

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

**BEFORE: SHRI VIKAS AWASTHY, JUDICIAL MEMBER
&
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**IT(TP)A No.619/Mum/2014
(Assessment Year :2009-10)**

**ITA(TP)A No.83/Mum/2015
(Assessment Year:2010-11)**

M/s. Credit Suisse Consulting (India) Private Limited 9 th Floor, Ceejay House Plot F, Shivsagar Estate Dr. Annie Besant Road Worli, Mumbai – 400 018	Vs.	Deputy Commissioner of Income Tax-Range 3(1) Mumbai Room No.607, Aayakar Bhavan, M.K. Road Mumbai – 400 020
PAN/GIR No. AACCC5398J		
(Appellant)	..	(Respondent)

**IT(TP)A No.745/Mum/2016
(Assessment Year:2011-12)**

M/s. Credit Suisse Consulting (India) Private Limited 9 th Floor, Ceejay House Plot F, Shivsagar Estate Dr. Annie Besant Road Worli, Mumbai – 400 018	Vs.	Deputy Commissioner of Income Tax-Range 6(2)(1), Mumbai Room No.504, Aayakar Bhavan, M.K. Road Mumbai – 400 020
PAN/GIR No. AACCC5398J		
(Appellant)	..	(Respondent)

**IT(TP)A No.751/Mum/2016
(Assessment Year:2011-12)**

Deputy Commissioner of Income Tax-Range 6(2)(1), Mumbai Room No.504, Aayakar Bhavan, M.K. Road Mumbai – 400 020	Vs.	M/s. Credit Suisse Consulting (India) Private Limited 9 th Floor, Ceejay House Plot F, Shivsagar Estate Dr. Annie Besant Road Worli, Mumbai – 400 018
PAN/GIR No. AACCC5398J		
(Appellant)	..	(Respondent)

Assessee by	Shri Ashish Thacker
Revenue by	Shri Satya Penisetty
Date of Hearing	06/01/2022
Date of Pronouncement	05/04 /2022

आदेश / O R D E R

PER BENCH:

**IT(TP)A No.619/Mum/2014 (Assessment Year :2009-10)
& IT(TP)A No.83/Mum/2015 (Assessment Year:2010-11)**

These appeals in IT(TP)A Nos.619/Mum/2014 & 83/Mum/2015 for A.Yrs.2009-10 & 2010-11 preferred by the order against the final assessment order passed by the Assessing Officer dated 31/10/2014 & 27/11/2013 respectively u/s.143(3) r.w.s.144C(13) of the Income Tax Act, hereinafter referred to as Act, pursuant to the directions of the Id. Dispute Resolution Panel-III & Dispute Resolution Panel-I, Mumbai (DRP in short) u/s.144C(5) of the Act dated 07/10/2014 & 24/10/2013 respectively for the A.Y.2009-10 & 2010-11.

**IT(TP)A No.745/Mum/2016 (Assessment Year:2011-12)
& IT(TP)A No.751/Mum/2016 (Assessment Year:2011-12)**

These appeals in IT(TP)A Nos.745/Mum/2016 & 751/Mum/2016 for A.Yr.2011-12 preferred by the order against the final assessment order passed by the Assessing Officer dated 15/12/2015 u/s.143(3) r.w.s.144C(13) of the Income Tax Act, hereinafter referred to as Act, pursuant to the directions of the Id. Dispute Resolution Panel-I, Mumbai

(DRP in short) u/s.144C(5) of the Act dated 20/10/2015 for the A.Y.2011-12.

1.1. As identical issues are involved, these appeals are taken up together and disposed of by this common order for the sake of convenience.

1.2. With the consent of both the parties, the appeal of the assessee for A.Y.2009-10 in IT(TP)A No.619/Mum/2014 is taken as the lead case and the decision rendered thereon would apply with equal force for other assessment years also in respect of identical issues except with variance in figures.

