

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

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

**ITA No.3132/Mum/2019
(Assessment Year A.Y. 2011-12)**

TPG Capital India Private Limited 1004, The Capital, Plot No.C-70, G-Block, Bandra Kurla Complex Bandra (East), Mumbai-400 051 PAN :AABCN6660K	vs	Deputy Commissioner of Income-tax, Circle-14(3)(1), Mumbai Room o.475, 4th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020
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**ITA No.3283/Mum/2019
(Assessment Year A.Y. 2011-12)**

DCIT-14(3)(1), Mumbai	vs	TPG Capital India Private Limited 1004, The Capital, Plot No.C-70, G-Block, Bandra Kurla Complex Bandra (East), Mumbai-400 051 PAN :AABCN6660K
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Assessee by : **Mr. Porus F Kaka / Mr. Manish Kanth**
Revenue by : **Ms. Dhivya Ruth J (SR DR)**

Date of hearing : 18/06/2024
 Date of pronouncement : 02/ 07/2024

ORDER

PER ANIKESH BANERJEE (JM) :

These cross appeals arise out of the order of the Ld. Commissioner of Income-tax (Appeals)-58, Mumbai [in short, 'Ld.CIT(A)'], date of order 15/03/2019 for A.Y. 2011-12 order passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'). Impugned order was emanated from the order of the Ld. Deputy Commissioner of Income-tax-14(3)(1), Mumbai order passed under section 143(3) read with section 144C(1) of the Act, date of order 11/03/2015.

2.1. The Assessee has taken the following grounds of appeal:-

"All the grounds of appeal as raised below are without prejudice to each other:

1 . The Commissioner of Income-tax (Appeals) - 58, Mumbai [hereinafter to be referred as 'the CIT(A)'] erred on facts and in law in partially upholding the action of the Deputy Commissioner of Income-tax, Circle-14(3)(1), Mumbai [AO] and the Transfer Pricing Officer - Addl. Commissioner of Income-4(2), Mumbai [TPO] resulting into transfer pricing adjustment, to the Appellant's total income, in respect of non-binding investment advisory services transaction of the Appellant alleging the same to be not at arm's length in terms or the provisions of Sections 92C(1) and 92C(2) of the Income -tax Act, 1961 ['the Act'] read with Rule 10B of the Income-tax Rules, 1962 ['the Rules'],

2. The CIT(A) erred on facts and circumstances of the case and in law in upholding the action of the AO, in not accepting the arm's length price determined by the Appellant, and choosing to determine the arm's length price by making reference to the TPO even though none of the conditions laid down under section 92C(3) of the Act, were satisfied.

3. The CIT(A)/ AO/ TPO erred on facts and circumstances of the case and in law in disregarding the methodically prepared Transfer Pricing documentation submitted by the Appellant and in not appreciating that the arm's length price of the international transaction in relation to non-binding investment advisory services was appropriately determine

4. The CIT(A)/AO/TPO erred on facts and circumstances of the case and in law by not accepting the functions performed, assets employed and risks assumed by the

Appellant as outlined in the Transfer Pricing documentation and as submitted during the course of the proceedings.

5. *The CIT(A)/AO/TPO erred on facts and circumstances of the case and in law in rejecting ICRA Management Consulting Services Limited^ identified by the Appellant by way of detailed and—methodical search process as forming part of the transfer pricing documentation prepared by the Appellant required under the Act and the Rules, despite the same being functionally comparable to the functions of the Appellant herein.*

6. *The CIT(A) / AO /TPO erred in disregarding the ruling of the Hon'ble Mumbai Tribunal in Appellant's own case [ITA No.7954/Mum/2014] for AY 2009-10 and [ITA No.5411/Mum/2016] for AY 2010-11, to include ICRA Management Consulting Services Limited in the final set of comparables for computing the arm's length price.*

