RESERVED ON 28TH SEPTEMBER 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF OCTOBER, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

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

INCOME TAX APPEAL NO. 338 OF 2013

BETWEEN:

1. THE COMMISSIONER OF INCOME-TAX
C.R. BUILDING, QUEENS ROAD, BANGALORE

2. THE ASSISTANT COMMISSIONER OF INCOME TAX
CIRCLE- 11 (5)
RASHTROTHANA BHAVAN
NRUPATHUNGA ROAD, BANGALORE

…APPELLANTS

(BY SRI E.I. SANMATHI, ADVOCATE)

AND:

1. M/S. LOGICA PRIVATE LTD.
DIVYASREE TECHNOPOLIS
NO.124-125, YEMLUR P.O., OFF. AIRPORT ROAD
BANGALORE – 560 037
NOW MERGED WITH CGI INFORMATION SYSTEMS AND MANAGEMENT CONSULTANTS PVT. LTD. #95/1 & 95/2, ELECTRONIC CITY, TOWER-2, ELECTRONIC CITY PHASE-1, WEST BANGALORE-560100, AS PER MEMO DATED 26.09.2026 FILED BY ADVOCATE FOR RESPONDENT, VIDE ORDER DATED 28.09.2026

…RESPONDENT

(BY MS. TANMAYEE RAJKUMAR, ADVOCATE FOR
MS. MANASA ANANTHAN, ADVOCATE)

THIS ITA IS FILED UNDER SECTION 260-A OF INCOME TAX ACT 1961 PRAYING TO ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE INCOME-TAX APPELLATE TRIBUNAL, BANGALORE IN ITA No.1129/Bang/2011 DATED 28/02/2013 AND CONFIRM THE ORDER PASSED BY THE DISPUTE RESOLUTION PANEL CONFIRMING THE TRANSFER PRICING ADJUSTMENT BY THE TRANSFER PRICING OFFICER AND CONSEQUENTLY CONFIRM THE ORDER OF ASSESSMENT PASSED BY THE ASSISTANT COMMISIONER OF INCOME TAX, CIRLCE 11(5), BANGALORE & ETC.

THIS INCOME TAX APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS PRONOUNCED AS UNDER:

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

C.A.V. 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 an order dated 28.02.2013 [**impugned order**] passed by the learned Income-Tax Appellate Tribunal, Bengaluru [**ITAT**] in ITA No.1129/Bang/2011, in respect of assessment year [**AY**] 2007-08.

2. The said appeal was preferred by the respondent [**Assessee**] against the Assessment Order dated 20.09.2011

passed by the Assessing Officer [**AO**] under Section 143(3) read with Sections 144C(5) and 144C(8) of the Act, pursuant to the directions dated 02.09.2011 issued by the Dispute Resolution Panel [**DRP**].

3. The present appeal was admitted on 24.03.2014 on the following questions of law as projected by the Revenue.

> "1. Whether on the facts and in the circumstances of the case and in law the Tribunal was right in super imposing the decisions of the other benches and the decision of the ITAT while rejecting the comparables ((i) Accel Transmatic Limited, (ii) Avani Cimcon Technologies Limited, (iii) Celestial Labs Limited, (iv) KALS Information Systems Limited, (v) Lucid Software Limited, (vi) Infosys Technologies Limited, (vii) Wipro Limited – IT Segment and (viii) Tata Elxsi Limited) without appreciating the fact that selection of comparables in a case depends on assessee specific FAR analysis and recorded a perverse finding?
>
> 2. Whether on the facts and in the circumstances of the case and in law the Tribunal was right in directing that the segmental financials have to be considered as against the enterprise financials without appreciating the fact that at the enterprise level the comparable satisfied all the filters applied by the Transfer Pricing Officer and recorded a perverse finding?
>
> 3. Whether on the facts and in the circumstances of the case and in law the Tribunal was right in directing that segmental financials have to be considered as against the enterprise level financials without appreciating the fact the Transfer Pricing Officer attracted the enterprise level financials as against the segmental financials with which he started, on the basis of the information gathered under Section 133(6) of the

Act and detailed analysis thereof and recorded a perverse finding?

4. Whether on the facts and in the circumstances of the case and in law the Tribunal was correct in rejecting M/s. Lucid Software Limited as a comparable by placing reliance on the order in the case of the other assessee passed by the Mumbai ITAT without taking into consideration the finding recorded by the Transfer Pricing Officer for selecting as a comparable and recorded a perverse finding?

