ltd. v. DCIT* (ITA No. 1520/Mum/2016)

4.2 Elaborating further, the Ld. counsel submits that IDC (India) Ltd. is accepted as comparable by the TPO in assessee's own case for AY 2013-14. Further, it is stated by him that IDC (India) Ltd. is accepted as comparable in the following orders for AY 2011-12 :

- *Goldman Sachs (India) Securities Private Limited v. DCIT* (ITA No. 927/Mum/2016 & ITA No. 902/Mum/2016),
- *Principal CIT-14 v. AGM India Advisors Private Limited* (ITA No. 1377 of 2017) (Mumbai High Court decision)
- *Carlyle India Advisors Pvt. Ltd. v. Asst. CIT* (ITA No. 2410/Mum/2016 and ITA No. 2506/Mum/2016)

4.3 Regarding the inclusion of Ladderup Corporate Advisory Pvt. Ltd. by the TPO, the Ld. counsel submits that it is rejected as comparable by the Tribunal in assessee's own case for AY 2012-13 (ITA No. 1427/Mum/2017). Further it is stated by him that Ladderup Corporate Advisory Pvt. Ltd. is rejected as comparable in the following orders for AY 2011-12 :

- *Carlyle India Advisors Pvt. Ltd. v. Asst. CIT* (ITA No. 2410/Mum/2016 and ITA No. 2506/Mum/2016)
- *Kitara Capital Pvt. Ltd. v. ITO* (ITA No. 796/Mum/2016)
- *Wells Fargo Real Estate Advisors Pvt. Ltd. v. DCIT* (ITA No. 1520/Mum/2016)

To summarize the contentions of the Ld. counsel, since the assessment year under consideration is also 2011-12 and the assessee is engaged in providing non-binding investment advisory services, the principle of consistency would require that the orders of the Tribunal passed earlier for the same assessment year should be followed. In this regard, reliance is placed by him on the decision by the Supreme Court of India in the case of *Bharat Sanchar Nigam Ltd. v. UoI* (2006) 282 ITR 273 (SC) and the order of the Tribunal in the case of *Thomas Cook (India) Ltd.* (ITA No. 1261 & 1238/Mum/2015).

The Ld. counsel further submits that it is not open to the Revenue to challenge a comparable which has been held by the Tribunal as comparable in another case for the same year as it certainly cannot be said that a company is comparable to one company rendering non-binding investment advisory services but not with another company rendering same services.

Finally the Ld. counsel submits that (i) even if a company is accepted as comparable in earlier year or a different year, the same should be accepted as comparable in the relevant year unless it is shown that there is change in the functional profile of the comparable company, (ii) unless there is change in the functional profile of the comparable company, the same company should not be re-considered merely because some new arguments are raised by the Revenue, as the Tribunal is deemed to have considered all aspect of the matter while accepting the company as comparable in the earlier assessment year.

5. On the other hand, the Ld. Departmental Representative (DR) supports the order of the TPO/AO rejecting all the comparable selected by the assessee. Arguing strongly for inclusion of Ladderup Corporate Advisory Pvt. Ltd., it is stated by him that as per the annual report of the said company, the income was Rs.11.18 crores during the year from financial and management consultancy fees ; there is no evidence that the income has been received from merchant banking. Thus the Ld. DR submits that merely because a SEBI registered merchant banker does not mean that the company has earned its income or any part of it from merchant banking. Thus it is argued by him that Ladderup Corporate Advisory Pvt. Ltd. is a valid comparable in the instant case.

6. We have heard the rival submissions and perused the relevant materials on record. The reasons for our decisions are given below.

The assessee herein is a wholly owned subsidiary of GSAM India Holdings Ltd., a company incorporated in Mauritius. The assessee received regulatory approval from SEBI to start mutual fund business in India on

01.09.2008. However, given the economic scenario post September 2008, it deferred its plans to launch mutual fund scheme in the Indian market. It also obtained SEBI approval to provide non-binding advisory services to its overseas AE w.e.f. 11.12.2008. Accordingly, the assessee provided investment advisory services, in respect of listed Indian securities to its overseas AE during the period 01.04.2010 to 31.03.2011. Investment Advisory Services refer to the support services provided by the Indian firms to the overseas fund managers in equity and general business research. Further, equity research relates to building and maintaining valuation models, ratio analysis, competitor analysis, comparable valuation method etc. Business research includes services, such as study and analysis of the industry of the target company, company profiles and study of the macroeconomic environment of the target country.

