SAP Labs India Private Limited v. Income Tax Officer, Ward-12(2), Bangalore and connected proceedings

ITA No. 10 of 2011 c/w ITA Nos. 23/2011, 24/2011, 44/2015, 128/2015, 469/2015, 492/2016, 514/2016, 884/2017, 955/2017, 956/2017 & IT Appeal Cross Objection No. 1 of 2018

ITA No. 10 of 2011 c/w ITA Nos. 23 & 24 of 2011 and 9 Others (Kar HC, Reportable, decided 28.08.2026) | 2026-08-28

Transfer pricing after Supreme Court remand: comparability, filters, forex nexus and 5% tolerance; mixed disposal with limited remands

Income-tax Act, 1961: Chapter X — sections 92, 92A, 92B, 92C, 92C(2), 92C(3), 92CA, 92D and 260A | Income-tax Rules, 1962: Rules 10A, 10B, 10C, 10D and 10E

High Court of Karnataka | 2-judge bench (Division Bench) | S. G. Pandit, J. | K. V. Aravind, J.

Assessment years: 2003-04, 2006-07, 2007-08, 2008-09, 2009-10, 2012-13

Distinct proceedings preserved; source contains differing comparable directions

Shared source bytes do not establish that the retained CNR records are aliases. No exact CNR-to-caption mapping is proved. Paras.26.3–26.5 remit Hinduja/Aftek exclusion in ITAs 23/2011 and 24/2011, while paras.31.1–31.4 find no substantial question on abnormal-profit/loss exclusions in ITA 10/2011. Read both directions; this note does not reconcile them by inventing a uniform result.

01 FACTS OF THE CASE

The Supreme Court remitted the transfer-pricing appeals for examination of statutory compliance and perversity, without deciding their merits. This common judgment covers eleven appeals and Swiss Re's cross-objection: SAP, Bearingpoint, MSource, Subex, Net App, Swiss Re and Tavant proceedings for the assessment years listed above. The method itself was not disputed; comparables, filters, forex, burden, appellate data, tolerance and working-capital adjustment were contested. SAP's lead appeal concerns AY 2003–04 and the Tribunal order of 30 August 2010.

Source: Captions pp.1–13; own paras.2–3.6,10; pp.14–30,71

02 DISCUSSION BY THE HON'BLE COURT

Section 92C(3) requires statutory grounds before replacing the taxpayer's study; a standard departmental set cannot substitute for Rule 10B analysis. The Court sustained the Rs.200 crore turnover filter and preferred 15% RPT, permitting 20%/25% where insufficient lower-threshold comparables are specifically established. Forex requires direct transaction nexus. Each party must justify the comparable change it seeks; later reliable data can be considered on appeal. Working-capital adjustment remains fact-dependent. The former 5% tolerance is not a deduction, and section 92C(2A) applies retrospectively from AY 2002–03.

Source: Own paras.11–19.2 and conclusions; pp.71–98

03 JUDICIAL DECISION

Forex issues in ITAs 128/2015, 469/2015, 23/2011, 24/2011 and 492/2016 were remitted to the TPO for nexus verification. In ITAs 23/2011 and 24/2011, Hinduja/Aftek exclusion was remitted to the Tribunal; the 5% questions were answered for Revenue with fresh TPO determination. Other challenged factual findings largely survived. Swiss Re's cross-objection was dismissed as not maintainable under section 260A. In ITA 10/2011, question 20.6 went to Revenue; the Court found no substantial question on the other comparable challenges, including Satyam, and declined question 20.10 as outside the remand.

Source: Own paras.20–32; pp.98–120

04 OUTCOME / IN WHOSE FAVOUR

Mixed disposal with specific remands, not blanket deletion of transfer-pricing adjustments. The Court did not determine a final revised ALP. Non-remitted issues were outside this rehearing. The differing Hinduja/Aftek passages are expressly disclosed.

Source: Own paras.22.4,23,26,27.1,30–32; pp.102–120

05 EXPERT COMMENTS

Identify the proceeding before using the result — Map each issue to its docket. Forex goes to the TPO; Hinduja/Aftek reconsideration in ITAs 23 and 24 goes to the Tribunal. The cross-objection fails on maintainability, not comparability merits. A common PDF does not make these results interchangeable.

Challenge the statutory defect, with the underlying data — Rejecting mechanical substitution does not extinguish the taxpayer's documentation burden. Identify the section 92C(3) ground, disputed FAR feature and annual-report or segmental evidence. Connect alleged legal error or perversity to that record, rather than merely asserting a preferred margin.

Use filters and forex as evidenced tests — The Rs.200 crore filter reflects size, intangibles and bargaining advantages. The 15% RPT threshold is not an absolute ceiling: document comparable availability. Reconcile forex to contracts, invoices and realization; the TPO remands show that stating a nexus test does not establish the nexus.

Separate tolerance from a deduction — For AY 2003–04, retrospective section 92C(2A) defeats subtraction of 5% before testing variation. Recompute without an automatic deduction. The historical percentage is not a universal current-year rule; this judgment does not quantify the revised adjustment.

Respect each comparable finding's limits — SAP's 6% filter turns on its contract. Satyam's retention reflects insufficient proof of falsification and the other margins, not certification of its accounts. Hinduja/Aftek directions differ: cite the precise docket and paragraph rather than asserting every abnormal-profit company must be excluded.

Source: Editorial analysis; own paras.11–32, PDF pp.71–120

SOURCE & VERIFICATION

High Court of Karnataka official reportable judgment PDF - AKHB Cloud Repository

121 pages: captions pp.1–13; own paras.1–32 pp.14–120; signatures p.121.

All 121 source pages read and visually inspected; SHA-256 verified.

Open cited source rendition

STATUTORY SCOPE

Historical Chapter X and Rules 10A–10E; current-law equivalence not verified.

LATER TREATMENT

Source checked 2026-10-21. Subsequent treatment not independently verified.

AI DISCLOSURE

AI-assisted research checked against the identified source. Extraction, interpretation or omission errors remain possible. Source review does not mean independent approval by a practising professional. Verify every material statement against the complete original judgment.

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