5. Whether on the facts and in the circumstances of the case and in law the Tribunal was justified in fixing the related party transaction filtered at 15% of the total revenue without going into the specific facts in the case of the Tax Payer and without adducing the basis for arriving at such cut-off at 15% and recorded a perverse finding?

6. Whether on the facts and in the circumstances of the case and in law the Tribunal was right in excluding Infosys Technologies Limited and Wipro Limited from the list of comparables due to premium branding without taking into consideration that brand is not a variable to determine the profit margin and recorded a perverse finding?

7. Whether on the facts and in the circumstances of the case and in law the Tribunal was correct in not appreciating the law laid down by the ITAT Vizag in the case of ***LG Polymers India Limited***, wherein it held that "...brand is only one of the factors affecting profitability and not the only factor which affects profitability" and recorded a perverse finding?

8. Whether on the facts and in the circumstances of the case and in law the Tribunal was right in excluding Tata Elxsi Limited as a comparable on the ground that comparable is equal to product development, when the comparable was in software development like assessee and only the segmentals were considered and recorded a perverse finding?

> 9. Whether on the facts and in the circumstances of the case and in law the Tribunal was justified in allowing the deduction claimed under Section 10A of the Act by the assessee in respect of recruitment charges while re-allocating the entire expenses on the basis of turnover of 10A and non 10A units by the Assessing Officer, when the assessee has failed to provide the details of the employees recruited to STPI and non-STPI units alongwith the expenditures incurred on such recruitments?
>
> 10. Whether on the facts and in the circumstances of the case and in law the Tribunal was justified in allowing the deduction claimed under Section 10A of the Act by the assessee with regard to the travel and conveyance charges while re-allocating the entire expenses on the basis of turnover of 10A and non 10A units by the Assessing Officer when the assessee has not maintained a list of expenditures incurred on all such employees of the 10A units who have travelled outside on projects or used cars locally or utilized the per-diem expenses and recorded a perverse finding?"

4. This Court dismissed the present appeal, *inter alia*, referring to the decision of this Court dated 25.06.2018 in ITA No.536/2015 c/w ITA No.537/2015, captioned **Prl. Commissioner of Income Tax and another v. M/s. Softbrands India Pvt. Ltd**.

5. The Revenue preferred a Special Leave Petition before the Supreme Court against the order dated 12.07.2018, which the Supreme Court considered as part of a batch of matters, tagged with the appeal arising out of this Court's decision in **Prl.**

Commissioner of Income Tax and another v. M/s. Softbrands India Pvt. Ltd.(*supra*). The Supreme Court, *inter alia*, held that the question whether the arm's length price [**ALP**] had been determined by following the provisions of the Act and the Rules made thereunder would also give rise to questions of law. By its judgment dated 19.04.2023, the Supreme Court set aside the order dated 12.07.2018 and remitted the present appeal to this Court for being decided afresh in the light of the observations made therein.

6. The present appeal is required to be considered, bearing in mind the observations made by the Supreme Court in **Sap Labs India (P) Ltd. v. Income Tax Officer (and other appeals)**[1].

7. Concededly, questions No. 9 and 10, as projected above, do not survive, as they do not relate to Transfer Pricing. As rightly contended by the learned counsel for the parties, this Court, by its judgment dated 12.07.2018, had held that the allocation of recruitment costs between the STPI and non-STPI units was just and fair, and that no substantial question of law arises insofar as the impugned order relates to travel and conveyance expenses.

[1] (2023) 454 ITR 121 (SC); [2023] 149 taxmann.com 327 (SC)

8. In view of the above, this Court heard arguments and contentions on the other questions as projected.

9. The Assessee filed its original return of income for the AY 2007-08 on 30.10.2007, declaring a total income as Rs.Nil. Subsequently, on 10.07.2008, it filed a revised return of income consequent to the amalgamation sanctioned by this Court by an order dated 16.11.2007, declaring an income of ₹17,57,97,532/-. The said return was processed under Section 143(1) of the Act on 17.03.2009. The case was selected for scrutiny and a notice dated 10.09.2008 was issued under Section 143(2) of the Act.

10. The Assessee is engaged in the business of providing Software Development and Consultancy Services and in developing, distributing and maintaining information technology related products and services.

11. Since the Assessee had entered into international transactions, the AO referred the matter to the Transfer Pricing Officer [**TPO**] to determine the ALP.

12. The learned TPO passed an order dated 30.09.2010 under Section 92CA of the Act making certain Transfer Pricing Adjustments, entailing an addition of ₹39,73,03,044/-. The tabular

statement setting out the summary of the adjustments is set out below:

Segment	Arm's Length price	Price shown	Adjustment
Provision of Software Development Services	Rs.276,74,06,586/-	Rs.222,46,62,941/-	Rs.38,20,29,316/-
Support services	Rs.9,79,04,650/-	Rs.8,26,30,922/-	Rs.1,52,73,728/-
Total			Rs.39,73,03,044/-

13. The learned TPO rejected the transfer pricing studies furnished by the Assessee and determined the ALP based on the comparable entities as found using the filters.