IT(TP)A No.619/Mum/2014 (Assessment Year :2009-10)
– Assessee Appeal

2. The assessee has challenged the transfer pricing adjustment made by the Id. AO in the final assessment order u/s.143(3) r.w.s. 144(C)13 of the Act on 27/11/2013 in the sum of Rs.2,76,24,906/- in respect of provision of non-binding investment advisory services.

3. We have heard rival submissions and perused the materials available on record. We find that assessee is a wholly owned subsidiary of Credit Suisse, Switzerland established to advice and assist entities in relation to their investments, grants loans and deposits in or outside India and provide other related services. The company also provides consultancy services to Credit Suisse and / or its affiliates, including executive and

administrative support, staffing and secretarial support, correspondence and follow-up and other related services. The list of international transactions provided by the assessee to its associated enterprises (AEs) are as under:-

SI. No.	Particulars	Amount	Method
1.	Provision of investment advisory and support services in relation to strategic investments in Indian companies	119,977,878	TNMM
2	Provision of information services	1,586,445	TNMM
3	Provision of support services for outsourced services	85,085,693	TNMM
4	Provision of liaison support services	18,068.180	TNMM
5	Provision for support services in relation to knowledge process outsourcing activities	1,056,683	TNMM
6	Reimbursement of salary costs	42,659,971	NA

3.1. It is not in dispute that assessee provides non-binding investment advisory services to its AEs. The Id. TPO had recorded that the AEs are Fund Managers entrusted to manage money raised from third party investors for onward investment in unlisted Indian companies or associated entity that makes investment in unlisted Indian Companies. The assessee had applied Transactional Net Margin Method (TNMM) as the Most Appropriate Method (MAM) for determining the Arm's Length Price (ALP) of the aforesaid international transaction. The assessee has a net margin of 20% of operating cost. The assessee had benchmarked its international transaction by identifying certain comparables engaged in similar line of activity and the comparables mean margin was arrived at

12.95% as per the Transfer Pricing Study Report (TPSR). Later, the assessee furnished the updated margin of the comparables companies using contemporaneous data and worked out the revised comparable mean margin at 21.51%. The assessee accordingly, stated that its transactions are at arm's length. The Id. TPO identified different comparables and arrived at the arithmetic mean margin of the comparables at 47.63% as under:-

Sr. No	Name the company	OP/OC for 2009
1	Motilal Oswal Investment Advisors Pvt Ltd	82.44%
2.	Brescon corporate Advisors Ltd	116.17%
3	IDFC Investment Advisors Ltd	-55.69%
4	AR Venture Funds Management Ltd	27.93%
5	KJMC Global Market (India) Ltd	45.14%
6	Integrated Capital Services Ltd	69.79%
	Arithmetic mean	47.63%

3.2. This comparable mean margin of 47.63% was compared with assessee's margin of 20% and upward adjustment on account of provision of services was made by the Id. TPO in the sum of Rs.2,76,24,906/- as under:-

Particulars	Amount
Operating Costs	99,981,565
Add: Markup of 47.63% as discussed	47,621,219
Less: Markup offered by the Assessee @20%	19,996,313
Adjustment	27,624,906

Provision of investment advisory and support services as per books	119,977,878
ALP of Provision of investment advisory and support services	147,602,784

3.3. The action of the Id. TPO was upheld by the Id. DRP and accordingly, the Id. AO in the final assessment order passed on 27/11/2013 adopted the same figure of Rs.2,76,24,906/- and made an addition while completing the assessment. Aggrieved, the assessee is in appeal before us.

3.4. Before us the Id. AR stated that all the comparables chosen by the assessee were accepted by the various orders of this Tribunal, in support of which he placed on record the copy of various Tribunal decisions. The Id. AR also sought exclusion of two comparables chosen by the Id. TPO i.e. Motilal Oswal Investment Advisors Pvt. Ltd., and Brescon Corporate Advisors Ltd.

