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

INCOME TAX APPEAL NO.117 OF 2017

Pr.Commissioner of Income Tax-5 … Appellant

V/s.

M/s General Atlantic Pvt. Ltd. … Respondent

Mr.Ashok Kotangle with Mr.Prabhakar Ranshur for the Appellant.
Mr.Porus Kaka, Senior Counsel with Mr.Divesh Chawla i/by Mr.Atul Jasani for the Respondent.

CORAM : AKIL KURESHI AND
SARANG V. KOTWAL, JJ.
DATE : MARCH 12, 2019.

P.C.:-

1. Revenue has filed this appeal against the judgment of the Income Tax Appellate Tribunal raising following question for our consideration:-

> "Whether on the facts and in the circumstances of the case and in law, the ITAT was right in directing the AO to exclude Motilal Oswal Investment Advisory Pvt. Ltd. from the list of comparables, when the DRP has in this year found that the major source of revenue came from financial advisory services and assessee company itself has reported in its annual report income from operations under the head 'Advisory fees'- a fact that has not been controverted by the Assessee company?"

2. This issue is squarely covered in favour of the assessee by order of this Court in its own cases arising earlier. We may therefore pass brief order.

3. Respondent-assessee is undisputedly an Investment Advisor. While carrying out transfer pricing assessment in case of the assessee, revenue desired to compare the instance of one M/s Motilal Oswal Investment Advisory Private Limited. The Tribunal discarded such comparable on the ground that Motilal Oswal was an Investment Banker and cannot be compared with the assessee which was an Investment Advisor.

4. In case of this very assessee in Income Tax Appeal No.251 of 2014 passed on 15th July, 2016, the Court considered the following question at the instance of the revenue:-

> "Whether on the facts and in the circumstances of the case and in law the Tribunal was justified in law holding that the assessee's activity of providing services is similar to the nature of services and activity of Carlyle India Advisors Pvt. Ltd. Ignoring the fact that activities of the assessee's are comparable to merchant banking/investment banking activities?"

The appeal was dismissed holding that the question is concluded.

5. In Income Tax Appeal No.406 of 2016 in case of **Pr. Commissioner of Income Tax -3 Vs. M/s NVP Venture Capital India Pvt. Ltd. in an order dated 18th September, 2018** the court considered, besides other the following question:-

> "Whether on the facts and in the circumstances and in law, the ITAT was justified, in directing not to consider the case of Motilal Oswal Investment Advisors Pvt. Ltd. as a comparable, when it's P & L showed operational income from advisory fees, the same as that of assessee and instead to place reliance on Director's Report which had categorized activities engaged by said company as Equity Capital Markets Mergers and acquisitions, Private Equity syndication and structured debt, would not make such reliance against the ambit of Rule 10B(2)?"

6. The Court in this context while dismissing the revenue's appeal observed as under:-

> "12. We have heard the learned counsel for parties at length and have gone through the papers and proceedings in this appeal including the impugned order passed by the ITAT. We are unable to agree with Mr Suresh Kumar that the above questions of law as projected by him to be substantial, are indeed substantial questions of law requiring our consideration. On going through the order of the

ITAT it is quite clear that the findings given therein are purely based of the facts placed before it. The facts, as placed before the ITAT, have not been controverted or denied by the revenue before us. The ITAT, after considering all these factual aspects, came to a categorical finding that Motilal Oswal Investment Advisors Pvt. Ltd. was engaged in a qualitatively different and diversified business than that of the assessee which was confined to rendering only non-binding investment advisory services to its Associated Enterprise (NVP – Mauritius). In coming to its conclusion, the ITAT also relied upon another decision of the Tribunal in the case of Carlyle India Pvt. Ltd. (ITA 2200/MUM/2014) dated 22nd August, 2014. In this case also the Tribunal concluded that though Motilal Oswal Investments Advisory Pvt. Ltd. was declaring a solitary stream of operating income under the head "advisory fee", but un-disputedly it was engaged in diversified fields and the financial results for each segment were not separately available. Considering that it engaged in many diversified fields and not only in the field of rendering non-binding advisory services, the ITAT came to a finding that Motilal Oswal Investments Advisory Pvt. Ltd. was not a concern which could be included in the list of comparable companies. We do not think that these findings of fact are in any way perverse or vitiated by any error apparent on the face of the record which, in turn, would give rise to any substantial question of law. We are in full agreement with the findings given by the ITAT. In fact, looking to the facts as narrated by the ITAT in the impugned order, we would have no hesitation in holding that by comparing Motilal Oswal Investments Advisory Pvt. Ltd. to the assessee company (for the purposes of determining the ALP) would be like comparing apples and oranges. This being the case, we do not find any infirmity in the order of the ITAT excluding Motilal Oswal Investments Advisory Pvt. Ltd. from the final list of comparables which would give rise to any substantial question of law.

13. In view of the foregoing discussion, we are of the opinion that the impugned order does not give rise to any substantial question of law which would require our consideration as the matter solely revolves around factual matters. Having found that the findings given thereon by the ITAT are certainly plausible and possible, no interference is called for by us under section 260A of the I. T. Act, 1961. In these circumstances, the appeal stands dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs."

7. Learned counsel for the revenue however brought to our notice an admission order dated 30th July, 2018 passed by Division Bench of this Court in Income Tax Appeal No.79 of 2016 in case of one **M/s Q-India Investment Advisors Pvt. Ltd.**. However when we have the instance of dismissal of appeal of this very assessee, we need not follow the admission order in case of another assessee that too without comparing two sets of facts within two cases.

8. In the result, this appeal is dismissed.

(SARANG V.KOTWAL,J.) **(AKIL KURESHI,J.)**