14. The learned TPO used the Transaction Net Margin Method [**TNMM**] as the most appropriate method, and it determined the markup on costs as the Profit Level Indicator [**PLI**]. A tabular statement listing comparable companies selected by the Assessee along with the respective values of PLI are set out below:

Sl.No.	Name of the Company	Mark up on cost
1.	Bodhtree Consulting Ltd	18%
2.	FCS Software Solutions Ltd	14%
3.	Goldstone Technologies Ltd	3%
4.	Larsen & Toubro Infotech Ltd.	11%
5.	Melstar Information Technologies Ltd	0%
6.	Orient Information Technology	-6%
7.	Powersoft Global Solutions Ltd	19%
8.	SIP Technology & Exports Limited	25%
9.	Sonata Software Ltd	9%

10.	Synetairos Technologies Limited	11%
11.	Trident Info-tech Corporation Ltd	66%
12.	VJIL Consulting Limited	7%
13.	Akshay Software Technologies Limited	7%
14.	Cambridge Technology Enterprises Ltd	21%
15.	ICRA Techno Analytics Ltd	15%
16.	Mindtree Consulting Limited	11%
17.	Computech International Limited	7%
18.	Karuturi Networks Ltd	4%
	Arithmetic Mean	13%

15. The TPO did not accept the transfer pricing studies and selected the following companies as comparables.

Sl. No.	Name of the Company	Mark up (%age)	
		Unadjusted	WC adjusted
1.	Accel Transmatic Ltd., (Segment)	21.11	20.82
2.	Avani Cimcom Technologies Ltd	52.59	51.79
3.	Celestial Labs Ltd.	58.35	54.88
4.	Datamatics Ltd	1.38	0.12
5.	E-Zest Solutions Ltd	36.12	36.70
6.	Flextronics Software Systems Ltd. (Segment)	25.31	25.73
7.	Geometric Ltd. (Segment)	10.71	10.33
8.	Helios & Matheson Information Technology Ltd.	36.63	35.03
9.	iGate Global Solutions Ltd	7.49	6.33
10.	Infosys Technologies Ltd	40.30	39.62
11.	Ishir Infotech Ltd.	30.12	31.07
12.	KALS Information Systems Ltd	30.55	24.10
13.	LGS Global Ltd	15.75	15.86
14.	Lucid Software Ltd	19.37	17.74
15.	Media Soft Solutions Pvt. Ltd	3.66	2.31

16.	Megasoft Ltd	60.23	51.94
17.	Mindtree Ltd	16.90	16.06
18.	Persistent Systems Ltd.	24.52	24.11
19.	Quintegra Solutions Ltd.	12.56	9.94
20.	R.S.Software (India) Ltd.	13.47	13.84
21.	R Systems International Ltd. (Segment)	15.07	13.95
22.	Sasken Communication Technologies Ltd. (Segment)	22.17	21.77
23.	S I P Technologies & Exports Ltd	13.90	11.42
24.	Tata Elxsi Ltd (Segment)	26.51	26.55
25.	Thirdware Solutions Ltd. (Segment)	25.12	22.21
26.	Wipro Ltd. (Segment)	33.65	35.16
	ARITHMETIC MEAN	**25.14**	**23.84**

16. The learned ITAT accepted the Assessee's objections in regard to inclusion of certain companies as comparables as well as in regard to certain filters.

17. We may now proceed to examine the questions as projected by the Revenue.

18. The first question relates to the ITAT accepting the Assessee's objections in regard to 8 comparables.

i. Re. Accel Transmatic Ltd. [Accel]

19. The ITAT excluded Accel Transmatic Ltd. [**Accel**], following the earlier decision of the learned ITAT in **Trilogy E-Business**

Software India Pvt. Ltd.[2] The learned ITAT also relied upon the decision in **Telcordia Technologies India (P.) Ltd. v. Assistant Commissioner of Income-tax, Cir 3(3), Mumbai**[3]for excluding certain other comparables.

