

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

BEFORE SHRI RAJENDRA SINGH , AM & SHRI VIJAY PAL RAO, JM

ITA No. 6315/Mum/2012  
(Asst Year 2008-09 )

Sandstone Capital Advisors Pvt Ltd Gr Floor Ismail Bldg D N Road, Flora Fountain Fort, Mumbai 400 001	Vs	The Asst Commr of Income Tax 3(3), Mumbai
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>PAN No.</b>	<b>AAICS8031L</b>
Assessee by	Shri Pardiwala/Madhu Agarwal
Revenue by	Ajeet Kumar Jain
Dt.of hearing	21 <sup>st</sup> Jan 2013
<b>Dt of pronouncement</b>	<b>6<sup>th</sup> FEB 2013</b>

**ORDER**

**PER VIJAY PAL RAO, JM**

This appeal by the assessee is directed against the assessment order dated 28.9.2012 passed u/s 143(3) r.w.s 144C(13) in pursuant to the directions of the DRP u/s 144C(5) of the I T Act for the AY 2008-09.

2 The only ground raised by the assessee in this appeal is as under:

*“On the facts and circumstances of the case and in law, the Assessing Officer erred in making an adjustment of ₹ 15,16,87,983/- to the international transaction of providing investment advisory services. “*

3 The assessee is a 100% subsidiary of Sandstone Capital LLC., a Delaware limited Liability Company having registered office at Boston, USA. The assessee company was incorporated in financial year 2004-05 and is engaged in carrying out business in providing financial services. As per the investment advisory agreement, the assessee was appointed as an investment advisor by Sandstone Capital LLC to provide investment advisory services in connection with investments in Indian securities. The services include analysing, investigating and identifying opportunities

in India and providing recommendations on such investment opportunities in India. During the financial year under consideration, the assessee has transactions with M/s Sandstone Capital LLC., which was subsequently become the holding company of the assessee and therefore, as an Associated Enterprises (AE) of the assessee. The details of the transactions are as under:

Sl.,No	Particulars of transactions	Amount (₹)
1	Provision of investment advisory services	30,92,69,400
2	Reimbursement of expense received	20,68,981

3.1 The Assessing Officer has made a reference to the TPO for determination of the ALP with reference to the international transactions reported in Form 3CEB. The dispute is only with respect to the determination of ALP of the transactions of investment advisory services. The assessee has determined the ALP of its investment advisory transactions with its AE by adopting TNMM as the most appropriate method and used Operating Profit/Total Cost (OP/TC) as PLI. The assessee has selected 5 comparables companies for benchmarking its ALP as under:

Sl.No.	Name of the company	Data Source	Average PLI
1	Crisil Research & Information Services Ltd (Merged)	Prowess	6.45%
2	Arix Consultants P Ltd	Prowess	7.32%
3	IDC India Ltd	Prowess	15.09%
4	ICRA online Ltd (information services Segment)	Seg. Prowess	45.91%
5	Crisil Ltd (information segment)	Seg Prowess	19.23%
	<b>Mean</b>		<b>18.80%</b>
	<b>Median</b>		<b>15.09%</b>

3.2 Since the assessee's operating profit on the total cost is at 17.57%; therefore, the assessee claimed that the assessee's mark up on total cost for the year under considerations is within the range of option as per the proviso to sec 92C(2) of the IT Act and therefore, it was claimed at ALP.

3.3 Before the TPO, the assessee has selected 6 comparables for benchmarking its ALP, the details of which are given in the order of the TPO as under:

Sl.No.	Name of the comparables	(OP/OT) for 2007-08(%)
1	IDC India Ltd	14.82
2	Crisil Ltd –Information Segment (Research)	31.80
3	Arix Consultants P Ltd	5.32
4	Ambit Capital Pvt Ltd (Segment)	-0.33
5	Quantum Advisors P Ltd	3.26
6	Indian Venture Capital Ltd	11.20
	Average	11.01
	<b>Assessee's average</b>	<b>17.57</b>

3.4 The TPO did not accept the comparables selected by the assessee as per the reasons stated in the order except one company namely Crisil Limited. The TPO has carried out its own search and initially proposed to take into consideration 11 comparables. The assessee raised the objections against the selection of 11 comparables by the TPO vide letter dated 3.10.2011.

