# The Commissioner of Income-Tax & Anr. v. M/s. Cisco Systems (India) Pvt. Ltd.

Income Tax Appeal No. 379 of 2013

2026:KHC:48625-DB | 2026-09-08

## Transfer pricing most appropriate method under section 92C & Rule 10B (AY 2007-08): captive entity importing warranty/AMC replacement spares from US AE and delivering them to AE's Indian customers at NIL price for a 1% markup is a service provider benchmarkable under TNMM, not a trader under Resale Price Method (RPM).

Income-tax Act, 1961: sections 10A, 92C, 92C(2), 92CA, 143(3), 144C and 260A | Income-tax Rules, 1962: Rules 10A to 10E

High Court of Karnataka | 2-judge bench (Division Bench) | Vibhu Bakhru, CJ. | K. S. Hemalekha, J.

Assessment years: 2007-08

### Method accepted; final ALP still subject to Tribunal's remand

The Court sustained TNMM recomputation, not a final nil adjustment or approval of the 1% markup. Section 10A question 6 was outside the remand inquiry. Source dates conflict: ITAT 20/28 March 2013; DRP 2 September 2011 is described as preceding an assessment dated 30 December 2010.

### 01 FACTS OF THE CASE

For AY 2007-08, the Transfer Pricing Officer passed an order dated 28.10.2010 under section 92CA making a transfer pricing adjustment of Rs. 80,52,22,112 in respect of spare-part replacement services rendered by M/s. Cisco Systems (India) Pvt. Ltd. to its US Associated Enterprise (Cisco US). Under the arrangement, Cisco group provided product warranties and sold AMCs to distributors; the Indian assessee imported replacement spares from Cisco US, acted as custodian, delivered replacements at NIL sales price to the AE's customers in India, returned or scrapped defective/obsolete parts as directed by the AE, was reimbursed customs duties, and earned a 1% markup on import cost. The assessee benchmarked the activity as a captive service under TNMM. The TPO re-characterised the assessee as a trader, applied the Resale Price Method (RPM), and made the Rs. 80.52 crore addition, which the DRP confirmed. The ITAT reversed the TPO, held that the assessee was a custodian/service provider lacking title, price-fixing autonomy or customer-selection rights, rejected RPM, and remanded the ALP computation to be carried out under TNMM. After the High Court's initial dismissal of the Revenue's appeal on 11.07.2018 (following Softbrands) was set aside and remitted by the Supreme Court in Sap Labs, (2024) 17 SCC 344, the appeal was heard afresh.

Source: Paragraphs 1-22; PDF pp. 2-10

## 02 DISCUSSION BY THE HON'BLE COURT

Examining the controversy in accordance with the Supreme Court's mandate in Sap Labs India Pvt. Ltd., (2024) 17 SCC 344, the Division Bench held that the Tribunal had properly analysed the assessee's functions, assets and risks (FAR) under Rule 10B. Unlike an independent trader who purchases goods by taking title, bears inventory risk, fixes the resale price, and selects customers, the assessee delivered replacement spares to the AE's warranty/AMC customers at a NIL sales price under the AE's directions and acted merely as a custodian earning a 1% cost markup. Consequently, the Tribunal's conclusion that the assessee's functional profile was akin to a service provider rather than a trader—and that TNMM rather than RPM was the Most Appropriate Method—suffered from no fault or perversity.

Source: Paragraphs 23-28; PDF pp. 11-12

## 03 JUDICIAL DECISION

Following its companion order in ITA No. 23/2005 passed on the same day and finding no substantial question of law, the High Court dismissed Income Tax Appeal No. 379 of 2013.

Source: Paragraphs 27-28; PDF p. 12

## 04 OUTCOME / IN WHOSE FAVOUR

Revenue’s AY 2007–08 appeal failed. The Tribunal’s direction to recompute ALP using TNMM and appropriate comparables remained intact. The Court did not itself determine the final adjustment, approve 1% as an arm’s-length margin or automatically grant the former 5% range benefit.

Source: Own paras.16–17,24–28; PDF pp.7–8,11–12

## 05 EXPERT COMMENTS

Document actual functions before selecting a method — Physical import and custody did not establish trading on these facts. The accepted profile included nil-price delivery to the AE's customers, no customer or resale-price discretion and custody under the AE's instructions. Support that profile with contracts and actual fulfilment records; drafting a service label alone cannot establish the economic substance found here.

Prove risk allocation as well as remuneration — The judgment records the AE's delivery risk, customs reimbursement and instructions for rejected or obsolete parts. Those features explain the accepted service profile. Reconcile who actually bore each cost or loss, rather than assume that a cost-plus invoice removes all risk. The recorded 1% markup describes the arrangement; it is not judicial certification of an arm's-length return.

Carry the remand through to a defensible computation — The Tribunal required appropriate comparables under TNMM and directed consideration of the former section 92C(2) range in light of precedent. Winning the method dispute therefore did not finish the pricing exercise. Preserve the comparable analysis, profit-level calculation and eventual remand order; neither a zero adjustment nor an automatic 5% deduction is established by this dismissal.

Frame appellate objections within the remand mandate — After SAP Labs, the inquiry was compliance with Chapter X and the Rules, not categorical immunity for transfer-pricing findings. Here Revenue did not argue that the accepted functional profile was perverse. Identify a concrete departure from the governing method or record if challenging it; also keep the section 10A turnover question separate, since it was not considered in this remand.

Source: Editorial analysis; own paras.7–28; PDF pp.4–12

## SOURCE & VERIFICATION

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

Twelve-page judgment; own paragraphs 1–28 on PDF pp.2–12. Separate AY 2007–08 appeal; do not merge with the AY 2008–09 judgment.

All 12 original pages read and visually inspected; source hash verified. AI-assisted substantive correction.

Open cited source rendition

Source bytes and identity checked; see panel-specific references and disclosed source anomalies.

## STATUTORY SCOPE

Applies sections 92C and 92CA of the Income-tax Act, 1961 read with Rules 10A to 10E of the Income-tax Rules, 1962 for AY 2007-08. Income-tax Act, 2025 equivalence is 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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