7. *The CIT(A)/AO/TPO erred on facts and circumstances of the case and in law in arbitrarily selecting following companies viz. Motilal Oswal Investment Advisors Private Limited, Ladderup Corporate Advisory-Private Equity Advisors Private Limited, as comparable to the Appellant with complete disregard to functions performed, assets employed and risks assumed analysis undertaken by the Appellant.*

8. *The CIT(A) has erred on facts and circumstances of the case and in law in directing TPO/AO to collect relevant information about the segmental profitability from Motilal Oswal Private Equity Advisors Private Limited, without considering the fact that the explicit information on segmental profitability are not available in audited financial statements and single segment i.e. providing financial services are only reported in accordance with Accounting Standards -17.*

9. *Without prejudice to the above, the CIT(A)/AO/TPO erred on facts and circumstances of the case in not allowing proper adjustments under the provisions of Rule 10B(1)(e)(iii) of the Rules, to account for differences between the risk profile of the Appellant and the comparables selected by the CIT(A)/AO/TPO.*

10. *The CIT(A)/ AO erred on facts and circumstances of the case in levying interest under Section 234B, Section 234C and Section 234D of the Act. The Appellant prays that suitable direction to be given to delete/reduce these interest.*

11. *The CIT(A)/ AO/ erred on facts and circumstances of the case and in law in initiating penalty proceedings under Section 271(1)(c) of the Act.*

The Appellant crave leave to add, amend, delete, rectify, substitute and / or modify any of the aforesaid grounds of appeal herein provided and / or add a new ground or grounds of appeal at any time before or at the time of hearing of the appeal.”

2.2 The Revenue has taken the following grounds: _

“1.1 Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is correct in relying on the decision of ITAT in assessee's own case for A.Y 2009-10 in directing the AO/TPO to include Informed Technologies India Ltd (ITIL) as a comparable entity, ignoring the specific facts of declining revenues pointed out by TPO specific for the impugned AY 2011-12 and adopting subsequent years financials of this company for comparability purpose?

1.2 Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is correct in violating the specific provisions of Rule 10B(4) on the stipulation of contemporaneous nature of data in adopting the facts of AY 2009-10 ignoring the facts of the impugned AY 2011-12 to include ITIL as comparable?

1.3 Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is correct in violating Rule 46A in accepting the additional evidence of financials of subsequent years of ITIL not produced before the TPO and adjudicating that ITIL to be included as comparable based on that additional evidence?

2.1 Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is correct in relying on the decision of ITAT in assessee's own case for A.Y 2009-10 in directing the AO/TPO to include IDC (India) Ltd as a comparable, ignoring the specific facts of brand value and functional dissimilarities pointed out by TPO specific for the impugned AY 2011-12?

2.2 Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is correct in violating the specific provisions of Rule 10B(4) on the stipulation of contemporaneous nature of data in adopting the facts of AY 2009-10 ignoring the facts of the impugned AY 2011-12 to include IDC as comparable?

3.1 Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is correct in directing the AO/TPO to include Pipal Research Analysis & Information Services India Pvt. Ltd(PRAISIPL) as a comparable, by totally disregarding and without adjudicating on functional dissimilarities pointed out by TPO of this company for comparability purpose?

3.2 Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is correct in including PRAISIPL as comparable, though RPT is more than 40%?

3.3 Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is correct in excluding the trade advances in working out RPT ratio?

4.1 Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is correct in not giving his decision in accordance with provisions of section 251(I)(a) of the Act and instead directing the AO/TPO to conduct fresh inquiries to gather information of segmental profits from Motilal Oswal Private Equity Advisors Pvt. Ltd independently for fresh adjudication on the matter of including this entity as a comparable?

4.2 Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is correct in not deciding the case by passing a speaking order, but virtually setting aside the matter to the TPO/AO though such powers of set aside do not remain with CIT(A) w.e.f. 1.6.2001?

4.3 Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is correct in setting aside so, when he has powers u/s 250(4) r.w.Rule 46A to call for remand report from the AO/TPO and to pass a speaking order based on such remand report?

