IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 541 OF 2016

Pr. Commissioner of Income Tax-3 .. Appellant

v/s.

M/s. Bain Capital & Advisors (I) P. Ltd. ..Respondent

Mr. Suresh Kumar for the appellant
Mr. Porus Kaka, Senior Counsel a/w Mr. Divesh Chawla I/b Atul K. Jasani for the respondent

CORAM : AKIL KURESHI &
M.S. SANKLECHA, J.J.

DATED : 24th NOVEMBER, 2018.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 15th May, 2015 passed by the Income Tax Appellate Tribunal (the Tribunal). This appeal relates to Assessment Year 2010-11.

2. The Revenue has urged the following re-framed question of law for our consideration :-

> *(i) Whether on the facts and circumstances of the case and in law, the Tribunal was justified in holding that Motilal Oswal Investment Advisors Pvt. Ltd. and M/s. IDFC Ltd. not comparables for the purpose of Rule 10B of the Income Tax Rules?*

3. The impugned order of the Tribunal allowed the respondent assessee's appeal by holding that it is engaged in providing investment research and advisory services to Bains Capital a Mauritius based Pvt. Ltd. Company. In the above facts, its activity is not comparable to the activity of Motilal Oswal Investment Advisors Pvt. Ltd. which is a Merchant Banker and not an investment advisor as the respondent. Similarly, it held that IDFC Investment Advisors Ltd. is also performing functionally different activity i.e. of portfolio management from that of non binding investment advice given by the respondent. Thus, holding that Motilal Oswal Investment Advisors Pvt. Ltd. and IDFC Investment Aedvisors Ltd. are not comparables to the respondent so as to use them as comparables to determine the Arms Length Price of the respondent's transactions with its related party i.e. Bains Capital (Mauritius).

4. Mr. Suresh Kumar, learned Counsel appearing for the Revenue fairly states that the issue arising herein stands concluded against the Revenue and in favour of the respondent assessee by the decisions of this Court in ***CIT Vs. Carlyle India Advisors (P) Ltd. 357 ITR 584*** and ***CIT Vs. General Atlantic (P) Ltd. 384 ITR 271*** and the order dated 17th November, 2016 passed in the case of ***CIT Vs. Temasek Holdings***

Advisors India Pvt. Ltd. (Income Tax Appeal No.1051 of 2014).

5. In view of the above, as the issue is concluded by orders of this Court, the question as proposed does not give rise to any substantial question of law. Thus, not entertained.

6. Accordingly, the appeal is dismissed. No order as to costs.

(M.S. SANKLECHA, J.) **(AKIL KURESHI, J.)**