3.5 After considering the objections raised by the assessee, the TPO finally selected 6 comparables as under:

Sl.No.	Name of the comparables	PLI (OP/TC)%
1	CRISL – Research Segment	45.42
2	SBI Fund Management P Ltd	114.70
3	ICRA Ltd	102.08
4	Deutsche Asset Management I Ltd	10.18
5	Siyaram Broking Intermediary Ltd	112.21
6	21 <sup>st</sup> Century Shares & Securities Ltd	66.84
	Arithmetic Mean	75.23
	<b>PLI of assessee</b>	<b>20.33</b>

3.6 The arithmetical mean of operating profit of comparables, by using single year data instead of multiyear data as applied by the assessee has been computed by the TPO at 75.23% and accordingly made an adjustment of ₹ 15,16,87,983/-

4 After receiving the TPO order dated 17.10.2011, the Assessing Officer passed a draft assessment order proposing an addition of ₹. 15,16,87,983/- on account of TP adjustment.

4.1 The assessee filed its objection against the draft assessment order before the DRP, which was rejected by the DRP while passing the directions dt 30.7.2012 and directed the Assessing Officer to proceed with the finalisation of the order as per the directions.

4.2 In pursuant to the directions of the DRP, the Assessing Officer has passed the impugned order dated 28.9.2012 whereby an addition of ₹ 15,16,87,983/- has been made being the TP adjustment.

5 Before us, Shri Padriwalla, the Id Sr counsel for the assessee has submitted that the assessee and M/s Sandstone Capital LLC, USA entered into an agreement dated 5.3.2005 under which the assessee received advisory fee initially US \$ 30000 and thereafter it was increased to US\$ 40000 w.e.f 29.3.2006. He has further submitted that at the time of agreement as well as at the time of increasing the advisory fee to 40000 US\$, M/s Sandstone Capitals LLC, USA was not the AE of the assessee. It is only on 14.3.2008, M/s Sandstone Capitals LLC., USA bought the entire share holdings of the assessee and thus, became the holding company and thereby an AE. In support of his contention, he has referred the Director's report at page 1 of the paper book as well as schedule I to balance sheet as on 31.3.2008 at page 8 of the paper book showing that the entire share holding of the assessee company is purchased by M/s Sandstone Capital LLC only in this year. The Id Sr counsel has also referred the notes on account and submitted that the assessee has disclosed the related party transactions as per AS- 18 whereby the date of acquiring the entire

holdings of the assessee by M/s Sandstone Capital LLC is given as 14.3.2008 at page 17 of the Paper Book.

5.1 The Id Sr counsel has also referred the sale of services at ₹ 25,98,050/-. He has further submitted that the assessee's operating profit on the international transaction is at 17.57% as against the ALP being the average of operating profit of the comparables finally selected by the assessee before the TPO at 11.01%.

5.2 At the threshold the Id Sr counsel for the assessee has submitted that the entire sales is though to one party; however, the sale after 14.3.2008 would become the international transaction and therefore, only for 15 days for the year under consideration, the assessee is having transactions with its AE because prior to that M/s Sandstone Capital LLC was not the AE of the assessee. Thus the entire sales during the year cannot be considered as sale to AE.

5.3 The Id Sr counsel has referred the TP study filed by the assessee and submitted that by virtue of the investment management agreement between M/s Sandstone Capital LLC and the overseas fund, it was appointed as the Investment Manager of the funds and it has given complete authority to invest and reinvest the fund assets in securities at its discretion that would be in the best interest of the funds. Vide investment advisory agreement dated 5.3.2005, the assessee was appointed as an Investment Advisor by Sandstone Capital LLC to provide investment advisory services in connection with the investments in Indian securities. He has referred the functional analysis and submitted that M/s Sandstone Capital LLC., functions as an investment manager to manage the assets and investments of Sandstone Group funds. In the process of investment management, Sandstone LLC primarily acts upon the assessee's recommendation. However, the ultimate buy/sell decisions are

taken by M/s Sandstone Capital LLC. M/s Sandstone Capital LLC undertakes the following routine activities;

- i) issue orders to brokers for investments;
- ii) instructs the custodian to exercise or abstain from exercising any option, privilege or right held in the investment account;
- iii) monitors and corrects collection of income on the investment account by the custodian; and
- iv) makes any other action with respect to securities or other property in the investment account needed to serve the best interest of the funds.

5.4 On the other hand, the assessee performs the functions to provide investment advisory services in connection with investments in India securities that assist Sandstone LLC to make investment decisions from time to time.

5.5 In pursuance of the Investment Advisory Agreement, the assessee primarily performs the following activities:

- a) Recommending Sandstone LLC of investment and disposition opportunities*
- b) Assisting in monitoring the performance of the portfolio companies;*
- c) Performing such other duties, functions and activities as Sandstone LLC may from time to time request to perform*
- d) Advising the investment manager in complying with any relevant statutory or legal or regulatory requirements which exist in India., etc.*
- e) Providing relevant information as may be required in connection with net asset value calculation of investment/scrips."*

5.6 Thus, the Id Sr counsel for the assessee has submitted that various functions performed by the assessee are in the nature of identify prospective investment opportunities by identifying industry growth drivers and key success factors in the economy or specific industries. Further, the analysts evaluate the prospective investment opportunities by conducting extensive economical and statistical research and obtain opinions of other professionals and consultants. Due diligence

is taken in making reasonable assessment of the parties position and the financial prospects of the prospective investee companies and of qualification and expertise of their management. Based on the technical analysis, the assessee provides a final recommendation with respect to the prospective investment and disinvestment.

5.7 The assessee also prepares progress reports pertaining to the investments made by M/s Sandstone LLC and accordingly performed the management services. The assessee, however, does not have the right to undertake any decision on behalf of the Investment Manager of the fund.

5.8 The Id Sr counsel for the assessee has further pointed out that the assessee is exposed to low risk by performing its services and submitted as under:

*"i) Sandstone India is not exposed to any direct risks while performing its services, since the investment decision for the Sandstone funds is the responsibility of the Sandstone LLC, as applicable and Sandstone India is only carrying out analysis and providing non binding advice in the form of reports, statistical data and factual information.*

*ii) Sandstone LLC cannot hold Sandstone India responsible for any loss (whether real or notional) arising from any depreciation in the value of the fund or the income derived from it, based on the investment decision.*

*iii) Risk profiling of Sandstone India and vis-à-vis its associated enterprises is provided below:*

*i)Market Risk/Price Risk*

*iv) Market risk arises for a business due to increased competition and relative pricing pressure, change in demand patterns and needs of customers, inability to develop/penetrate in a market etc.,*

*v) As Sandstone India carries out work on an outsourced basis, Sandstone India's exposure to market risk is minimal. Further, Sandstone India's revenue (fees) are not directly linked to the value of investments made. Therefore, Sandstone India faces limited risk in this respect.*

*ii)Credit Risk*

*vi)This is the risk arising from non payment of dues by customers. Since services of Sandstone India are provided to its AE, the non payment eventuality is minimised.*

*iii) Manpower Risk*

vii) Any enterprise which is dependent for its success upon quality personnel with superior technical knowledge and experience is faced with this risk. Competitive market forces expose such an enterprise to the risk of losing its trained personnel. As the operations of Sandstone India rely on the quality of personnel, it faces normal level of risk in this regard.

iv) Foreign currency risk

viii) This risk relates to the potential impact on profits that may arise because of changes in foreign exchange rates. Since Sandstone India is compensated by in USD, it faces foreign exchange risk on account of foreign exchange losses, due to foreign exchange rate movements."

5.9 It was further submitted that the assessee has carried out search by taking into consideration the two years data; however, later on the TPO proposed to use only current year data. Since the assessee is primarily engaged in providing investment research/advisory services in the financial services space; therefore, the assessee undertook search process and selected the companies falling under the main headings of 'Financial and Leasing Services and business services'.

5.10 After setting out the comparables, the assessee has reduced its search by selecting 159 companies out of 475 resulted initially found. Finally on the basis of functional similarity and engaged in the same activities, the assessee selected 5 comparables.

5.11 Before the TPO, the assessee again selected 6 comparables in which 3 comparables namely **IDC India Ltd; Crisil Ltd; and Arix Consultants Pvt Ltd** are common to the original comparables along with 3 new comparables were selected by the assessee. The Id Sr counsel has submitted that the TPO has took its own comparables and only one comparable namely Crisil Ltd was common. The Id Sr counsel has submitted that the TPO himself has dropped out 6 out of 11 comparables initially considered due to the objections of the assessee. However, the remaining 5 companies selected by the TPO are also functionally different except



one i.e. Crisil Ltd., which is common in both the assessee as well as the TPO's comparables.

5.12 The Id Sr counsel has submitted that though the company **Crisil Ltd** is common; however, the TPO has taken the operating profit/total cost at 45.42% whereas the assessee took the operating profit from financial accounts of the said company at 31.80%. The Id Sr counsel has referred the financial account of Crisil Ltd at page 184 of the paper book and submitted that the assessee has computed the operating profit at 31.80% as per the record available and it is not clear from the TPO order that how the operating profit has been taken at 45.42%. The Id Sr counsel has pointed out that the assessee took research segment profit of Crisil Ltd which is not disputed by the TPO. There is nothing on record for taking some different operating profit by the TPO.