3.5. The Id. AR also submitted that though the various decisions of the Tribunal had accepted all the comparables chosen by the assessee, in order to cut short the entire process of adjudication, he stated that if only three comparables chosen by the assessee in the TP study report are sought to be included in addition to exclusion of two comparables as stated supra, the assessee would be well within the tolerance band of +/- 5% provided in the statute and accordingly, its pricing would be at arm's length and no TP adjustment need to be made thereon. In effect, the Id. AR argued only in respect of the following:-

- (i) Exclusion of Motilal Oswal Investment Advisors Pvt. Ltd.,
- (ii) Exclusion of Brescon Corporate Advisors Ltd.,
- (iii) Inclusion of ICRA Management Consulting Services Ltd.,

- (iv) Inclusion of IDC (India) Ltd.,
- (v) Inclusion of Informed Technologies Ltd.,

3.6. Inclusion of ICRA Management Consulting Services Ltd., IDC (India) Ltd., & Informed Technologies Ltd.,

The Id. AR stated that the functions performed by the assessee and these comparable companies are functionally similar and had passed through the FAR (functions performed, assets employed and risks assumed) analysis. He also placed reliance on the decision of the Co-ordinate Bench of this Tribunal in DCIT vs. Temasek Holding Advisors India Pvt. Ltd., reported in 151 ITD 458 wherein it was held as under:-

10. We have considered rival contentions, gone through the orders of the authorities below and also the order of the Tribunal in assessee's own case for A.Y. 2007-08 & 2008-09. The precise observation of the Tribunal was as under :—

'53. We have heard the rival contentions, perused the relevant material relied upon by the either party before us and also the order of the TPO. The assessee which is mainly engaged in rendering of investment advisory services to its parent company at Singapore has received mark-up of 21%. This margin of 21% has been benched marked by using TNMM as the most appropriate method with PLI as operating profit to operating cost. After detail process of selection in "Prowess data" and selection criteria, it had selected six comparables in its transfer pricing study report with average margin of 13.85%. Since this margin was lower than assessee's margin of 21% and, hence, it was declared that its margin on the transaction carried out with its parent company was at ALP. The TPO, however, out rightly rejected the assessee's comparables, firstly, on the ground that they are not in investment advisory services and secondly the assessee has not carried out search by using the key phrase "investment advisory services". He was of the opinion that the data should have been accessed from the "capital line data base". No proper reasoning has been given by the TPO as to why data from "Prowess" is not reliable and the "capital line data" should have been taken. On a perusal of his own search for selection of comparables, it is seen that he himself has selected the comparables using the "Prowess data" which is evident from the financials taken by the TPO of his comparables which are appearing from Page-555 to 564 of the paper book submitted before us. He has also not established that by entering the key phrase "investment advisory service", the selection of the functionally similar companies are available from the data. Be that as it may, the selection of eight comparables by the TPO, as have been incorporated in the forgoing paragraphs, it is seen that these companies are either engaged as a broking company or merchant banker or asset management company. In case of stock broking companies, the main functions are marketing and prospecting for new clients, execution

and settlement of the transaction and trading of shares which are mostly on own account or on behalf of the customers. The risk assumed is far more than the companies which are purely engaged in investment advisory services. The assets employed are also significant. In comparison to this, the company which is engaged in investment advisory services, only gives advise and are for different from the activities carried out by the stock brokers. Out of eight comparables, three comparables chosen by the TPO viz. (i) Religare Commodities Ltd., (ii) Shriyam Broking Intermediary Ltd., and (iii) Twenty First Century Shares and Securities Ltd. are purely stock broking company and, therefore, the same are not comparable on FAR analysis with that of the assessee company and cannot be held as functionally comparable. The companies which are engaged in the "asset management" are basically responsible for mobilizing the funds from the investors by marketing the scheme. Their main functions are sales and marketing, investment and management of the funds mobilized under various schemes. They are responsible for providing management and administrative services mostly to the mutual funds and to deploy such funds. The risk is also assumed by such companies in the form of service liabilities, regulatory and reputational risk. Moreover, the asset management companies are also regulated entities which are required to be licensed by SEBI. Thus, these companies also fail the test of FAR analysis with the investment advisory companies. Thus, Sundaram Asset Management company, Deutche Asset Management India Ltd. and Religare Commodities Ltd., as selected by the TPO, cannot be compared with the assessee company. Lastly, there are few companies which are doing entirely different activities viz. ICRA Ltd., which is a credit rating agency in India and BGIL Films and Technologies Ltd., which is mainly engaged in production of distribution of movies. Both these companies under any parameter or yardstick cannot be said to be functionally comparable with that of the assessee company. Lastly, Breson Corporate Finance Ltd., are mostly into making investment in the companies using its own fund and it is a leading player in distress and special situation advisor and investment company. The over all function as per the profile of the company, cannot be said to have much functional similarity with that of the assessee company. Accordingly, none of the comparables as selected by the TPO can be said to be comparable on FAR analysis and, therefore, none of the comparables can be included for the comparability analysis for bench marking the transactions carried on by the assessee under TNMM.