20. A plain reading of the impugned order indicates that the Assessee's objections regarding the inclusion of Accel as a comparable were accepted, as it was found to be functionally different. The impugned order notes the Assessee's contention that the annual report for the financial year [**FY**] 2005-2006 indicated the business activities of the said company as under:

> "In regard to Accel Transmatics Ltd. the assessee submitted the company profile and its annual report for financial year 2005-06 from which the DRP noted that the business activities of the company were as under.
> (i) Transmatic system - design, development and a panuacture of multi function kiosks Queue management system, ticket vending system
> (ii) Ushus Technologies -. offshore development centre for embedded software, net work system, imaging technologies, outsourced product development
> (iii) Accel IT Academy (the net stop for engineers)-training services in hardware and networking, enterprise system management, embedded system, VLS! designs, CAD/CAM/BPO
> (iv) Accel Animation Studies software services for 2D/3D animation, special effect, erection, game asset development."

[2] Order dated 23.11.2012 passed in ITA No.1054/Bang/2011
[3] Order dated 11.05.2012 passed in ITA No.7821 (MUM) of 2011

21. The Revenue does not dispute that Accel's activities include Accel IT Academy, which provides training services. The Assessee is not engaged in providing any such services. It is also not disputed that the Revenue's appeal against the ITAT's decision in **Trilogy E-Business** (*supra*) was dismissed by this Court by an order dated 10.07.2018 passed in ITA No.171/2013, which has not been carried further, and that no appeal appears to have been preferred against the decision in **Telcordia** (*supra*).

22. The learned ITAT's finding that Accel is functionally different, cannot be interfered with by this Court, as the said finding is one of fact and cannot by any stretch be stated to be perverse.

ii. Re. Avani Cincom Technologies Ltd.

23. The learned ITAT accepted the Assessee's objection regarding inclusion of Avani Cincom Technologies Limited [**Avani**] as a comparable, *inter alia*, on the ground that the company had developed a software product named "DXchange". Its revenue thus included sales of software products; that is, from a source other than rendering Software Services.

24. The learned ITAT also referred to its decision in **Telcordia** (*supra*) where Avani was rejected as an entity comparable with a

company engaged in IT services. Additionally, it was noted that annual accounts for the FY 2006-07 reported an abnormally high operating margin as compared to other years. The tabular statement indicating the operating margins of Avani is set out below:

Particulars	Fys 05-06	06-07	07-08	08-09
Operating Revenue	21761611	35477523	29342809	28039851
Operating Expns.	16417661	23249646	23359186	31108949
Operating Profit	5343950	12227877	5983623	(3069098)
Operating Margin	32.55%	52.59%	25.62%	-9.87%

25. The question whether Avani's Income could be considered as comparable to a company rendering IT services was also considered by the Division Bench of the Delhi High Court (of which one of us, Vibhu Bakhru J, was a member) in **Alcatel Lucent India Ltd., v. Deputy Commissioner of Income Tax**[4]. The said decision referred to information available on the company's website, which clearly indicated that it was a product-oriented company and that its product "DXchange" was available in three versions. In view of the above, the ITAT's finding that the functional profile of Avani is not comparable with the Assessee, which is largely engaged in providing software services, cannot be

[4] [2024]167 taxmann.com 595(Delhi)

interfered with in the present appeal. The said finding does not give rise to any substantial question of law.

iii. Re. Celestial Labs Ltd.[Celestial]

26. The learned ITAT found that the said company was involved in research and development. It referred to its director's report, where it was found that the company applied for income tax concessions for in-house R&D expenditure. It referred to the decision of the Mumbai Bench of the learned ITAT in **Teva Pharma Private Ltd. v. Additional CIT**[5] for AY 2007-08, which reflected that the company had developed a *de novo* drug design tool, "CELSUITE", related to drug discovery. Undisputedly, the said company was involved in the research of pharmaceutical products.

27. The Assessee also pointed out that the said company provides software product services as well as bioinformatics services, and one of its objections was that the segmental data is not available.

28. According to the Revenue, the learned ITAT erred in directing exclusion of the said company as the TPO had issued a notice under Section 133(6) of the Act and the learned TPO's order

[5] ITA No.6623/Mum/2011

indicates that Celestial, had responded to the said notice by stating that it was mainly in software development services.

29. The learned TPO had also raised specific queries with regard to the statements made in the draft red herring prospectus and the company had responded to the same, *inter alia*, stating as under:

> "With reference to our earlier letter dated 6" February 2010 we further clarify that the name of the company was changed as Celestial Labs Limited from Celestial Technologies Limited in the year 2004. Till the year 2007-08 mainly we have been working for developing the software tools and applying to offer the services in the field of bio technology, pharmaceutical and health care industry, The developed tool has been offered as a customized tool in the field of software development. Although the developed tool as a product for us , but
> mainly we provided the services as software development. From 2009-10 we are focusing to manufacture industrial enzymes, herbal and allopathic formulations."