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

5.2 "The appellant prays that the 'order of the CIT(A) on the above ground be set-aside and that of the Assessing Officer be restored."

3. Brief facts of the case are that the assessee is engaged in the business of providing sub-investment advisory services, market research and statistical data to its holding company, TPG Capital LLP. The assessee filed its return of income for A.Y. 2011-12 on dated 28.11.2011 declaring total income at Rs.3,81,92,398/-. Noticing international transactions during the year, the Id. AO referred the case of the assessee under section 92CA(1) of the Act to the Transfer Pricing Officer (in short, 'TPO'). The TPO made an adjustment of Rs.7,67,24,390/- to the Arm's length price to the value of international transactions reported by the assessee for the year under consideration. Accordingly, the Ld.AO passed assessment under section 143(3) read with section 144C(1) of the Act determining the total income at Rs.11,49,16,790. The aggrieved assessee filed appeal before the Id. CIT(A) but remained unsuccessful. Being aggrieved the assessee filed appeal before us.

4. The Ld.AR filed the written submissions which are kept in the record. The Ld.AR vehemently argued and first placed that the three comparables which are included by the TPO are liable to be excluded. The companies are-

- (1) Motilal Oswal Investment Advisors Pvt Ltd (in short, MOIAPL),
- (2) Ladderup Corporate Advisory-Private Equity Advisors Private Limited (in short, LCAPEAPL); and

(3) Motilal Oswal Private Equity Advisors Private Limited (in short, MOPEAPL).

The Ld.AR prayed for inclusion of comparable as follows: -

- (1) ICRA Management Consulting Services (in short, ICRA);
- (2) Cyber Media Research Limited (formerly known as IDC (India) Ltd (in short, 'IDC'); and
- (3) Informed Technologies India Limited (in short, 'ITIL').

The Ld.AR further argued related to excluding of variables placed with the TPO has taken the view in case of final set of comparable is as follows: -

<u>Name of Company</u>	<u>OP / OC</u>
MOIAPL	82.23%
LCAPL	52.42%
MOPEAPL	32.38%
Average	55.6%

and accordingly calculated the arm's length adjustment at Rs.7,67,24,390/- which is proposed to be added back with the total income of the assessee. The Ld.AR proceeded the argument company-wise, which are as follows: -

MOIAPL:

4.1 The grievance for the assessee is that the variable is not accepted due to functional non comparability considering the management discussion and analysis report of the company. The company in coming years has involved in investment banking space, equity, capital markets, M&A Equity Syndication and structures it, business segmental data, abnormal profits, etc. The issue is squarely covered by

the order of the co-ordinate bench of ITAT in assessee's own case in **IT(TP) A No.3068/Mum/2017**, date of order **21/06/2019**, wherein it has been held as under:-

"25. In this appeal, the Revenue has challenged the decision of the (Appeals) in excluding Motilal Oswal Investment Advisors Pvt Ltd. as a comparable.

26. As discussed earlier, this company was introduced by the Transfer Pricing Officer as a fresh comparable by the despite the objection of the assessee. However, learned Commissioner (Appeals) having found that the company is engaged in the business of investment / merchant banking has excluded it as a comparable.

27. We have considered rival submissions and perused the material on record. We have also applied our mind to the decisions relied upon by the parties on the issue of comparability of this company. After careful reading of the decisions cited before us, we are of the considered opinion that the issue relating to the comparability of this company is no more res Integra in view of the judicial pronouncements cited before us. Undisputedly, this company is in the business of investment / merchant banking which is completely different from investment advisory service provided by the assessee. For this reason alone, this company has to be excluded as a comparable. Therefore, consistent with the view expressed in the judicial pronouncements cited before us, we uphold the decision of learned Commissioner (Appeals) in excluding this company as a comparable. Grounds raised are dismissed."

The Ld.AR prayed to delete this comparable from the list of comparables.