6.1 We begin with the issue of comparability of ICRA Management Consulting Services Ltd. (in short 'IMCSL'). It is observed that the operations pertaining to the advisory services division of ICRA Ltd. during the FY 2005-06 were transferred to IMCSL. The company IMCSL provides consulting services and was set up to take over the management consulting division of ICRA Ltd. We find merit in the contentions of the Ld. counsel that in order to identify companies which are providing services in the nature of investment advisory services as rendered by the assessee, the search criteria was widened to a more general industry criterion in order to identify companies engaged in providing management consultancy support and advisory support services earning fee based income and carrying limited risks and accordingly IMCSL was

considered as a comparable given that it is engaged in provision of management consulting and business advisory services.

We also find that IMCSL has been accepted by the Tribunal in ITA No. 6989/Mum/2014 in assessee's own case for AY 2010-11. Also it has been accepted as a comparable by the TPO in assessee's own case for AY 2013-14 and AY 2014-15. Further, we find that IMCSL is accepted as comparable for AY 2011-12 in (i) *Goldman Sachs (India) Securities Private Limited v. DCIT* (ITA No. 927/Mum/2016 & ITA No. 902/Mum/2016), (ii) *Principal CIT-14 v. AGM India Advisors Private Limited* (ITA No. 1377 of 2017) (Bombay High Court decision), (iii) *Carlyle India Advisors Pvt. Ltd. v. Asst. CIT* (ITA No. 2410/Mum/2016 and ITA No. 2506/Mum/2016), and (iv) *Temasek Holdings Advisors India Private Limited v. DCIT* (ITA No. 477 & 816/Mum/2016) .

In view of the above factual scenario, we direct the TPO/AO to include IMCSL as a comparable for the year under consideration.

6.2 Then we turn to the issue of comparability of Informed Technologies India Ltd. (in short 'ITIL'). We find that ITIL offers a range of data management services to the financial sector. It collects and analyses data on financial fundamentals, corporate governance, director/executive compensation and capital market. Its outsource services consist of financial data bases and back office activity for research/advisory report and it has a focus on the niche market segment of financial content. Accordingly, the services provided by the company are comparable to the investment advisory services rendered by the assessee.

Further, we notice that ITIL is accepted as a comparable by the Tribunal in ITA No. 1427/Mum/2017 in assessee's own case for AY 2012-13. It is also accepted as a comparable in assessee's own case by the TPO for AY 2013-14 and AY 2014-15. Also, the Tribunal has accepted ITIL as a comparable in (i) *Temasek Holdings Advisors India Private Limited v. DCIT* (ITA No. 477 & 816/Mum/2016) and (ii) *Wells Fargo Real Estate Advisors Pvt. Ltd. v. DCIT* (ITA No. 1520/Mum/2016).

In view of the above factual matrix, we direct the TPO/AO to include ITIL as a comparable for the year under consideration.

6.3 Then we turn to IDC (India) Ltd. We observe that IDC (India) Ltd. is a global provider of market intelligence and advisory services and it is engaged in the research and survey functions, which is similar to advisory support services rendered by the assessee. There is merit in the contentions of the Ld. counsel that in order to identify companies which are providing services more in the nature of advisory support services as rendered by the assessee, the search criteria was widened to a more general industry criterion in order to identify companies engaged in providing management consultancy support, advisory support services and accordingly, the company was considered as a comparable given that it is engaged in research and survey function, which is similar to advisory support services rendered by the assessee.