5.13 Apart from this, the Id Sr counsel has submitted that Crisil Ltd is basically a rating agency; though it is also in the business of research. The Id Sr counsel has pointed out that the advisory services of Crisil Ltd has been transferred to its subsidiary; therefore, only research segment is available as a comparable. The Id Sr counsel has submitted that though this is a common comparable; however, about 60% of the income is from related transactions; therefore, this comparable should be excluded. The Id Sr counsel has submitted that the TPO himself has excluded some of the comparables on the basis of these objections of related party transaction; therefore, Crisil research having related party transaction should be excluded as a comparable.

5.14 The Id Sr counsel for the assessee has further submitted that the second comparable taken by the TPO is **SBI Fund Management Pvt Ltd** which is an asset

management company and not an advisory company. Therefore, there is no functional similarity of SBI Management Pvt Ltd with the assessee and cannot be considered as a comparable. He has referred the directors' report of the SBI Fund Management Pvt Ltd at page 298 of the Paper Book and submitted that the said fund is only equity fund house, being fund manager and has no advisory or research services. Therefore, the entire receipts of SBI fund management are from management fee and there is no income from research. The advisory fee; though it is negligible; however, it is for portfolio advice as it is clear from the P&L account of the said company at page 313 of the Paper Book. He has also referred the note no.10 of the notes on accounts at page 334 of the Paper Book and submitted that the segmental reporting disclosure as required by AS-17 by the said Fund is not applicable since the company has a single reportable business of asset management services to the schemes floated by SBI Mutual Fund. Only 10% of the revenue is from advisory services that too in the portfolio advisory services; therefore, it cannot be considered as a comparable. He has also referred the balance sheet of the fund wherein the product description was given as asset Management Company.

5.15 The Id Sr counsel has referred the objections of the assessee filed before the TPO at page 455 of the Paper Book and submitted that similar to SBI Fund Management, **Deutsche Asst Management India Ltd**, which is taken as a comparable by the TPO is also an asset management company and therefore, it cannot be considered as a comparable to the assessee. He has referred the P&L account at page 280 of the Paper Book and submitted that the major part of the revenue was receipts against the investment fee.

5.16 Even other wise, there are related party transactions as mentioned in the note 13 to the notes on account at 294 of the Paper Book. Thus, even on this ground of having related party transaction, this company cannot be taken as a comparable.

5.17 The Id Sr counsel has then referred the **Shriyam Broking Intermediary Ltd** and **Twenty-first Century Shares & Securities Ltd**. These two companies taken by the TPO as comparable; but both these companies are in the business of broking and therefore, there is no functional similarity with the assessee. The Id Sr counsel has referred the director's report of Twenty-first Century Shares and Securities Ltd., and submitted that this company is a Member of NSE of India and engaged mainly in institutional and retail broking. He has also referred the P&L Account and submitted that the main income of this company is broking; therefore, there is no comparison of nature of business or functionality with that of the assessee.

5.18 Similarly, in the case of Shriyam Broking Intermediary Ltd, it is mainly in the stock and commodity broking. The Id Sr counsel has submitted that for the AY 2009-10, the TPO himself has excluded broking house from the comparables. He has referred the show cause notice issued by the TPO wherein the TPO in para 6.8 excluded the broking house from the comparables. The Id Sr counsel has also referred the decision of the coordinate Benches of the Tribunal in the case of Carlyle India Advisors Private Ltd in ITA 7901/Mum/2011 vide order dated 4.4.2012. and submitted that the Tribunal has also held that the broking companies cannot be considered as comparable to the advisory and research services companies.

5.19 The next comparable taken by the TPO is **ICRA Ltd**. The Id Sr counsel for the assessee has submitted that the main business of the ICRA is rating services; therefore, there is no functional similarity. He has further pointed out that the major

income of the company is from rating services and the segment results in respect of similar services are loss; therefore, this company cannot be considered as a comparable. Hence, the Id Sr counsel has submitted that in view of the objections raised by the assessee, both these comparables which are taken by the TPO should be rejected.

5.20 On the other hand, the Id CIT-DR has relied upon the order of the TPO so far as the comparables are selected by the TPO for determining ALP.

6. We have considered the rival submissions as well as the relevant material on record with respect to the comparables selected by the TPO for making the transfer pricing adjustment in question. There is no dispute about the most appropriate method adopted by the assessee as TNMM for benchmarking of the ALP because the TPO has also adopted the same method.

6.1 The first comparable taken by the TPO is **CRISL Research and Information Services Ltd.** The said comparable is common as the assessee has also selected the same in its original TP study. Though CRISL Ltd is basically a rating agency; however, since the segment results relating to the research activity has been taken into consideration; therefore, the other activity being rating agency does not effect the comparability solely because of this fact. The Id Sr counsel for the assessee has pointed out that about 60% of the income of the CRISL Ltd is from the related party transactions. This is a material fact that has to be considered for the purpose of selecting the uncontrolled comparable transactions as per sec. 92C(1) r.w.r 10B(1)(e) for the purpose of determination of ALP. Since the TPO has not taken into consideration the related party transaction, if any in the case of CRISL Ltd and if this fact pointed out by the Ld Sr counsel is to be taken into consideration, then

irrespective of the fact that both the assessee as well as the TPO has considered this company as a comparability, it will be contrary to the provisions of transfer pricing regulations to consider such a comparable having related party transactions about 60% of the income. Hence, M/s CRISL Ltd cannot be considered as a proper comparable if it has such large related party transaction. Accordingly, the Assessing Officer/TPO is directed to verify/consider this fact and then decide the comparability of this company.

6.2 The next comparable company which is selected by the TPO is **SBI Fund Management P Ltd.** Undisputedly, the entire receipts of SBI Fund Management are from management fees and there is no income from research. Further, the advisory fee, as it is evident from the P&L account of that company is very negligible and that too is for the portfolio advice. Therefore, SBI Fund Management P Ltd is totally a functionally different company to that of the assessee as the business profile is entirely different from the business of the assessee. Hence, this company does not satisfy the requirement of the transfer pricing rules and regulations to be taken as a proper comparable of the assessee for the purpose of determination of the ALP.

6.3 Similarly, **Deutsche Asset Management India Ltd**, another comparable selected by the TPO for computation of ALP is also functionally different and therefore, cannot be considered as a comparable company of the assessee. This fact emerges from the P&L account of the said company at page 282 of the paper book which clearly shows that almost all revenues of the said company is from investment fee and therefore, there is no similarity between the business profile of the said company and the assessee. Apart from this, as pointed out by the Id Sr counsel that there are related party transactions. Hence, in the facts and

circumstances as discussed above, Deutsche Asset Management India Ltd cannot be considered as a good comparable of the assessee for the purpose of determination of ALP of the international transactions.

6.4 Next comparables selected by the TPO is **M/s Shriyam Broking Intermediary Ltd and M/s Twenty-first Century Shares & Securities Ltd** . From the Schedule-H forming part of P&L Account of Shriyam Broking Intermediary Ltd , we find that the income from operations is only from broking activity and there is no income from advisory fee. Thus, it is clear that the said company derives income only from broking activity.

6.5 Similarly, Twenty First Century Shares & Securities Ltd is also is in the business of share broking and also member of NSC of India. Thus, the main business of the said company is institutional and retail broking as it is evident from the financial accounts of the said company. The P&L Account of the company clearly shows that the main income of this company is from broking. The TPO has also noted that these companies are broking houses. Hence, these two companies are entirely different in their business profiles and therefore, not functionally comparable with that of the assessee company.

6.5.1 We may note that the coordinate Bench of this Tribunal in the case of Carlyle India Advisors Pvt Ltd in ITA No. 7901/Mum/2001 vide order dated 4.4.2012 has also taken a view that the company having income from Syndication fees and brokerage commission cannot be compared with the company, which is engaged in the business of investment and advisory related support services.

6.5.2 We further note that the TPO itself has excluded the broking houses from comparables for the Assessment Year 2009-10. The Id Sr counsel for the assessee has

filed a copy of the show cause notice and in para 6.8 of the said notice reads as under:

*"6.8 A search was conducted in the Capitaline and proweess database using the key word financial services, investment advisory service, investment advisory fee, investment management service. A search was also conducted in the internet website shine.com with the key words financial services and investment advisory services. The companies thrown out in the search were financial companies, equity broking companies, asst management companies, companies rendering portfolio management services and investment advisory services. The companies, with turnover less than 1 crore, companies with RPT more than 25% were exclude. On functional analysis, companies engaged in mere financial services, investment banking, merchant banking, equity/stock broking were excluded. The companies rendering financial consultancy services, advisory services were analysed. On such analysis the above referred 4 companies were selected. The list of companies rejected on qualitative analysis is enclosed."*

6.5.3 As it is clear from the contents of the above part of the show cause notice of the TPO that the companies engaged in mere financial services, investment banking, merchant banking, equity/stock broking were excluded. In view of the above facts and circumstances, we hold that M/s Shriyam Broking Intermediary Ltd and M/s Twenty-first Century Shares & Securities Ltd., cannot be considered as comparables to the assessee as these are functionally different companies having different business profiles.

6.6 The next comparable company selected by the TPO is **ICRA Ltd.**

6.6.1 Since the main business of ICRA Ltd is rating services; therefore, the said company is functionally different. Even otherwise, the segment results of ICRA Ltd are loss; therefore, this company cannot be considered as a good comparable on the basis of the entity level results when the entire income is from the rating services. Thus, the comparable selected by the TPO for determination of the ALP are not found as proper comparables in view of the facts as discussed above.

7 The Id Sr counsel for the assessee then took us to the reasons recorded by the TPO for rejecting the comparables selected by the assessee.

7.1 **IDC India Ltd:** He has pointed out that in the case of IDC India Ltd, the TPO rejected the said company on the ground that it does not offer any investment advisory services. The Id Sr Counsel has referred the P&L Account as well as the audit report and submitted that IDC India Ltd is a research company, primarily dealing in research and survey services and products. It does not have any physical inventories. Therefore, the business activity of IDC India is similar to that of the assessee. Almost the entire income is from the sale and services which is from the business of marketing and research management and consultancy services. He has referred note-12 to the notes on account and submitted that the company is a single segment company in the business of market research and management consultancy and no further disclosures are required under AS-17 other than those already provided in the financial statements. Thus, it was contended that as it can be seen from the record that the said company is only a research and management services and provides investment advisory research services and therefore, functionally comparable.

7.1.1 *Per contra*, Shri Ajeet Kumar Jain, Id CIT DR has submitted that in the case of IDC India Ltd., the income has been shown in the P&L account under the head 'sales and services' income. The description of sales has not been given in the records. He has further pointed out that as per the Schedule to the Balance Sheet; the general business profile of IDC India Ltd is given as (conversion income and management consultancy) conduct of research and survey, business functions and



management consultancy; therefore, this company is functionally different from the business profile of the assessee.

8 Having considered the rival submissions as well as the relevant material on record, we find that the main business of the assessee from which it has derived its income is conducting research and survey, business conversion and management consultancy. Though the separate results in respect of each activity are not provided; however, prima facie, it appears that the company is in the business of marketing research and management consultancy. Therefore, as far as the functions of IDC India Ltd are concerned, the same are similar to the activity of the assessee. Therefore, in our considered view, IDC India Ltd can be considered as a good comparable for the purpose of determination of ALP.

9 **Arix Consultants Pvt Ltd** : The next comparable which has been rejected by the TPO is Arix Consultants Pvt Ltd on the ground that data for the Assessment Year 2007-08 is not available in the public domain and hence the company is not suitable comparable. Whatever data available which includes directors report and Annexure to the audit report and P&L account. The Id Sr counsel has further submitted that the nature of business of Arix Consultants Pvt Ltd is magazine publication and investment research. However, the income of the said company is primarily from the operations of doing consultancy. The TPO has also pointed out that the financial results of the company for the entire financial year is not available in the public domain as the data are available only upto 30.6.2007. The Id Sr counsel has fairly admitted that there are related party transaction in the case of Arix Consultants Pvt Ltd as per the details given at page 89 of the paper book.

Therefore, the said comparable may not be considered on the ground of related party transaction; though the TPO has not rejected on this ground.

9.1 On the other hand, the Id DR has submitted that the company's financial accounts are prepared on 30.6.2007; therefore, the data for the entire financial year are not available and only for 3 months data were available. Therefore, in view of the decision of the Pune Benches of the Tribunal in the case of Honeywell Automation India Ltd vs DCIT in ITA No. 4/PN/08 vide order dated 10<sup>th</sup> Feb 2009. This company may not be considered as a comparable for want of financial results for the entire year.

10 We have considered the rival submissions and relevant material on record. The TPO has rejected this comparable because the financial data for the Financial Year 2007-08 were not available in the public domain and hence, it was held that this company is not a suitable comparable. There is no dispute that the data furnished by the assessee are regarding the financial results as on 30.6.2007. Therefore, as far as the financial year 2007-08 is concerned, the data available were only for 3 months.

10.1 As per Rule 10B(4), the data to be used in analysing the comparability of an uncontrolled transaction with an international transaction shall be the data relating to the financial year in which the international transaction has been entered into. Therefore, it is mandatory for the purpose of comparing the data of an uncontrolled transaction with an international transaction that the same should be relating to the financial year in which the international transaction has been entered into. The information, data and documents should be contemporaneous.

10.2 Undisputedly, the final accounts of Arix Consultants Pvt Ltd are prepared on 30<sup>th</sup> June; therefore, the objection raised by the TPO has merits. The Pune Benches of the Tribunal in the case of Honeywell Automation India Ltd in ITA No.4/PN/08 vide order dated 10<sup>th</sup> Feb 2009 has also taken a similar view.

10.3 Apart from this, as it has been fairly conceded by the Ld Sr counsel for the assessee that there are related party transaction in the case of Arix Consultants Pvt Ltd as it is evident from the note on account at page 89 of the paper book. Therefore, in view of the fact that this company is having related party transactions, the same cannot be considered as a proper comparable.

11 **Ambit Capital Pvt Ltd:** This comparable has been rejected by the TPO on the ground that the company has negligible business of advisory services and also earned more than 30% from the related parties. The Ld Sr counsel has not disputed the fact that the related party transaction whereby more than 30% of the segment revenue are from related party transactions.

11.1 In the case of Ambit Capital Ltd, the Ld DR has pointed that this company has more than 25% of the revenue from the related party; therefore, cannot be considered as a suitable comparable.

12 We have considered the rival submissions and relevant material on record. As admitted by the Ld Sr counsel for the assessee that there are related party transactions of more than 30% of the segment revenue; therefore, this company cannot be considered as a comparable for determination of the ALP.

13 **Quantum Advisors Pvt Ltd:** This comparable has been rejected by the TPO on the ground that the said company is primarily engaged in floating and managing

quantum mutual funds and also having basic functional difference with the assessee's function of providing investment advisory services. The TPO has also pointed out that the financial data for the Financial Year 2007-08 is not available in the public domain and hence is not a suitable comparable. Apart from this, the TPO has also noted that the company has negligible income from the services in comparison to the total revenue of the company. The Id Sr counsel has referred the director's report and submitted that the company is providing advisory services, fund accounting and back office services to QIEF management LLC , Mauritius. He has also referred the P&L accounts of the company and submitted that the majority of the income is from profession and consultancy fee. Therefore, the company is in the business of providing consultancy services, which is similar to the assessee.

13.1 On the other hand, the Id DR has submitted that this company is providing services only to one party namely QIEF management LLC , Mauritius. He has filed the details of the information taken from the website of the said company and submitted that the said enterprise has been shown as a related party; therefore, this cannot be considered as a proper comparable. Apart from this, the Id DR has also pointed out that financial accounts are prepared as on 30.6.2007; therefore, the final results are not available for the entire financial year 2007-08. In support of his contention, he has relied upon the P&L account at page 101 of the paper books which are prepared as on 30.6. 2007.

14 Having considered the rival submissions and relevant material on record, we note that M/s Quantum Advisors P Ltd is providing services to QIEF Management LLC Mauritius. The Id DR has produced the extract from the financial account of the company which shows that QIEF Management LLC is an Associated Company and

thus, the entire income of Quantum Advisors P Ltd is from related party transactions. In view of this fact brought before us by the Id DR, this company cannot be considered as a comparable for determination of the ALP in respect of the international transaction of the assessee company. Further, when the contemporaneous data were not available before the TPO, then the results upto 30.6.2007 can't be compare with the transaction with AE of the assessee upto 31.3.2008.

15 **Indian Venture Capital Ltd:** This comparable was rejected by the TPO on the ground that the company is engaged in rendering software related services and hence is not an acceptable comparable. The TPO has also pointed out that for the year under consideration, the revenue from the service charges is only ₹ 20.25 lacs which is not even a crore and hence, it cannot be taken as comparable.

15.1 The Id Sr counsel has submitted that the main business activity of the Indian Venture Capital Ltd is research and advisory, in the business strategy and investor apart from general business idea in the various fields of business and infrastructure etc. Identifying the weakness suggest ensuring improvement in the business strategy, product disclosure etc., He has referred the P&L accounts of the company and submitted that the entire income is from services charges. There is nothing to suggest that the services provided in the software services though, the TPO has taken software services as given in the notes on account. But there is nothing on the website of the company to suggest that the company is in the software services.

15.2 The Id DR has submitted that the TPO has pointed out that the turn over of the company is only 20 lacs as against the turnover of the assessee at 32 crores. He has

referred the notes on account and submitted that the main business of the said company is stated as software services. Moreover, the accounts of the company are prepared on 30.6.2007 and therefore, the data for the full financial year 2007-08 were not available before the TPO.

15.3 The Id DR has further submitted that if the comparables from both the sides as selected by the assessee as well as by the TPO are not found proper, then in view of the fact that in the subsequent Assessment Year as recorded by the TPO in the show cause notice filed by the assessee, at least some comparables are found to be agreed by both the parties and therefore, this issue may be remanded to the records of the Assessing Officer for examination and reconsideration in the light of the undisputed comparables for the AY 2009-10.

15.4 In rebuttal, the Id AR has submitted that as per the notes to the financial accounts only income shown by the assessee is by way of service in market survey and therefore, the said comparables cannot be excluded on the ground as taken by the TPO though, the accounts are prepared on 30.6.2007. However, the accounts prepared as on 30.6.2008 may be considered which covers the entire financial year.

16 Having considered the rival submissions and carefully gone through the relevant material on record, we note that the TPO has rejected this company as a comparable on the ground that this company is engaged in rendering software related services. Apart from this, the TPO has also raised the objection that the revenue from service charges for the year is only ₹ 20.25 lacs in comparison to the assessee's turnover of ₹ 32 crores. The Id Sr counsel for the assessee, though objected to the said observation of the TPO that the company is in the software services as there nothing on the website of the company to suggest that the

company is in the software services, however, It is clear from the note on account that the business profile of the company has been shown as rendering software related services. Further, when the turnover from the services charges is only ₹ 20 lacs in comparison to the assessee's turnover of Rd 32 crores, then it is not appropriate to compare this company with the assessee for the purpose of determination of ALP. Thirdly, the contemporaneous data for the FY 2007-08 were not available before the TPO. Hence, we do not find any reason to disturb the order of the authorities below, qua this comparable.

17 As we have discussed above comparables as selected by the assessee as well as by the TPO except IDC India Ltd., are not proper and suitable comparables for the purpose of determination of ALP on international transactions of the assessee. In view of the fact that for the AY 2009-10, some of the comparables are found as acceptable to both parties, therefore, we set aside this issue to the record of the Assessing Officer/TPO to determine the ALP after taking into consideration the comparables which are accepted by both the parties for the Assessment Year 2009-10 as well as considering any other suitable comparables.

18 As regards the issue of considering single year data instead of multi year data is concerned, this issue is now settled and the current year data has to be taken into consideration until and unless some exceptional circumstances are brought on record to show that one year data of comparable do not give true picture being influent by such circumstances. As per Rule 10B (4) for determining the ALP u/s 92C, the data to be used in analysing any comparability of uncontrolled transaction with an international transaction shall be the data relating to the Financial Year in which the international transaction has been entered into. Thus, it is manifest from the sub

rule (4) of Rule 10B that the data of the financial year in which the international transaction has been entered into to be used for analysing comparability of uncontrolled transaction in order to determine the ALP. The proviso to sub. rule (4) of Rule 10B provides the option for considering the data relating to the period other than the financial year in which the international transaction has been entered into; but not being more than two years prior to such financial year.

18.1 The proviso to sub. Rule 4 of Rule 10B does not mandate that always consider two more years' data of comparables in such analysis; but has a limited role only when the data of current year reveal some exceptional facts which could have influenced on determination of the Act in relation to the transaction being compared.

18.2 When the assessee has not made out a case that taking the data of only current financial year does not present the correct and fair financial result of the comparables then there is no mistake in considering the data for the financial year in which the international transaction has been entered into. There is a rationale for using the data of the comparables pertaining to the same period during which the international transactions took place because it will rule out the effect of difference in economic and market conditions prevailing/exist at different time period. Therefore, we do not find any error or illegality by taking into consideration only the data of the financial year in which the international transaction has been entered into.

19 The assessee has also raised a plea that if at all any adjustment is to be made the same should be considered only with respect to the transactions carried out



after 14.3.2008 till 31.3.2008 because prior to that M/s Sandstone Capital LLC was not an AE of the assessee.

19.1 Since this plea has been raised for the first time before us and the authorities below have not considered the same; therefore, the Assessing Officer/TPO is directed to consider the contention of the assessee and decide the same as per law.

20 In the result, the appeal filed by the assessee is allowed for statistical purpose.

**Order Pronouncement in the Open Court on this 6<sup>th</sup>, day of Feb 2013**

Sd/-

Sd/-

<b>( RAJENDRA SINGH )</b> Accountant Member	<b>( VIJAY PAL RAO )</b> Judicial Member
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Place: Mumbai : Dated: **Feb 2013**

**Raj\***

Copy forwarded to:

1	Appellant
2	Respondent
3	CIT
4	CIT(A)
5	DR

/TRUE COPY/  
BY ORDER

Dy /AR, ITAT, Mumbai