LCAPL:

4.2. The Ld.AR further placed that the company is functionally not comparable due to the high-quality investment banking solution, providing financial and corporate advisory services, absence of segmental data. The company is engaged in providing the corporate advisory services like advising the clients to raise traditional debt facilities, restructuring advisory services, raising private equity and sourcing and executing merger and acquisition opportunities, domestic as well as cross border of the same is apparent from the extract from the management discussion and analysis report of the said company. The issue is squarely covered by the order of the co-ordinate bench of ITAT, Mumbai in the case of **Temasek Holdings Advisors (I) P.Ltd** ITA No.776/Mum/2015 date of order **25/02/2016** and **ACIT Circle-3(1)(1), Mumbai vs. Backbone Advisors India Pt Ltd** ITA No.928/Mum/2016 date of order **30/11/2018**, where in it has been held as under: -

“20. This company was selected by the Transfer Pricing Officer and was also retained by the DRP.

21. Objecting to the selection of the aforesaid company by the Transfer Pricing Officer and the DRP, the learned Sr. Counsel for the assessee submitted, the company being a merchant / investment banking company, is functionally different from the assessee, hence, cannot be treated as comparable to an investment advisory service provider like the assessee. In this context, he relied upon the following decisions:-

- i) DCIT v/s General Atlantic Pvt. Ltd., ITA no.1717/Mum./ 2016, dated 21.02.2018;*

ii) *Temasek Holdings Advisors India Pvt. Ltd. v/s DCIT, [2017] 87 taxmann.com 168;*

iii) *Sun Ares India Real Estate Pvt. Ltd. v/s DCIT, ITA no. 621/Mum./2016, dated 09.02.2018; and*

iv) *Wells Fargo Real Estate Advisors Pvt. Ltd. v/s DCIT, ITA no.1520/Mum./2016, dated 17.01.2018.*

22. *The learned Departmental Representative relied upon the observations of the Transfer Pricing Officer and the DRP.*

23. *We have considered rival submissions and perused materials on record. From the functional profile of the aforesaid company it appears that it is registered as Category-1 Merchant Banking Company with SEBI and is engaged in merchant banking services w.e.f. July 2010. Considering the aforesaid factual aspect, the Co-ordinate Bench in the decisions cited by the learned Sr. Counsel for the assessee has held that this company cannot be a comparable to a company engaged in the activity of investment advisory services. Since. The aforesaid decisions are for the very same assessment year and no distinguishing fact in the present appeal was brought to our notice by the learned Departmental Representative, respectfully following the consistent view of the Tribunal, hold that this company cannot be treated as comparable of the assessee."*

The Ld.AR prayed for exclusion of this company from the list of comparable.

MOPEAPL

4.3 This company in such process during the preparation of TP Study, the company was rejected on the basis of qualitative review since the description study, the company is engaged in managing and advising two funds, viz. India Business Company Excellence Funds, a sector agnostic to profit equity fund aimed at providing growth capital to meet market enterprise in India and India Realty Excellence, i.e. a domestic real estate fund focused on investing in residential and commercial projects in Madras and other cities are in India. The company was specifically rejected by the assessee during the TP study. It is not possible to determine the profitability of advisory segment alone. Hence, it is not comparable company. The Ld.AR further relied on the order of co-ordinate bench of ITAT, Mumbai in the case of **Temasek Holdings Advisors (I) P. Ltd** ITA No.776/Mum/2015 date of order 25/02/2016 A.Y. 2011-12. The relevant portion of the order is as under: -

“15. We have heard the Id. Authorized Representatives of the both the parties, perused the orders of the lower authorities and the material placed on record. We have given a thoughtful consideration to the facts of the case and are of the considered view that as per the facts available on record, it stands duly substantiated from the 'directors report' (Page 343 of APB) that the aforesaid comparable was carrying out investments in portfolio companies. We find that a perusal of the 'directors report' of the aforesaid comparable reveals that during the year under consideration it had managed 'India business excellence fund I' and 'India reality excellence fund I' (IREF-I) and was further contemplating to raise IREF-II with a corpus of between Rs.500-750 crores in financial year 2012. We are of the considered view that the functional analysis of the aforesaid comparable

substantially places it at variance as against the assessee company which is engaged in the business as that of an investment advisor. We further find that from a perusal of the 'Annual report' of the aforesaid comparable for Financial year 2010-11, it stands revealed that the latter operates 4 different business verticals, viz financial advisory, investment advisory, management and facilitation services and identifying investment opportunities. We find that despite the aforesaid multiple sectors of operations, no segmental data is available in the 'Annual report', and the income from the advisory operating constitute only 42.10% of its total operating income. We are further of the considered view that a: observed by us hereinabove, the aforesaid comparable unlike the assessee is engaged in the business of managing and advising funds in the Growth Capital as well as Real Estate Space. That a perusal, o 'Schedule E' to the balance sheet of the aforesaid comparable therein reveals that the latter had made investments in one of the funds managed, by it, i.e 'India Reality excellence fund'. Thus in the totality of the aforesaid facts we are of the considered view that functions performed by the aforementioned comparable, viz. Motilal Oswal Equity Pvt. Limited, which is into managing and investment into funds, cannot be compared to the assessee whose functions are strictly limited to as that of an investment advisor. Thus in light of our aforesaid observations we are of the considered view that the aforementioned comparable, viz. Motilal Oswal Equity Pvt Ltd. is functionally incomparable with the assessee company and had wrongly been included in the list of the final comparables. We thus direct the AO / TPO to exclude the aforesaid comparable from the final list of the comparables."

5. The Ld.AR further placed that the following companies should be included in the comparable list: -

1. ICRA Management Consulting Services Ltd (in short, 'ICRA')
2. Cyber Media Research Limited (in short,'Cyber')
3. Informed Technologies India Ltd (in short, 'ITIL')

5.1. ICRA:

The business activity of the ICRA provides corporate and regulatory support strategies, analyses, operations, selling risk management services and implementation tools to both, public and private sector clients; but provides research coverage on industry environment, economic contribution, industries' growth, business strategy, risk analysis comparative scenario and financial performance outlook, among other areas. In view of the above activities carried out by the ICRA are similar to those carried out by the assessee and thus its functionally comparable. The issue was squarely dealt in by the co-ordinate Bench of the Mumbai Tribunal in assessee's own case in **IT(TP)A. 3068/Mum/2017 & ITA 2303/Mum/2017** date of order **21/06/2019** wherein it has been held as under: _

"11. We have considered rival submissions and perused the material on record. We have also applied our mind to the decisions relied upon. On a perusal of the annual report of the company placed in the paper book, it is to be understood that the nature of service provided by the company is more or less similar to the assessee. As could be seen, the company was selected as a comparable by the Transfer Pricing Officer himself in assessment year 2008-09. Similarly, though, in assessment year 2009-010 the Transfer Pricing Officer rejected this company as a comparable, however, while deciding assessee's appeal in ITA no.7594/Mum./2014, dated 8th February 2017, the Tribunal accepted it as a comparable. Pertinently, in case of TPG Growth Advisors India Pvt. Ltd., which subsequently became the present assessee, for the very same assessment year th4e Tribunal in ITA no.5411/Mum./2016, dated 7th December 2018, has accepted this company as a comparable. Even, in the other decisions

cited by the learned Sr.Counsel, which are for the very same assessment year, this company has been accepted as a comparable to an investment advisory provider. Respectfully following the decisions of the Tribunal in assessee's own case as well as in case of others as cited supra, we direct the Assessing Officer to include this company as a comparable."

5.2.Cyber:

Cyber Media Research Limited has been considered as a comparable company in the assessment years 2008-09 and 2010-11. Cyber Media Research Limited is engaged in providing market research and management consultancy services. It is a subsidiary of Cyber Media. The company provides a comprehensive research on market trends and focus, competition analysis, even profiles analysis, revenue segmentation and information on customer requirements. Its research covers the communications hardware, peripherals, software, service and government sectors. The Ld.AR placed the judicial pronouncement covered by the co-ordinate bench of ITAT, Mumbai in assessee's own case in **ITA No.7594/Mum/2014** date of pronouncement **08/02/2017** A.Y. 2009-10 where it has been held as under: -

"We have heard the Ld. Representatives, perused the records and the orders of the lower authorities and therein find that the aforesaid comparable had been accepted by the TPO in the case of the present assessee itself in the immediately preceding year, viz A.Y. 2008-09, which thereafter have been accepted by the Tribunal in the case of the assessee in ITA No. 880/Mum/2013 (supra). We have further given a thoughtful consideration to the averments of the Ld. Representatives of both the parties in context of the order of the ITAT, Delhi in the case of: Actis Advisers Private Limited Vs. ACIT, Circle 1(1) [(2015) 55 taxmann.com 485 (Delhi-Trib) and the order of ITAT, Mumbai Bench 'E' in the case of: Tevapharm Private Limited Vs. Addl. CIT-10(3),Mumbai [(2012) 18

taxmann.com 148 (Mum)]. That after perusing the aforesaid respective orders of the Tribunal, we are persuaded to be in agreement with. We find that in the case of Actis Advisers Private Limited (supra) the India Limited had been rejected by relying on the information available on the website relating to Cyber Media (India) Limited, viz <http://www.cybermedia.co.in/static/products>, which was not the website link for IDC India Limited, but for its holding company, i.e Cyber Media (India) Limited. Thus in the backdrop of the aforesaid facts, it can safely be concluded that no adverse inference as regards selection of the comparable, viz IDC India Limited can be drawn by relying on the order of the ITAT, Delhi bench in the case of : Actis Advisers Private Limited (supra). That we are further persuaded to subscribe to the contention of the Ld. A.R that the reliance placed on the order of the ITAT, Mumbai in the case of Tevapharm Private Limited (supra) was misplaced. We have perused the order of the Tribunal and find that the observations as regards the comparable, viz. EDC India ... Limited were rendered in context of the assessee before the Tribunal, viz Tevapharm Private Limited (supra), which we find is functionally different from the present assessee before us. We further find ourselves to be in agreement with the contention of the Ld. A.R that the findings of the Tribunal in the aforesaid case in context of IDC India Limited (supra), rather goes to assist the claim of the assessee that the said concern had rightly been selected as a comparable. That in light of the aforesaid facts and no material having been placed on record by the Ld. D.R, on the basis of which we could be persuaded to observe that there had been a shift in the nature of business of the assessee during the year under consideration, as against that of the immediately preceding year, coupled with the fact that the Tribunal had consistently in host of decisions as had been so relied upon by the Ld. A.R therein concluded that the aforesaid comparable, viz EDC India Ltd (supra) was into investment advisory business, therefore do not find any reason to take a different view. Thus, in light of our aforesaid observations we are of the considered view that the TPO had wrongly excluded the aforesaid comparable from the list of the

comparables selected by the assessee company, and therefore set aside the order of the CIT(A) who had upheld the said findings of the TPO.”

5.3.ITIL:

The Ld.AR further placed that the company provides outsourced services consisting of research on financial databases and back-office activities for research / advisory reports for its off-shore clients mainly in the USA. The company also focuses on financial research and analytics and it analyses data on financial fundamentals, corporate governance, director / executive compensation and capital; market. Considering these activities carried out by the ITIL, are similar to this carried out by the assessee and it is functionally comparable. The Ld.AR further proceeded that –

- the activities earned out by ITIL is similar to those carried out by the assessee and thus it is functionally comparable.
- it is pertinent to note that the Mumbai Tribunal while pronouncing its ruling in assessee's own case for AY 2008-09, **ITA No.880/MUM/2013** had accepted ITIL as a comparable company which was selected by the assessee in its TP study and the same was also accepted by the TPO.
- Also the said company was accepted in AY 2009-10 and AY 2010-11 as a comparable company by the Id. TPO in assessee's own case.
- Further, the Mumbai Tribunal Ruling in case of **Temasek Holding Advisors (I) P.Ltd, ITA No.6504/MUM/2012**, held that ITIL is functionally comparable to the investment advisory services rendered by the Company.

6. The Ld.DR argued vehemently and relied on the order of the revenue authorities. The Ld.DR invited our attention in para 13 of the TPO order which is reproduced as below: -

“13 Real function of the Assessee:

It is an admitted position that as per the agreement assessee actually "Provide advice to the Principal with respect to the ownership, operation and management of the investments owned by the Partnerships and on how best to develop, restructure, expand or assist companies or businesses in which the Partnerships have invested." Thus the assessee is actually a guardian, protector of the investment made by AE in India. Assessee is helping the companies in business expansion. For this Mr. Puneet Bhatia had got Mr.Ranvir Dewan, a former Citibanker in 'Shreeram Group entity. This is what is the advantage of Network which is mentioned in the review of the employee.

From the analysis of the statement, downloads, agreement, it can be seen that assessee is not merely doing investment advisory function but doing a larger function than investment advisory. It has been submitted by assessee that employee of the assessee have been appointed as Directors on the "Board of Directors of the companies in which AE has invested. The role of these employees is to actually monitor performance of those companies and protect interest of the AE. This is not just an investment advisory function. It has also been mentioned that assessee has interacted with management of the companies along with heads of the various departments to understand the functioning of the company in which AE has subsequently invested. The managing director has admitted that assessee is doing portfolio management. It is also mentioned in the agreement that assessee is doing restructuring and portfolio management. Mr. Bhatia has explained that he along with his team members have interacted with various lenders, negotiated with the lenders about the Debts in the case of Vishal. Mr. Bhatia, head of Assessee was actively involved in the Renegotiation of Debts in the case of Vishal.

It has been explained by Sumedh Jog that they have interacted at various LEVEL TO understand functioning of the Janalaxmi Bank. Thus the functions performed by assessee are much wider than investment advisory. It is not a plain vanilla investment advisory service, rather, it's a full meal.

All these functions are not performed by the so called comparables selected by assessee. The assessee is going into each and every intricate detail in understanding the business of the companies where AE is interested. They are even interacting with lawyers, Chartered Accountant on various issues related to investment. It is very much evident from the extracts of the interview reproduced above. “

7. We heard the rival submission and considered the documents available in the record. Related to exclusion of companies, the issue is squarely covered by the order of the Coordinate Bench of ITAT, Mumbai and Ld.AR was also able to demonstrate that all 3 companies are functionally not comparable with the assessee. We consider the orders of coordinate bench which are binding on us. Accordingly, we direct to exclude the MOIAPL, LCAPL & MOEPAPL from the comparable list. In the case of other 3 companies, i.e. ICRA, Cyber, ITIL are functionally similar with the assessee and all the issues are duly squarely covered by the order of the co-ordinate benches. We cannot circumvent the order of coordinate bench of ITAT-Mumbai. It is directed to TPO / AO to include these 3 companies in the list of comparables and calculate the ALP accordingly.

7. The revenue the in grounds challenged the act of the Id. CIT(A) and order of the coordinate benches of ITAT. But the Id. DR unable to produce any contrary judgment against the order of the ITAT. Accordingly, the grounds of the revenue are failed.

8. In the result, appeal of the assessee bearing **ITA 3132/Mum/2019** is allowed and appeal of the revenue bearing **ITA 3283/Mum/2019** is dismissed.

Order pronounced in the open court on 02nd day of July, 2024.

Sd/-

(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 02/07/2024
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
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4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
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BY ORDER,

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