We also find that IDC (India) Ltd. is accepted as comparable in assessee's own case for AY 2013-14. Further, it is accepted as a comparable for AY 2011-12 in the case of (i) *Goldman Sachs (India) Securities Private Limited v. DCIT*

(ITA No. 927/Mum/2016 & ITA No. 902/Mum/2016), (ii) *Principal CIT-14 v. AGM India Advisors Private Limited* (ITA No. 1377 of 2017) (Bombay High Court decision) and (iii) *Carlyle India Advisors Pvt. Ltd. v. Asst. CIT* (ITA No. 2410/Mum/2016 and ITA No. 2506/Mum/2016).

In view of the above factual scenario, we direct the TPO/AO to include IDC (India) Ltd. as a comparable during the year under consideration.

6.4 Finally, we come to the issue of comparability of Ladderup Corporate Advisory Pvt. Ltd. (in short 'LCAPL'). The TPO selected LCAPL on the ground that (i) it is engaged in the business of financial advisory services; it offers various types of services such as equity investments, business and equity valuations, project and acquisition financing, (ii) it has earned revenue of Rs.11.18 crores from the business of financial and management advisory and consulting fees.

The Ld. counsel submits that as per the web portal of the company, it is engaged in rendering investment banking, capital markets, wealth management, project finance and growth stage investment. It is further stated that LCAPL is registered as Category 1 Merchant Banker with the Securities & Exchange Board of India (SEBI) and is engaged in rendering merchant banking services. Further, it is explained that as per the annual report of LCAPL for FY 2010-11, there are no reportable segments. Finally, it is stated that LCAPL is engaged in rendering investment/merchant banking services and therefore, it cannot be considered as comparable to the advisory functions performed by the assessee.

It is the contention of the Ld. DR that as per the annual report of LCAPL, its income during the year is Rs.11.18 crores derived from financial and management consultancy fees; there is no evidence that the income has been received from merchant banking. It is also explained by him that merely being a SEBI registered merchant banker does not mean that the company has earned its income or any part of it from merchant banking. Thus it is stated that LCAPL is a valid comparable.

6.5 Let us discuss the case laws relied on by the Ld. Counsel. In *Wells Fargo Real Estate Advisors Pvt. Ltd.* (supra), the assessee is engaged in the business of providing non binding advisory services, it adopted TNMM to determine the ALP of the international transactions entered into by it with its AEs. The Tribunal observed that (i) Ladderup Corporate Advisory Pvt. Ltd. is registered as a category 1 merchant banking with SEBI and is engaged in rendering merchant banking services w.e.f. July 2010, which factual position stands duly substantiated from the perusal of the web portal extracts of the aforesaid company, (ii) As per the annual report of Ladderup Corporate Advisory Pvt. Ltd, it is engaged in only one segment, which includes merchant banking.

Observing as above, the Tribunal held that “we thus in the backdrop of the very fact that the aforesaid comparable is engaged in the merchant banking /investment banking and other similar activities, are of considered view that the same cannot be considered as functionally comparable to the assessee company which is engaged in the business of rendering non-binding investment advisory services.”

In the case of *Kitara Capital Pvt. Ltd.* (supra), the assessee company is engaged in provision of investment advisory services to its group company. During the AY 2011-12 the assessee entered into international transaction with its AEs for providing investment advisory services. To benchmark its transaction, the assessee selected TNMM is the most appropriate method. The Tribunal observed that the DRP has upheld inclusion of Ladderup Corporate Advisory Pvt. Ltd. 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. The Tribunal further found that Ladderup Corporate Advisory Pvt. Ltd. has been excluded by the Coordinate Bench in the case of *SUN Ares Real Estate Pvt. Ltd., vs. DCIT* (ITA No. 621/Mum/2016) for AY 2011-12. Similar view has been taken by the Tribunal in the *DCIT vs. General Atlantic Pvt. Ltd.*, (91 taxmann.com 406) (Mum Trib) for AY 2011-12.

Thus following the above two decision of Coordinate Bench, the Tribunal directed the TPO/AO to exclude LCAPL from the list of comparables. The relevant paragraphs of the above order of Tribunal are produced below:

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.”

6.6 Facts being identical, we follow the order of the Coordinate Bench in *Kitra Capital Pvt. Ltd.* and *Wells Fargo Real Estate Advisors Pvt. Ltd.* mentioned hereinabove and direct the TPO/AO to exclude Ladderup Corporate Advisory Pvt. Ltd. from the list of comparables.