"54. Coming to the assessee's comparables, it is seen that some of them have been found to be proper comparable by the TPO himself in the assessment year 2007-08 and also in the assessment year 2009-10. Without any proper reason or change in the functionality and any financial data, it cannot be held that the same companies are not comparable in the intermediary period of the assessment year 2008-09. The TPO has to bring some material on record to show that why these comparables which were good comparable in the earlier year also in and succeeding year, cannot be compared in this year. Thus, three comparables viz. ICRA Management Consulting Services Ltd., ICRA Online Ltd. and IDC India Ltd., cannot be rejected out rightly. Coming to the functional profiles of all the six comparables, it is seen that -

(i) ICRA Management Consultant Ltd.

This company is engaged in operations of advisory services and is offering consultation service in the area of strategy, risk management, operations, improvement regulatory economics

and transactions advisory. From the various fields of activities as seen from the directors' report, it is seen that this company is providing management and advisory services for various types of industries. All its revenue is generated from consultation fees. Thus, this company is giving consultation in various types of industries through investment advisors. Thus, this company is a good comparable more so when it has been accepted by the TPO in the earlier year as well as in the succeeding year;

(ii) ICRA Online Ltd.

The assessee has taken its segmental details of out source services which mostly consists of investment advisory services only. Thus, going by the segmental details only, which is investment advisory company only, it is considered to be a good comparable and moreover on the background that this company has been found to be a good comparable in the earlier years as well as in the succeeding years by the TPO, the same has rightly been included as good comparable for comparability analysis.

(iii) Access India Advisors Ltd.

This company is into management consulting and rendering business advisory services. This company mostly focuses on inward investment in India, which is quite similar to the activities carried out by the assessee company. Going by its profile and its functions along with revenue generated from such activities, it is seen that it is quite a good comparable. Moreover, the learned Departmental Representative did not had any objection for including this comparable for the comparability analysis. Accordingly, the said company has rightly been included in the list of comparables;

(iv) IDC India Ltd.

This company is also engaged in advisory and consultancy and services for the purpose of investment made in various sectors. This company was also found to be a good comparable in Carlyle India Advisories Pvt. Ltd. for rendering similar kind of function. Moreover, this company has also been found to be good comparable by the TPO in the assessment years 2007-08 and 2009-10 (x) II (v) Informed Technologies Ltd. This company mostly offers range of data management services to the financial sector in U.S.A. It collects and analyses data on financial fundamentals, corporate governance and capital market. It outsource services i.e., BPO services consisting of financial data base and back office activities for research and advisory reports. Thus, the data outsourcing charges are mostly related to analysing of data based on which advise is given for the

investment purpose in India. Moreover, this company has been accepted by the TPO in the year 2009-10 also. Thus, it is a good comparable.

3.7. On perusal of the aforesaid order of this Tribunal, we find that Temasek Holding Advisors (P) Ltd., which is a wholly owned subsidiary of Temasek Holding PTE Ltd., which is an Asia Investment Firm based at Singapore. Temasek Holding Advisors Pvt. Ltd., renders investment advisory services to THPL Singapore which includes identifying and analyzing potential investment particulars in India, evaluating political and economic scenario for the investment purpose in India and monitoring and making recommendation to THPL Singapore in respect of specified investment in India, specifically for unlisted companies. All these services should be provided by the Temasek Holding Advisors Pvt. Ltd., to the Singapore company.

