



CNR: KAHC010139642014

NC: 2026:KHC:48628-DB
ITA No. 140 of 2014

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF SEPTEMBER, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

INCOME TAX APPEAL NO. 140 OF 2014

BETWEEN:

1. THE COMMISSIONER OF INCOME-TAX
C.R. BUILDING
QUEENS ROAD
BANGALORE
2. THE ADDITIONAL COMMISSIONER OF INCOME-TAX
RANGE-11
RASHTROTHANA BHAVAN
NRUPATHUNGA ROAD
BANGALORE

...APPELLANTS

(BY SRI E.I. SANMATHI, ADVOCATE)

AND:

1. M/S. CISCO SYSTEMS (INDIA) PVT. LTD
DIVYASHREE CHAMBERS, 'B' WING
NO.11, 'O' SHAUGHNESSEY ROAD
OFF LANGFORD ROAD
BANGALORE - 560 025

...RESPONDENT

(BY SRI NAGESWAR RAO D.D., ADVOCATE)



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THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 31/10/2013 PASSED IN ITA NO.1510/Bang/2012, FOR THE ASSESSMENT YEAR 2008-2009, PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE & ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME-TAX APPELLATE TRIBUNAL, BANGALORE IN ITA NO. 1510/Bang/2012 DATED: 31/10/2013 AND CONFIRM THE ORDER OF THE DISPUTE RESOLUTION PANEL, ORDER PASSED BY THE TRANSFER PRICING OFFICER AND THE ORDER PASSED BY THE ADDL. COMMISSIONER OF INCOME TAX, RANGE-11, BANGALORE & ETC.

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MRS. JUSTICE K.S. HEMALEKHA

ORAL JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

1. The Revenue has filed the present appeal under Section 260A of the Income Tax Act, 1961 [**the Act**] impugning the order dated 31.10.2013 passed by the learned Income Tax Appellate Tribunal [**the Tribunal**] in IT [TPA] No.1510/BANG/2012 for the Assessment Year [**AY**] 2008-09. The respondent [**Assessee**] had preferred the said appeal before the Tribunal, impugning the order dated 12.10.2012 passed by the Assessing Officer [**AO**] under Section 143(3) of the Act.



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2. The Assessee had disclosed certain transactions with its Associated Enterprise [**AE**]. In view of the above, the AO had made a reference to the Transfer Pricing Officer [**TPO**] under Section 92CA of the Act. The learned TPO passed the order dated 28.10.2011 making a transfer pricing adjustment in the sum of ₹128,79,01,373/- in respect of Arm's Length Price [**ALP**] for spare replacement services rendered by the Assessee.

3. The AO had passed the draft assessment order, which was forwarded to the Assessee. The AO, in addition to determining the ALP in respect of the international transactions, also proposed certain additions.

4. The Assessee instituted proceedings before the Dispute Resolution Panel [**DRP**] assailing the said draft order. The DRP passed an order under Section 144C(5) r/w Section 144C(8) of the Act on 16.08.2012 issuing certain directions. The DRP, *inter alia*, held that the TPO's approach was in accordance with the correct interpretation of law.

5. In view of the directions issued by the DRP, the AO framed the assessment order dated 28.10.2011, *inter alia*, adding a sum of



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₹128,79,01,373/- on account of the transfer pricing adjustment as determined by the TPO.

6. Aggrieved by the said assessment order, the Assessee filed an appeal before the Tribunal on various grounds, including the ground that the AO/TPO erred in making any transfer pricing addition.

7. The Assessee had furnished the transfer pricing study to establish that the transactions were at ALP. The Assessee used the Transaction Net Margin Method **[TNMM]** as the most appropriate method, with operating profit/value of services as the Profit Level Indicator **[PLI]**. The learned TPO faulted the Assessee for adopting the TNMM as the most appropriate method and held that, given the functional profile, the Assessee was carrying on the activities as a trader by purchasing products from its AE and reselling them to the AE's customers in India. The learned TPO held that given the FAR¹ analysis, the Resale Price Method **[RPM]** is the most appropriate method.

¹ Functions, Assets and Risks



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8. The Assessee disputed that its functional profile was that of a trader. It claimed that it provided product replacement services and, therefore, the international transactions should be benchmarked with other service providers, not with an entity engaged in trading activities.

9. The FAR analysis furnished by the Assessee set out that it is a captive service provider for its AE and assumes no risks. It explained that the AE had supplied equipment to the customers in India and AE undertakes the services of providing the replacement parts from its AE in US (CISCO US). It imports the replacement parts from its AE and supplies the same at nil value to the AE's customers in India. It claimed that it does not hold any inventory on its own behalf and undertakes no risk. Additionally, all intangibles and IPR belong to the CISCO group.

10. The Assessee stated that the CISCO group provides warranties for its products and also sells AMCs to its distributors. For this purpose, it supplies spare parts through the Assessee. It is stated that the Assessee supplies the products received from its



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AE at nil value to customers and sends back product replacements to its AE. For its services, the Assessee charges a markup of 1%.

11. The Assessee also explained that it only ensures the prompt delivery of spares to the customers of its AE. Importantly, it does not sell the product to customers at a price, but provides parts to AE customers at a NIL sales price. It also does not bear any risk regarding spare parts deliveries, as the AE supplies them at its own risk. In the event that product replacement is rejected or the product becomes obsolete, the Assessee arranges for its return or scraps such products, as directed by its AE. The customs duties paid by the Assessee on import are also reimbursed by the AE.

12. After examining the Assessee's functional profile, the learned TPO concluded that the Assessee's functions were akin to those of a trader and proceeded on the basis that the Assessee purchases the goods, holds an inventory, and sells the goods to customers. And, in view of its finding, the learned TPO rejected TNMM as the most appropriate method and used RPM instead.

13. The learned Tribunal examined the Assessee's functional profile and did not concur with the TPO's finding. The Tribunal



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accepted that the functions of the Assessee were not akin to those of a trader. The Tribunal noted that a trader purchases goods by transfer of ownership and is free to fix the resale price and choose the customers to whom the goods are sold. The Tribunal found that the Assessee has no right to fix the resale price or to select its customers to whom the products are sold. The Assessee procures the spare parts to be supplied and earns 1% mark up on the cost of importing goods.

14. The learned Tribunal found that the Assessee was only a custodian of the goods imported until they were delivered to the clients or customers of its parent company, and under its directions. On the aforesaid factual conclusion, the Tribunal held that the RPM method would not be an appropriate method for determining the ALP.

15. Out of the comparables selected by the TPO, the learned Tribunal found that one of the entities, M/s Iris Computers, could be accepted as a comparable, but the other entities were not comparable on the basis of the FAR analysis.



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16. In the aforesaid view, the learned Tribunal remanded the matter to the TPO/AO with directions to re-compute the ALP by adopting proper comparables using the TNMM method to arrive at the ALP. Additionally, the Tribunal directed the AO/TPO to consider the issue of allowing the benefit of the 5% range as provided under the erstwhile proviso to Section 92-C(2) of the Act, in light of the judicial precedents thereon.

17. In view of the above, CIT has filed the present appeal and has projected the following questions of law:

"1. Whether on the facts and in the circumstances, the Tribunal was correct in holding that the Resale Price Method adopted by the TPO is not applicable and in directing the TPO/AO to recompute the ALP by using TNMM on the ground that the services provided by the assessee are akin to that of S&F Agents and not that of a trader without appreciating that there is no significant difference between the three comparables adopted by the TPO and the assessee in terms of FAR?

2. Whether on the facts and in the circumstances of the case the tribunal was right in directing the AO to delete Tata Elexi Ltd. from the list of comparables if it is found that the segmental data of the comparable are not available without appreciating that the comparable satisfies all the qualitative and quantitative filters adopted by using the segmental results?



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3. Whether on the facts and in the circumstances of the case the ITAT was right in holding that the assessee is covered by the amendment of the proviso to section 92C of the Act for the assessment year 2008-09 and directing the AO to give the benefit of the amended provision without appreciating that the proviso was inserted w.e.f 1.10.2009 by the Finance (No.2) 2009?

4. Whether on the facts and in the circumstances of the case the tribunal was right in upholding the head count method adopted by the assessee for allocation of common expenses without appreciating that the allocation of common expenses should be on a scientific basis and that all type of expenses cannot be allotted on head count basis and a mixture of turnover and head count basis should be adopted for allocation of expenses depending upon the nature of expenses?

5. Whether the Hon'ble ITAT is justified in directing the AO to exclude lease line and internet expenses from both the export turnover and the total turnover for the purpose of deduction u/s. 10A of the Act without appreciating the fact that there is no provision in section 10A that such expenses should be reduced from the total turnover, as clause (iv) of the Explanation 2 to section 10A provides that such expenses are to be reduced only from the export turnover?"

18. This Court considered the present appeal and, on 12.07.2018, dismissed it, holding that no substantial question of law arose for consideration in the present case. This Court also referred to its earlier decision in **Principal Commissioner of Income Tax and another v. Softbrands India Pvt. Ltd.:** ITA No.



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536/2015 c/w No. 537/2015, dated 25.06.2018, and observed that unless the findings of the learned Tribunal were found to be perverse, no question of law would arise.

19. This Court had held that the question as to whether comparables have been rightly selected or the filters for arriving at the correct list of comparables have been applied, would not give rise to any substantial questions of law.

20. The Department preferred an appeal against the judgment rendered by this Court, which is tagged along with the batch of matters, where this Court has followed the earlier decision in **Softbrands** (*supra*).

21. The Supreme Court did not accept the proposition as set out by this Court in **Softbrands** (*supra*). The Supreme Court held that the Tribunal has to follow the guidelines stipulated under Chapter X IT Act and Rules 10(a) to 10(e) of the Income Tax Rules, 1962. Any determination of ALP under Chapter X *dehors* the relevant provisions of the guidelines can be considered as perverse and may be considered as a substantial question of law. The Supreme Court remanded the batch of matters to examine whether the



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guidelines laid down under the Act and Rules were followed while determining the ALP.

22. Learned counsel for the Revenue fairly stated that only questions relating to the determination of the ALP are required to be considered pursuant to the order passed by the Supreme Court.

23. The learned counsel appearing for the Department fairly stated that question Nos.4 and 5 are not required to be considered as the directions issued by the Supreme Court in **Sap Labs India Pvt. Ltd. v. Income Tax Officer, Circle 6, Bangalore**² were to examine whether the guidelines laid down in the Act and the Rules have been followed for determining the ALP.

24. In the present case, the principal controversy concerns the adoption of TNMM as the most appropriate method for determining ALP. The assessee adopted the said method, claiming that its functional profile was akin to a service provider. The TPO had held that the Assessee's functional profile was that of a trader and accordingly determined the ALP by following the RPM.

² (2024) 17 SCC 344



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25. After analysing the functional profile and risks, the Tribunal found that the Assessee's functions are more akin to a service provider than a trader and accordingly remanded the matter to the TPO to determine the ALP after adopting TNMM and considering the appropriate comparables.

26. We find no fault with the learned Tribunal's reasoning. The learned counsel appearing for the Revenue also does not argue that the learned Tribunal's decision in regard to the functional profile of the Assessee is perverse.

27. The question involved is similar to that in ITA No.23/2005, which is disposed of by a separate order passed today. In our view, no substantial question of law arises in the present appeal. The appeal is accordingly, dismissed.

**Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE**

**Sd/-
(K.S. HEMALEKHA)
JUDGE**