

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

INCOME TAX APPEAL NO. 376 OF 2018

The Pr. Commissioner of Income Tax-3,
Room No. 612, Aayakar Bhavan,
M.K. Road,
Mumbai-400 020.

....Appellant

V/s

1. Warburg Pincus India Pvt. Ltd.,
7th Floor, Express Towers,
Nariman Point,
Mumbai-400 021.
PAN : AAACW 5205 E

....Respondent

* * *

Mr. Suresh Kumar for appellant.

Mr. Manish Kanth i/b Mr. Atul K. Jasani for respondent.

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**CORAM : DHIRAJ SINGH THAKUR AND
VALMIKI SA MENEZES, JJ.**

Judgment reserved on : 20th July 2022

Judgment pronounced on : 12th September 2022.

PER DHIRAJ SINGH THAKUR, J. :

1. This is an appeal under section 260A of the Income Tax Act, 1961 (hereinafter referred to as, 'the Act') against the order dated 13th January 2017 passed by the Income Tax Appellant Tribunal 'K' Bench, Mumbai relevant to the assessment year 2009-10.

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2. The following questions of law have been proposed for our consideration :

(i) Whether, on the facts and in the circumstances of the case and in law, the Tribunal was right by holding that M/s. Integrated Capital Services Ltd. and M/s. Motilal Oswal Investment Advisors Pvt. Ltd. are to be excluded and M/s. ICRA Management Consulting Services Ltd. and M/s. IDC Ltd. are to be included as comparables ignoring the FAR analysis carried out by the TPO?

(ii) Whether, on the facts and in circumstances of the case and in law, the Tribunal erred by relying upon several case laws and not judging the comparability on the facts of the case though facts of each case are different and not squarely applicable to the facts of other cases?

3. The assessee-company is engaged in the business of investment advisory services. The return of income was filed by the assessee declaring total income at Rs.17,44,90,750/- on 30th September 2009 and a book profit at Rs.16,47,55,751/- under section 115JB of the Act. The return of income was processed under section 143(1). The case was later selected for scrutiny. A reference under section 92CA(1) of the Act was made to the Transfer Pricing Officer, Mumbai ("TPO") for computation of the Arm's Length Price in relation to international transactions entered into by the assessee company.

4. Before the TPO, the comparables relied upon by the assessee

were rejected on the ground of functional dissimilarity and proceeded to select the following three comparables :

Sr.No.	Name of Company	PLI = OP/OT (%)
1.	Motilal Oswal Investment Advisors P. Ltd.	82.44
2.	Future Capital Investment Advisors Ltd.	23.40
3.	Integrated Capital Services Ltd.	69.72
	Arithmetic Mean Margin	58.52

The TPO, based upon the aforementioned comparables, suggested an upward adjustment of Rs.34,16,50,457/-.

5. A draft assessment order was framed by the AO against which objections were filed before the Dispute Resolution Panel-II, Mumbai ('DRP') under section 144C (13) pursuant to which the AO proceeded to pass a final order of assessment, rejecting the objections of the assessee, an adjustment of Rs.34,16,50,457/- was made to the total income under section 92CA(3) of the Act.

6. The issue was finally considered by the Income Tax Appellate Tribunal, Mumbai ('Tribunal') in an appeal preferred by the assessee.

7. In regard to Integrated Capital Services Ltd., the Tribunal held that the said company was engaged in providing investment

banking services, as against the assessee company which was engaged in providing investment advisory services. It thus excluded this company from being treated as a comparable to an investment advisory service provider.

8. In regard to Motilal Oswal Investment Advisors Pvt. Ltd. also, the Tribunal held that the same could not be treated as comparable inasmuch as the said company was a merchant banker.

9. In regard to ICRA Management Consulting Services Limited, a company which was suggested as a comparable, but was rejected by the TPO and the DRP, as being not functionally similar to the assessee, the Tribunal held that the said company was basically engaged in offering consultation services in the area of strategy, risk management, operations, improvement, regulatory economics and translations advisory and that its entire revenue was being generated from consultation fees.

10. Even in the case of IDC India Limited, the Tribunal held the same as comparable to an investment advisory service provider, keeping in mind, the view already expressed on similar lines in the case of *The Commissioner of Income Tax-3 Vs. Temasek Holding Advisors India Pvt. Ltd.*¹. Based upon the above observations, the

1 [2014] 46 ITR (Trib.) 311 (Mum.)

Tribunal accordingly directed the Transfer Pricing Officer to compute/determine the Arm's Length Price by considering the aforementioned two comparables.

11. Learned counsel for the Revenue vehemently urged that the view expressed by the Tribunal in rejecting the selection of Integrated Capital Services Ltd. and Motilal Oswal Investment Advisors Pvt. Ltd. was without any basis at all. Equally so it was urged that there was no basis for the Tribunal to hold ICRA Management Consulting Services Limited and IDC India Limited as comparables.

12. We have heard learned counsel for the parties.

13. The issue as to whether Integrated Capital Services Ltd. and Motilal Oswal Investment Advisors Pvt. Ltd., which are engaged in providing investment banking services, could be declared as comparable to a company which was providing investment advisory services is no longer *res-integra*.

14. The Apex Court in the case of ***Commissioner of Income-tax 10, Mumbai Vs. Carlyle India Advisors (P.) Ltd.***² has already held that the case of an investment advisor or sub-advisory cannot be compared with a merchant banker or investment banker. This view

2 [2013] 32 taxmann.com 23 (Bombay)

was reiterated in the case of *Principal Commissioner of Income-tax-3 vs. Blackstone Advisors India (P.) Ltd.* ³.

15. In view of the aforementioned settled legal position, Integrated Capital Services Ltd. and Motilal Oswal Investment Advisors Pvt. Ltd cannot at all be held as comparables with the assessee company.

16. In so far as IDC India Limited is concerned, this Court in *Commissioner of Income-tax-3, Mumbai Vs. General Atlantic (P.) Ltd.* ⁴, the Tribunal adopted only IDC India Ltd. as comparable. The Tribunal had adopted IDC India Limited, which was common between the Revenue and the assessee, as comparable to determine the Arm's Length Price, while rejecting the other eight comparables selected by the Revenue.

17. The decision of the Tribunal was challenged by the Revenue in appeal, which was dismissed in *Carlyle India Advisors (P.) Ltd.* (Supra).

18. In regard to ICRA Management Consulting Services Ltd., the Tribunal relied upon the decision of the *Temasek Holdings Advisors India Private Limited Vs. DCIT* ⁵ and held that the same to be a good

3 [2020] 114 taxmann.com 221 (SC)

4 [2016] 68 taxmann.com 88 (Bombay)

5 [2014] 47 ITR (Trib.) 311

comparable in view of the fact that it was offering consultation services in the area of strategy, risk management and operations regulatory economics and translations Advisory and that its entire revenue was being generated from consultation fees.

19. In this regard, learned counsel for the respondent relied upon an order dated 28th March 2022 passed in Income Tax Appeal No. 117 of 2018, in the case of the assessee, in which a similar issue was raised and rejected and the appeal dismissed.

20. Be that as it may. We are of the view that no interference is warranted in the order passed by the Tribunal. The appeal is found to be without any merit, and is accordingly dismissed with no order as to costs.

[VALMIKI SA MENEZES, J.]

[DHIRAJ SINGH THAKUR, J.]