3.8. The functions performed by the assessee herein are also similar, as admittedly it gives recommendations to its AEs for making investments more especially in unlisted companies. Likewise the comparable companies which are sought to be included i.e. ICRA Management Consulting Services Ltd., IDC (India) Ltd., & Informed Technologies Ltd., also are engaged in similar range of services as detailed herein in the order of Tribunal reported in 151 ITD 458 supra. Since the assessee is a captive service provider to its AE, the aforesaid three parties would effectively be a good comparable on account of functional similarities. We also further find that the aforesaid decisions of Tribunal in the case of Temasek Holding Advisors Pvt. Ltd., reported in 151 ITD 458 has been approved by the Hon'ble Jurisdictional High Court in Income Tax Appeal No.359 of 2015 dated 11/07/2017. The copy of the said order of the

Hon'ble Jurisdictional High Court is enclosed in pages 27-29 of the case law paper book filed before us for A.Y.2009-10.

3.9. In view of the above, we direct the Id. TPO to include ICRA Management Consulting Services Ltd., IDC (India) Ltd., & Informed Technologies Ltd., in the final list of comparables.

3.10. Exclusion of Motilal Oswal Investment Advisors Pvt Ltd:-

We find that Motilal Oswal Investment Advisors Pvt Ltd is engaged in the business of merchant banking and therefore, cannot be considered as a good comparable with a company providing non-binding investment advisory services such as assessee herein. Hence, we hold that the functions performed by Motilal Oswal Investment Advisors Pvt. Ltd., is dissimilar to the functions performed by the assessee company. We further find that similar view was taken by the Co-ordinate Bench of this Tribunal in the case of Goldman Sachs (India) Securities (P) Ltd vs. DCIT reported in 69 taxmann.com 386 (Mumbai) for A.Y.2009-10 dated 30/11/2015. We find that Goldman Sachs (India) Securities (P) Ltd is into investment advisory services for Indian equities and strategic investment in India. We find that the Co-ordinate Bench of this Tribunal in the case of Goldman Sachs (India) Securities (P) Ltd reported in 69 taxmann.com 386 referred to supra had excluded Motilal Oswal Investment Advisors Pvt. Ltd., from the list of comparables by observing as under:-

"1. Motilal Oswal Investment Advisors Pvt. Ltd.

This company has been excluded as a comparables for Investment Advisory Services the Co-ordinate Benches in the case of Dy. CIT v. Arisaig Partners India (P.) Ltd. [2015] 58 taxmann.com 15 (Mum.) wherein the Co-ordinate Bench at para-15 has held that this company is engaged in the business of Merchant Banking and, therefore, is not a good comparable of a company providing investment advisory services to the AE. Similar view was taken by

the Tribunal in the case of Wells Fargo Real Estate Advisors Pvt. Ltd in ITA No. 1093/M/2014 wherein the Tribunal at para-6 of its order has held that Motilal Oswal Investment Advisors Pvt. Ltd. was carrying on business of mergers and acquisitions and other related activities and is also a merchant banker. Drawing support from the decision of the Co-ordinate Bench given in the case of Carlyle India Advisors (P.) Ltd. v. Dy. CIT [2015] 153 ITD 400/[2014] 49 taxmann.com 476 (Mum. - Trib.), it was held that Motilal Oswal Investment Advisors Pvt. Ltd., is functionally not comparable with an investment advisory company. In the case of Bain Capital Advisors (India) (P.) Ltd. [IT Appeal No. 1360 (M) of 2014, dated 30-5-2014] the Co-Ordinate Bench of the Tribunal are taking a consistent view that Motilal Oswal Investment Advisors Pvt. Ltd. has to be excluded from comparables on the plea that it was engaged in diversified activities. Respectfully following the findings of the Co-ordinate Benches, we direct for the exclusion of Motilal Oswal Investment Advisors Pvt. Ltd. from the list of comparables in the case of investment advisory services. It would not be out of place to refer to the decision of the Tribunal in the case of General Atlantic (P.) Ltd. [IT Appeal No. 1019 (M) of 2014] wherein the same combination have excluded Motilal Oswal Investment Advisors Pvt. Ltd. from the list of final comparables.”