7. In view of the above findings, we direct the TPO/AO to recompute the arms length price of the assessee.

ITA No. 835/Mum/2016
Assessment Year: 2011-12

8. The appeal filed by the revenue reads as under:

1. Whether on the facts and in the circumstances of the case, the DRP was correct in rejecting the comparable taken by the TPO, i.e. M/s. New Berry Advisors Ltd. despite the Transfer Pricing Officer has established functional similarity.

2. Whether on the facts and in the circumstances of the case, the DRP was correct in rejecting the comparable i.e. M/s. Motilal Ostwal Investment Pvt. Ltd. despite the Transfer Pricing Officer had established functional similarity based on the factual finding for AY 2011-12, whereas the DRP has based its decision on the ruling of the Hon'ble ITAT for AY 2010-11.

9. The DRP excluded M/s. Motilal Ostwal Investment Pvt. Ltd (in short 'MOAIPL') from the list of comparables on the following ground:

"2.26 Now coming to the comparables selected by the TPO, as regards Motilal Oswal Investment Advisors Pvt. Ltd., we find that the Hon'ble ITAT Mumbai Bench in the case of *Carlyle India Advisors Pvt. Ltd. Vs. DCIT Cir-10(1), Mumbai (ITA No.7367/M/2012* pertaining to the A.Y. 2008-09) order dated 07.02.2014 has rejected Motilal Oswal Investment Advisors Pvt. Ltd. as a comparable to investment advisory services. The Hon'ble Tribunal has held that the said company is engaged in diversified activities and that segmental reporting is not available. Hon'ble ITAT has observed that the said company is

registered with SEBI as a merchant banker and the Directors report show that it is into takeover, acquisitions, dis-investments etc. and in the absence of specific data it is not possible to make comparison. The Hon'ble ITAT has concluded that the said company being into merchant banking cannot be considered as a comparable (to Carlyle which is a company primarily engaged in the business of providing investment advisory and related support services to Carlyle, Hongkong).”

9.1 The Ld. DR, supports the order passed by the TPO on the ground that (i) MOAIPL is engaged in providing high quality strategic and financial advisory services for placement of equity with investors, rendering strategic financial advisory services, (ii) the analysis of these services shows that the strategic and financial advisory services rendered by this company are comparable with the high quality, investment advisory services rendered by the present assessee-company, (iii) MOAIPL has single reportable operating income segment and it is advisory fees of Rs.40.04 crores, (iv) MOAIPL is engaged in providing mergers and acquisition services, which in fact are the advisory services which involve skills sets which are comparable to the other investment advisory services to that of the assessee's and none of the activities are in the nature of merchant banking services, (v) the assessee's claim of exclusion on the basis that the company has earned super normal profits, is not acceptable as a company cannot be eliminated just because it has earned high profits or has made huge losses.

9.2 Regarding the comparables selected by the TPO, the Ld. counsel submits that MOAIPL is rejected as comparable by the Tribunal in assessee's own case in AY 2010-11 (ITA No. 6989/Mum/2014) and also rejected as comparable by the DRP in assessee's own case in AY 2011-12. Further, it is stated by him that MOAIPL is rejected as comparable in the following orders for AY 2011-12 :

- *Goldman Sachs (India) Securities Private Limited v. DCIT* (ITA No. 927/Mum/2016 & ITA No. 902/Mum/2016),
- *Principal CIT-14 v. AGM India Advisors Private Limited* (ITA No. 1377 of 2017) (Bombay High Court decision)
- *Carlyle India Advisors Pvt. Ltd. v. Asst. CIT* (ITA No. 2410/Mum/2016 and ITA No. 2506/Mum/2016)
- *Kitara Capital Pvt. Ltd. v. ITO* (ITA No. 796/Mum/2016)

9.3 We have heard rival submissions and perused the relevant materials on the record.

An examination of the documents clearly indicate that MOAIPL is engaged in merchant banking/investment banking activities. It offers comprehensive investment banking solutions and transactions expertise covering private placement of equity, debt and convertible instruments covering international and domestic capital markets, mergers and acquisitions advisory and restructuring advisory and implementations. The income of MOAIPL is largely from cross border mergers and acquisitions activity and the related financing solutions. Thus MOAIPL is engaged in merchant banking and other similar activities, which are not functionally comparable to the assessee, which is engaged in rendering advisory services.