30. On the aforesaid basis, the TPO concluded that Celestial was mainly into software development services.

31. It is material to note that no segmental financials are available or referred to by the TPO. The learned TPO rested its decision solely on the response to a notice issued under Section 133(6) of the Act. It is material to note that the learned TPO had called upon the said company to give details of the revenues by

way of software products, either by purchase of software or development, which were used in customisation services for the FY 2006-07 and FY 2007-08 respectively. In response to the said query, the said company had provided the details of revenue as under:

		(Amount in Rs.)
Financial Year	2006-07	2007-08
Revenue from customized services through inhouse developed products	50,75,100	20,21,12,145
Revenue from third party products	Nil	Nil
Total	50,75,100	20,21,12,145

32. On the basis of the aforesaid response, the learned TPO concluded that the revenue from in-house development product was only ₹50,75,100/- for the FY 2006-07 which was only 3.6% of its operating revenues. However, a plain reading of the query indicates that the TPO sought details of revenues from customised services. However, there was no segmental reporting. The website of the company indicated that “it had a decade of experience in Insilico Drug Discovery and Development, and contract research services”.

33. Celestial also claimed it supported Pharma, Bio-pharma, and Biotech manufacturing with customised IT solutions, as well as contract research work. It was also involved in R&D, commercial production and marketing of enzymes and nutraceuticals.

34. Celestial, in its response to the statements made on the website, clearly stated that until 2007-08, it had been developing software tools and applying them to offer services in biotechnology, pharmaceuticals, and the healthcare industry. It claimed that although it had developed a tool as a product, it had mainly provided services as software development and that from the year 2009-10 it was focusing on the manufacture of industrial enzymes, herbal and allopathic formulations.

35. Thus, it is clear that Celestial was involved in a specialised industry. As per its website, it had a decade of experience in "Insilico Drug Discovery and Development, and contract research services".

36. Although Celestial had indicated its revenues from customised services and in-house development products, it did not provide any segment reporting for drug discovery and development or contract research services. Thus, the learned ITAT found that

there was no clear basis for the TPO to conclude that the company, Celestial, was engaged in the business of providing software development services.

37. It is clear from the above that the functional profile of Celestial is materially different from that of the Assessee and thus there is no error in the learned ITAT's decision to direct its exclusion from the list of comparable entities.

iv. Re. Lucid Software Ltd [Lucid]

38. The said company had developed a product named “Muulam”, which is used for civil engineering structures. The product development expenditure is also substantial. In view of the above, the learned ITAT found that the said company was functionally dissimilar. Further, its segment details were unavailable.

39. The learned counsel appearing for the Revenue submitted that the said company had in response to the notice under Section 133(6) stated that it was a pure software development services company and there was no reason to disbelieve the same.

40. However, the company's website clearly indicated that it was a provider of “leading edge software products and services to the global NDT and material sciences industry”. There was no dispute that its balance sheet also expressly indicated substantial product development expenditure. It also used a product shown as “Lucid Online Exam”. Thus, clearly there were grounds to hold that the company was not a company purely rendering software development services. Concededly, no segment financials were available for different segments. Thus, the decision of the ITAT to reject the same cannot be faulted.

v. Re. KALS Information Systems Ltd. [KALS]

41. The Assessee had objected to the inclusion of KALS on the ground that its salary expenses were less than 25%. The company was a product company and not a pure software development company. Further, the segmental accounts were also not available.

42. The learned TPO had relied on the said company's response to the notice issued under Section 133(6) of the Act. The Assessee has also pointed out that KALS, had income from revenue from sale of products and training services and the share

of revenues from trading in software and training exceeded 25% of the total income. These figures were culled out from the annual report.

43. The learned TPO had relied on the company's response received to the notice under Section 133(6) of the Act, wherein the company had stated that "the core of its business may be classified as that of Pure Software Development service Provider".

44. The company also claimed that the revenue from ready made object libraries was only about 0.33% to 3% in the year 2005-06 and 2006-07 and its revenue from domestic training activities contributed only 0.7% to 8.56% in the years 2005-06 and 2006-07. However, there were no segmental financials available.

45. Additionally, it also claimed that in most cases they executed projects through the entire Software Development Life Cycle [**SDLC**] which included delivery, testing as well as training. However, there is no dispute that it consumed software inventory to the extent of ₹34,85,914/-, which was substantially higher than the percentages as indicated by the company in its response to the notice issued under Section 133(6) of the Act. In the aforesaid

circumstances, the ITAT accepted the Assessee's objections to the inclusion of the said company.