3.11. We further find that this order of Mumbai Tribunal in the case of Goldman Sachs (India) Securities (P) Ltd., is subsequently approved by the Hon'ble Jurisdictional High Court in Income Tax Appeal No.30 of 2017 dated 10/06/2019 wherein it was held as under:-

“3. All these questions arise out of transfer pricing adjustment in case of the respondent-assessee. In so far as question No.i is concerned, the Tribunal excluded the instance of one Motilal Oswal Investment Advisory Private Limited on the ground that the said company was carrying on business of mergers and acquisitions and other related activities as well as, as a merchant banker, whereas the assessee was providing Investment Advisory Services. Learned counsel for the revenue however contended that the Transfer Pricing Officer had recorded that during the year under consideration Motilal Oswal had earned income only from Advisory fees and not from any activity of merchant banking. According to him, therefore, the Tribunal committed an error in discarding Motilal Oswal as a comparable.

4. We notice that similar issue had come up for consideration before the Tribunal in case of Carlyle India Advisors (P.) Ltd. Vs. Deputy Commissioner of Income-tax, 10(1), Mumbai1. The Tribunal considered the instance of Motilal Oswal and discarded the same relying on the earlier decision in case of the very same assessee in which the Tribunal

*had inter-alia observed that the profit and loss account appears to be only consolidated account. The company is registered with SEBI as a merchant banker. It was further observed that the said company was engaged in merchant banking. This view has been confirmed by this Court in series of judgments for example:- **Principal Commissioner of Income Tax Vs. NVP Venture Capital India (P.) Ltd.** This question is therefore, not considered.”*

3.12 Respectfully following the same, we hold that Motilal Oswal Investment Advisors Pvt. Ltd., is functionally dissimilar with that of the assessee company and hence, the Id. TPO is directed to exclude the same from the final list of comparables.

3.13. Exclusion of Brescon Corporate Advisors Ltd.,

We find that Brescon Corporate Advisors Ltd., has earned its revenue from debt resolution, debt syndication and financial restructuring advisory services. Brescon Corporate Advisors Ltd., also makes significant investment in companies using its own funds and was considered as a leading player in distressed and special situation advisory and investment company, therefore this comparable was not considered as a good comparable with a company providing non-binding investment advisory services such as assessee herein. Hence, we hold that the functions performed by Brescon Corporate Advisors Ltd., is dissimilar to the functions performed by the assessee company. We further find that similar view was taken by the Co-ordinate Bench of this Tribunal in the case of Goldman Sachs (India) Securities (P) Ltd vs. DCIT reported in 69 taxmann.com 386 (Mumbai) for A.Y.2009-10 dated 30/11/2015. We find that Goldman Sachs (India) Securities (P) Ltd is into investment advisory services for Indian equities and strategic investment in India. We find that the Co-ordinate Bench of this Tribunal in the case of Goldman Sachs (India) Securities (P) Ltd reported in 69 taxmann.com 386 referred to

supra had excluded Brescon Corporate Advisors Ltd., from the list of comparables by observing as under:-

“2. Brescon Advisors Limited

A review of the Annual report indicates that this company has earned its revenue from debt resolution/debt syndication and financial restructuring advisory services. As per the profits and loss account, income is earned from debt resolution and debt syndication. It is further observed that this company also makes significant investments in companies using its own funds. This company has not been considered by the Co-ordinate Benches of the Tribunal in the case of Carlyle India Advisors (P.) Ltd. v. Asstt. CIT [2012] 53 SOT 267/24 taxmann.com 176 (Mum.) and also in the case of Temasek Holdings Advisors (I) (P.) Ltd. v. Dy. CIT [2013] 60 SOT 134/38 taxmann.com 80 (Mum. - Trib.) wherein the Tribunal at para-53 on page-56 of its order have observed that this company is mostly into making investment in the companies using its own fund and it is a leading player in distress and special situation advisor and investment company. The overall function as per the profile of the company cannot be said to have much functional similarity with that of the assessee. Respectfully following the findings/observations of the Co-ordinate Benches in respect this company (supra) we direct the TPO to exclude this company from the final list of comparables.”