We also find that MOAIPL is rejected as comparable by the Tribunal in ITA No. 6989/Mum/2014 in assessee's own case for AY 2010-11. Also it has been rejected as a comparable by the DRP in assessee's own case for AY 2011-12. We further find that MOAIPL is rejected as comparable in the decision in (i) *Goldman Sachs (India) Securities Private Limited v. DCIT* (ITA No.

927/Mum/2016 & ITA No. 902/Mum/2016), (ii) *Principal CIT-14 v. AGM India Advisors Private Limited* (ITA No. 1377 of 2017) (Bombay High Court), (iii) *Carlyle India Advisors Pvt. Ltd. v. Asst. CIT* (ITA No. 2410/Mum/2016 and ITA No. 2506/Mum/2016) and (iv) *Kitara Capital Pvt. Ltd. v. ITO* (ITA No. 796/Mum/2016).

In view of the above factual matrix, we are of the considered view that the DRP has correctly excluded MOAIPL as a comparable during the year under consideration.

10. Then we turn to New Berry Advisors Ltd. (In short 'NBAL'). The DRP has excluded NBAL on following ground:

"2.30 As regards New Berry Advisors Ltd., we have considered the submission of the assessee. Since the company is engaged in distribution and marketing of financial products it is not functionally similar to the assessee company. From the website of the company, it appears that the company is boutique investment bank and a PCG equity broking house based out of Mumbai, focused on Indian and other emerging markets backed by veterans in the investment banking and capital market space in India.

Its focus areas are:

- Corporate Advisory
- M&A and Private Equity
- IPO Advisory and Planning
- Structured Finance
- India Entry Strategy
- Sri Lanka Advisory
- PCG and Institutions equity broking
- HNI Wealth advisory
- FII advisory
- Stock Market Investment Strategy

2.31 In view of the fact that the activities of the company are functionally different from the activities of the assessee company, the A.O. is directed to exclude this company from the list of comparables to be used for application of TNMM."

10.1 The Ld. DR supports the order of TPO and submits that NBAL is rightly selected as a comparable on the reason that (i) as per the financials of the company, it is engaged in the business of corporate advisory, IPO advisory and planning, Indian entry strategy, stock market investment strategy etc. (ii) NBAL has earned revenue of Rs.1.86 crores from investment advisory services, (iii) there is no revenue/income of the company from distribution/marketing of financial products.

10.2 Regarding the inclusion of New Berry Advisors Ltd. by the TPO, the Ld. counsel submits that it is rejected as comparable by the TPO in assessee's own case in AY 2012-13. Further, it is stated by him that New Berry Advisors Ltd. is rejected as comparable in the following order for AY 2011-12 :

- *AGM Advisors Pvt. Ltd. v. DCIT* (ITA No. 537/Mum/2016)

10.3 A perusal of the annual report of NABL indicates that, it is engaged in the business of marketing and distribution of financial products. Further, the notes to the financial statement mention that the company is in the business of distribution/marketing of financial products under the head 'Inventories'.

We find that NBAL is rejected as a comparable by the TPO in assessee's own case for AY 2012-13. Further, it is rejected as comparable for AY 2011-12 by the Tribunal in ITA No. 537/Mum/2016 in the case of *AGM India Advisors Pvt. Ltd. v. DCIT*.

The fact remains that companies providing similar functions should only be considered as a comparable.

In view of the above factual matrix, we are of the considered view the DRP has correctly excluded NBAL as a comparable during the year under consideration.

11. To sum up, the appeal filed by the assessee is allowed; the appeal filed by the revenue is dismissed.

Order pronounced through notice board under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Mumbai:

Dated:

Nishant Verma, Sr. PS

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

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