46. The question whether the said company could be considered as a comparable to a software company is also covered by the decision of the Delhi High Court in **Commissioner of Income Tax, International Taxation v. UT Starcom Inc. (India Branch)**[6], whereby the said Court had dismissed the appeal arising from the decision of the ITAT in **UT Starcom Inc. (India Branch) v.** DDIT, Circle 2(2), New Delhi[7]. Thus, we find no infirmity in the learned ITAT's decision to exclude KALS from the list of comparables.

vi. Re. Infosys Technologies Ltd. [**Infosys**]

47. The learned ITAT found that Infosys was not a comparable entity for several reasons. First, the company had substantial intangible assets, and its brand value alone was valued at ₹22,915 crores. Infosys had a premium brand, which would have a bearing on its revenues. Further, it was a giant company, and its revenue was more than ₹13,145 crores. Its expenditure on advertising and promotion and on R&D was also ₹69 crores and ₹167 crores, respectively. The Assessee's revenue was relatively insignificant,

[6] [2018] 95 taxmann.com 604 (Delhi)
[7] IT Appeal No.5848 (Delhi) of 2011 for AY 2007-08

and it incurred no expenditure on sales or promotion, as it was essentially providing services to its associated enterprises. Thus, Infosys could not be considered comparable to the Assessee on the basis of FAR analysis.

48. The learned ITAT also noted that the question was covered by the decision of the Delhi Bench of the ITAT in **Agnity India Technologies Private Limited** (ITA No.3856/Del/2010), which has since been affirmed by the Delhi High Court in **Commissioner of Income-tax v. Agnity India Technologies (P.) Ltd.**[8] Undeniably, a company's size, as well as its brand or IPR, would have a bearing on revenue. In view of the above, we find no infirmity with the decision of the learned ITAT in excluding Infosys as a comparable.

vii. Re. Wipro Ltd. [**Wipro**]

49. The said company is a diversified company, and the learned ITAT accepted that 67% of its sales related to products which command a premium, resulting in higher profitability. Undisputedly, the turnover of Wipro is also extremely large as compared to the Assessee. Thus Wipro cannot be considered as a comparable entity.

[8] [2013]36 taxmann.com 289 (Delhi)

50. The learned counsel appearing for the Revenue contended that the brand or the magnitude of turnover is irrelevant to the determination of the profit margin. However, we find no merit in that contention. The size of a company is also relevant when considering a comparable entity. A large company has a different FAR profile than a small entity. Whilst TNMM is tolerant of variations, it does not accommodate cases where the disparity in size is extremely large. Such entities cannot be considered a comparable for the purpose of determining the ALP. The size of the company may significantly alter the cost structure. Considerable expenditure on R&D and brand development would have a bearing on the margins.

51. Thus, there is no infirmity with the decision of the ITAT in excluding Wipro from the list of comparables.

viii. Re. TATA Elxsi Limited. [Tata Elxsi]

52. The learned ITAT excluded TATA Elxsi as a comparable on the ground that it is a niche product company and therefore cannot be considered comparable on FAR analysis. The segmental details of the said company are also not available.

53. Concededly, the question of excluding Tata Elxsi is also covered by this Court's decision in **Sap Labs India Private Limited v. Income Tax Officer**[9]. In the said decision this Court has observed as under:

> "28.4 While directing the exclusion of Tata Elxsi Limited, the Tribunal, upon examining its annual report, recorded a finding that the company was engaged in diversified activities, including embedded systems, product design, industrial design services, engineering services, visual computing laboratories, and system integration and support services. Under these broad segments, the company was found to be carrying on multiple diversified product design, engineering design, and visual computing activities. On that basis, the Tribunal concluded that the company was functionally dissimilar to the assessee and, therefore, not comparable.
>
> 28.5 Similarly, while excluding Infosys Technologies Limited, the Tribunal recorded that the company is a market leader possessing significant brand value, substantial research and development activities, and valuable intangible assets. Placing reliance upon the judgment of the High Court of Delhi in the case of Commissioner of Income-tax vs. Agnity India Technologies (P.) Ltd., [2013] 219 Taxman 26 (Delhi), the Tribunal held that Infosys Technologies Limited could not be regarded as a suitable comparable.
>
> 28.6 We find that the findings recorded by the Tribunal are in conformity with the provisions of Section 92C of the Act and Rule 10B of the Rules. The Revenue has neither pleaded nor demonstrated that the said findings suffer from perversity. In the absence of any demonstrated perversity, the findings recorded by the Tribunal remain findings of fact and do not give rise to any substantial question of law."

[9] ITA No.10/2011 and connected matters decided on 28.08.2026

Question Nos.2 and 3

54. The said questions are general questions and it would not be apposite to answer the same without reference to the specific instances where enterprise financials are rejected.

55. In the present case, the Assessee as well as the learned TPO had determined TNMM as the most appropriate method for determining the ALP.

56. Section 92C(1) of the Act requires the ALP in relation to an international transaction to be determined by an appropriate method as prescribed. Clause (e) of Rule 10B(1) of the Income Tax Rules, 1962 prescribes TNMM. The said clause is set out below:

> "(e) transactional net margin method, by which, -
>
> (i) the net profit margin realised by the enterprise from an international transaction [or a specified domestic transaction] entered into with an associated enterprise is computed in relation to costs incurred or sales effected or assets employed or to be employed by the enterprise or having regard to any other relevant base;
>
> (ii) the net profit margin realised by the enterprise or by an unrelated enterprise from a comparable uncontrolled transaction or a number of such transactions is computed having regard to the same base;
>
> (iii) the net profit margin referred to in sub-clause (ii) arising in comparable uncontrolled transactions is adjusted to take into account the differences, if any, between the international

> transaction [or the specified domestic transaction] and the comparable uncontrolled transactions, or between the enterprises entering into such transactions, which could materially affect the amount of net profit margin in the open market;
>
> (iv) the net profit margin realised by the enterprise and referred to in sub-clause (i) is established to be the same as the net profit margin referred to in sub-clause (iii);
>
> (v) the net profit margin thus established is then taken into account to arrive at an arm's length price in relation to the international transaction [or the specified domestic transaction];"

57. It is clear from the plain language of clause (e) that the net profit margin realised by an enterprise from an international transaction with an associated enterprise is to be first computed and compared with "the net profit margin realised by the enterprise or by an unrelated enterprise from a comparable uncontrolled transaction or a number of such transactions." Therefore, it is essential to ascertain a comparable uncontrolled transaction. In cases where an enterprise which is selected for purposes of comparing the PLI of the tested entity has various segments, the uncontrolled transaction would be the segment that is, functionally similar to the tested entity. Comparing the profit margins of an enterprise that carries on business activities that are not functionally similar to the tested entity would not be appropriate. However, if certain business activities carried on by such entities

are similar to the activities carried on by the tested entity, the profit margins of the same may be compared with the profit margins of the tested entity to determine the ALP. However, for this purpose, it would be necessary to ensure credible information to determine the profit margins arising from such similar activities. This would be possible only if segmental financial statements are available.

58. There is no impediment for the TPO to ascertain segmental accounts by calling for information by issuing notices under Section 133(6) of the Act. However, it would be essential to ensure that such information is credible and duly verified. In the absence of audited segmental accounts, it may be difficult to ascertain the reliability of the financial information as submitted without due reconciliation with the reported financial statements. Thus, the question whether the financial information as to a particular segment or business activity is reliable is essentially a question of fact to be determined on a case-by-case basis.

Question No.4.

59. The question whether the learned ITAT is correct in excluding Lucid as a comparable is discussed hereinabove in question No.1.

60. The question whether the learned ITAT could rely on an order passed in case of another assessee must be answered in the affirmative, provided that the learned ITAT concludes that the material facts of the case relied upon are similar to the facts relating to the Assessee. In the context of transfer pricing adjustments, if the learned ITAT comes to the conclusion that the business activities carried on by the Assessee in another case are similar to the business activities carried on by the Assessee, it would be appropriate for the learned ITAT to take a similar view unless it finds other reasons to distinguish the case from the earlier precedent.

Question No.5

61. The learned ITAT had used the Related Party Transaction [**RPT**] filter of 15% of sales thus, in case of entities where the RPT exceeded 15% of sales, the same were excluded as comparables. The learned TPO used a filter where RPT was less than 25% of revenues. There is no dispute that using RPT as a proper filter may be necessary to determine uncontrolled transactions. According to the learned TPO, companies with RPT above 25% were required to be excluded. Accordingly, 50 selected entities were eliminated as comparables. The learned ITAT further narrowed the RPT filter to

15% of revenues. Undisputedly, the learned TPO had not given any specific reasons for fixing 25% as the RPT filter. It is clear that the said filter was used to ensure that the financials of the selected entities are representative of uncontrolled transactions. Further narrowing the RPT filter, if sufficient comparables can be identified, would be appropriate, considering that RPTs cannot be accepted as uncontrolled. The said issue is also covered by the decision of the Co-ordinate Bench of this court in **Sap Labs India Private Limited v. ITO**: order dated 28.08.2026 passed in ITA No.10/2011 and other connected matters. In the said decision, the court observed as under:

> "13.3 Where the taxpayer has selected comparable companies by applying a 15% RPT Filter and there is no finding that such comparables fail to satisfy the requirements of the Act or the Rules, there is no rational basis for increasing the RPT threshold to 25%. Where comparable companies with a lower percentage of related party transactions are available, adoption of a lower RPT Filter results in a narrower tolerance and correspondingly reduces the influence of related party transactions on the profitability of the comparable companies. In such circumstances, adoption of a 25% RPT Filter would be without any rational basis.
>
> 13.4 At the same time, an RPT Filter of 25% cannot be rejected as impermissible in all cases. Where either the taxpayer or the TPO demonstrates that an adequate number of comparable companies satisfying a lower RPT threshold are not available, there can be no objection to adopting a higher RPT Filter. The

> enhancement of the RPT threshold up to 20% or 25% must, however, be founded upon a specific finding regarding the non-availability of sufficient comparable companies satisfying a lower RPT threshold. In the absence of such a finding, adoption of a 25% RPT Filter merely as a standard upper tolerance limit is without any rational basis.
>
> 13.5 The exercise of determining the appropriate RPT Filter is necessarily fact-based and depends upon the availability of comparable companies in each case. Except for the contention that interference with the application of a 25% RPT Filter by the Tribunal is erroneous, the Revenue has neither pleaded nor demonstrated any violation of the provisions of the Act or the Rules, nor any perversity in the findings recorded by the Tribunal. Consequently, the adoption of a 15% RPT Filter by the Tribunal cannot be held to be arbitrary or without basis."

62. In the present case, there is no cavil that despite narrowing of the RPT filter to 15%, the search has yielded a sufficient number of comparable entities.

63. On the facts, we are unable to accept that the learned ITAT's finding adopting a lower RPT filter of 15% is perverse. Question No. 5 is, accordingly, answered against the Revenue and in favour of the Assessee.

Question Nos.6 and 7

64. As noted above, the learned ITAT excluded Infosys and Wipro as comparables for several reasons including on the ground

that the said companies owned valuable IPR. According to the Revenue, brand cannot be considered as a variable for determining the profit margin, and therefore, the learned ITAT's finding in this regard is perverse. The said contention is without merit. It is well settled that an established brand and goodwill are intangible assets that have a vital bearing on revenue margins. The products and services of a company with an established brand command a higher price than unbranded products or services.

65. Thus, the revenues of companies that have established the brand by incurring expenditure on promotional activities over the years could not be readily considered as comparable with the revenues of a company that has not incurred any such expenditure and does not own any established brand.

66. This question has also been considered by the Delhi High Court in **Principal Commissioner of Income Tax-7 v. Oracle (OFSS) BPO Services (P) Limited**[10]. In the said case, the court found no infirmity with exclusion of Wipro on the ground of its brand value.

[10] [2018] 90 taxmann.com 388 (Delhi)

67. The relevant extract of the said decision is set out as under:

> "As to the exclusion of M/s Wipro Limited, here too, the Court is of the opinion that the brand value of an entity has a significant role in its ability to garner profits and negotiate contracts. Thus, while considering the comparables, the likelihood of profits derived or attributable to the brand having regard to the consistency of the quality of services that an entity is able to offer would be relevant; although functionally, the two entities may be similar in terms of the services or products they offer, brand does play its own role in price or cost determination. If this singular aspect is kept in mind, the ITAT's approach cannot be faulted with."

68. The said view was also followed in **Avaya India (P) Ltd. v. Assistant Commissioner of Income Tax**[11].

69. The Revenue's contention that the brand is not the only variable affecting revenue is correct. However, it cannot be disputed that it is an asset that would have a bearing on profit margins. Thus, we find no perversity in the learned ITAT's decision to reject Infosys and Wipro as comparables, *inter alia*, on the ground that they hold valuable IPR and have an established brand.

Question No.8

70. The said question relates to exclusion of Tata Elxsi as a comparable. The question whether the learned ITAT was correct in

[11] [2019] 108 taxmann.com 222 (Delhi)

excluding the said company as a comparable is discussed hereinbefore.

71. In view of the said discussion, the learned ITAT cannot be faulted for excluding Tata Elxsi as a comparable. Question No. 8 is, accordingly, answered against the Revenue and in favour of the Assessee.

72. Although we have addressed the questions as raised, in the given facts of this case they cannot be considered substantial questions of law.

73. The appeal is accordingly dismissed.

Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE

Sd/-
(K.S. HEMALEKHA)
JUDGE

KMV/KPS