3.14. We further find that this order of Mumbai Tribunal in the case of Goldman Sachs (India) Securities (P) Ltd., is subsequently approved by the Hon'ble Jurisdictional High Court in Income Tax Appeal No.30 of 2017 dated 10/06/2019 wherein it was held as under:-

“5. In relation to question No.ii, we notice that the Tribunal had cited proper reasons for discarding this comparable. It was noticed that the audit report of Brescon Advisors shows that its income is earned from debt realization and debt syndication. The company also makes significant investments using its own funds. The Tribunal relied on its earlier decision holding that the company which mostly uses its own investments cannot be compared with the present case. The Tribunal also observed that overall profile of the company was not functionally similar. We are broadly in agreement with the view of the Tribunal. The Tribunal has cited proper reasons by discarding Brescon Advisors Private Limited as a comparable.”

3.15. Respectfully following the same, we hold that Brescon Corporate Advisors Ltd., is functionally dissimilar with that of the assessee company

and hence, the Id. TPO is directed to exclude the same from the final list of comparables.

3.16 As stated supra, once Motilal Oswal Investment Advisors Pvt. Ltd., and Brescon Corporate Advisors Ltd., are excluded and ICRA Management Consulting Services Ltd., IDC (India) Ltd., & Informed Technologies Ltd., are included, the assessee would be well within the tolerance band of +/- 5% as stated by the Id. AR. Hence we are inclined to accept the same and hence, the entire transfer pricing adjustment made by the Id. TPO in respect of provision of non-binding advisory services are hereby directed to be deleted for the A.Y. 2009-10. The other comparables which are to be included / excluded are left open and no opinion is given herein. Accordingly, the ground Nos. 1 & 2 raised by the assessee are allowed.

4. The ground Nos.3 raised by the assessee for A.Y.2009-10 is with regard to charging of interest u/s.234B of the Act which would be consequential in nature.

5. The ground No.4 raised by the assessee is challenging the initiation of penalty proceedings u/s. 271(1)(c) of the Act. Since, the addition made by the Id. TPO / AO, the TP adjustment is hereby directed to be deleted, the penalty u/s.271(1)(c) of the Act would have no legs to stand and hence deleted.

6. In the result appeal of the assessee in IT(TP)A No.619/Mum/2014 for A.Y.2009-10 is hereby allowed.

IT(TP)A No.83/Mum/2015 A.Y.2010-11 – Assessee Appeal

7. In this appeal, assessee has sought inclusion of ICRA Management Consulting Services Ltd., IDC (India) Ltd., & Informed Technologies Ltd., and exclusion of Motilal Oswal Investment Advisors Pvt. Ltd.,. If this is done, according to the Id. AR, the assessee would through and would fall within +/- 5% tolerance band provided in the statute. We have already decided these comparables in favour of the assessee for A.Y.2009-10 supra and accordingly, the ground Nos. 1 & 2 raised by the assessee for A.Y.2010-11 are allowed.

8. The ground Nos.3 raised by the assessee for A.Y.2009-10 is with regard to charging of interest u/s.234B of the Act which would be consequential in nature.

9. In the result appeal of the assessee in IT(TP)A No.83/Mum/2015 for A.Y.2010-11 is hereby allowed.

10. IT(TP)A No.745/Mum/2016 A.Y.2011-12-Assessee Appeal & IT(TP)A No.751/Mum/2016 A.Y.2011-12 – Revenue Appeal

In this appeal, assessee has sought inclusion of ICRA Management Consulting Services Ltd., IDC (India) Ltd., & Informed Technologies Ltd., and exclusion of Motilal Oswal Investment Advisors Pvt. Ltd. and Ladderup Corporate Investment Advisors Pvt. Ltd., It is pertinent to note that for this A.Y.2011-12, the Id. DRP itself had excluded Motilal Oswal Investment Advisors Pvt. Ltd., as functionally not comparable with that of the assessee company. The activities carried out by the assessee in

A.Y.2009-10 and 2010-11 are exactly the same as was carried out in A.Y.2011-12. Against this direction of the Id. DRP, the Revenue is in appeal before us. So, effectively we have to adjudicate exclusion of Motilal Oswal Investment Advisors Pvt. Ltd. and Ladderup Corporate Investment Advisors Pvt. Ltd., and inclusion of ICRA Management Consulting Services Ltd., IDC (India) Ltd., & Informed Technologies Ltd., The decision rendered by us for A.Y.2009-10 for inclusion of ICRA Management Consulting Services Ltd., IDC (India) Ltd., & Informed Technologies Ltd., and exclusion of Motilal Oswal Investment Advisors Pvt. Ltd., would hold good for this assessment year also in view of the same functions carried out by the assessee as well as by the respective comparable companies.

10.1. Exclusion of Ladderup Corporate Investment Advisors Pvt. Ltd.,

We find that the comparability of Ladderup Corporate Investment Advisors Pvt. Ltd., to an investment advisory services provider had come up before this Tribunal in the case of DCIT vs. General Atlantic P. Ltd., reported in 91 taxmann.com 406 (Mumbai Tribunal) dated 21/02/2018 for A.Y.2011-12 wherein Ladderup Corporate Investment Advisors Pvt. Ltd., was found to be registered as Category-1 merchant banking company with SEBI and is engaged in merchant banking services w.e.f. July 2010 and accordingly, the same cannot be a good comparable with non-binding investment advisory service provider. Respectfully following the same, we direct the Id. TPO to exclude Ladderup Corporate Investment Advisors Pvt. Ltd., from the final list of comparables.

10.2. In view of the above, we hereby direct the Id. TPO to include ICRA Management Consulting Services Ltd., IDC (India) Ltd., & Informed Technologies Ltd., and exclusion of Motilal Oswal Investment Advisors Pvt. Ltd. and Ladderup Corporate Investment Advisors Pvt. Ltd., The Id. AR stated that once the above relief is granted, the assessee margin would be within +/- 5% tolerance band as provided in the statute. We are inclined to accept the same and accordingly, we direct the Id. TPO to delete the TP adjustment made in respect of provision of investment advisory services for the A.Y.2011-12. Accordingly, the ground Nos. 1 & 2 raised by the assessee for A.Y.2011-12 are allowed and the grounds raised by the Revenue are dismissed.

11. The ground No.3 raised by the assessee is only seeking credit for tax deducted at source. As this matter requires verification, the Id. AO is hereby directed to grant TDS credit to the assessee in accordance with law.

12. The ground Nos.4 raised by the assessee for A.Y.2011-12 is with regard to charging of interest u/s.234B of the Act which would be consequential in nature.

13. The ground No.5 raised by the assessee is challenging the initiation of penalty proceedings u/s. 271(1)(c) of the Act. Since, the addition made by the Id. TPO / AO, the TP adjustment is hereby directed to be deleted, the penalty u/s.271(1)(c) of the Act would have no legs to stand and hence deleted.

14. Accordingly, the appeal of the assessee in IT(TP) A No.745/Mum/2016 is allowed for statistical purposes and appeal of the Revenue in IT(TP)A No.751/Mum/2016 is dismissed for A.Y.2011-12.

15. TO SUM-UP

<u>IT(TP)A No.</u>	<u>A.Y.</u>	<u>Appeal By</u>	<u>Result</u>
619/Mum/2014	2009-10	Assessee	Allowed
83/Mum/2015	2010-11	Assessee	Allowed
745/Mum/2016	2011-12	Assessee	Allowed for statistical purposes
751/Mum/2016	2011-12	Revenue	Dismissed

Order pronounced on 05/04/2022 by way of proper mentioning in the notice board.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 05/ 04 /2022
KARUNA, *sr.ps*

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai