HC-KAR

NC: 2026:KHC:58795-DB
ITA No. 113 of 2015

CNR: KAHC010245132015

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH 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. 113 OF 2015

BETWEEN:

1. THE DIRECTOR OF INCOME TAX
INTERNATIONAL TAXATION
RASHTROTHANA BHAVAN
NRUPATHUNGA ROAD
BANGALORE

2. THE ASSISTANT DIRECTOR OF INCOME TAX
INTERNATIONAL TAXATION CIRCLE-1(1)
RASHTROTHANA BAHVAN
NRUPATHUNGA ROAD
BANGALORE-560001

…APPELLANTS

(BY SRI E.I. SANMATHI, ADVOCATE)

AND:

1. M/S. CISCO SYSTEMS SERVICES
B.V. INDIA BRANCH
DIVYASHREE CHAMBERS
B WING, NO.11
O SHAUGHNESSEY ROAD
OFF LANGFORD ROAD
BANGALORE-560025

…RESPONDENT

(BY SRI NAGESWAR RAO, ADVOCATE,
SRI K. MALLAHARAO, ADVOCATE,
MS. JINITHA CHATERJEE, ADVOCATE &
MS. DIMPY KUMARI, ADVOCATE)

THIS INCOME TAX APPEAL IS FILED UNDER SEC.260-A OF INCOME TAX ACT 1961, PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE & ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE INCOME-TAX APPELLATE TRIBUNAL, BANGALORE IN IT(TP)A NO.270/BANG/2014 DATED:17/10/2014 AND CONFIRM THE ORDER OF THE DRP CONFIRMING THE ORDER PASSED BY THE ASSISTANT DIRECTOR OF INCOME TAX,(INTERNATIONAL TAXATION) CIRCLE-1(1), BANGALORE & ETC.

THIS APPEAL, COMING ON FOR 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 an order dated 17.10.2014 [**impugned order**] passed by the learned Income Tax Appellate Tribunal, Bangalore Bench 'C', Bangalore [**ITAT**] in IT(TP)A No.270/Bang/2014 for the Assessment Year[**AY**] 2009-2010.

2. The respondent [**Assessee**] is the Indian branch office of Cisco Systems Services B.V., a company incorporated in the Netherlands. The Assessee is engaged in providing software support services for the development of software tools,

applications and processes for the internal use of the Cisco group, and also renders advisory services. The Assessee is remunerated on a cost plus basis for the said services. The Assessee had filed its return of income for AY 2009-2010 on 30.09.2009 declaring a total income of ₹17,67,97,830/-.

3. Since the Assessee had entered into international transactions with its associated enterprises [**AEs**], the Assessing Officer [**AO**] made a reference under Section 92CA of the Act to the Transfer Pricing Officer [**TPO**]. The Assessee furnished a Transfer Pricing Study [**TP Study**] to establish that its international transactions were at the Arm's Length Price [**ALP**]. The Assessee had selected Transactional Net Margin Method [**TNMM**] as the most appropriate method and the operating profit to operating cost as the Profit Level Indicator [**PLI**]. The Assessee had selected seventeen comparables, whose average margin worked out to 13.18% as against its own margin of 14.82%.

4. The learned TPO rejected the Assessee's TP Study, *inter alia*, on the ground that some of the comparable companies selected by the Assessee did not 'stand scrutiny of comparability

characteristics as enunciated in Rule 10B' of the Income Tax Rules, 1962 [**the Rules**] and that the Assessee had not used the data relating to the current financial year in which the international transactions were entered into.

5. The learned TPO applied various filters and rejected twelve of the comparables selected by the Assessee. On an independent search, the learned TPO included six fresh comparables, and thus arrived at a final set of eleven comparables, which included Bodhtree Consulting Limited, Infosys Limited, M/s. KALS Information Systems Limited and Tata Elxsi Limited (segmental). The learned TPO treated the foreign exchange fluctuation gain as non-operating in nature and determined the arithmetic mean of the margins of the said comparables at 24.32%. After a working capital adjustment of (-) 1.73%, the learned TPO determined the adjusted margin at 26.05%. Applying the said margin to the Assessee's operating cost of ₹1,95,83,90,000/-, the learned TPO determined the ALP at ₹2,46,85,50,595/- as against the price of ₹2,24,86,73,636/- received by the Assessee. The learned TPO, by an order dated 29.01.2013, determined the shortfall at ₹21,98,76,959/- and directed that the same be treated as transfer

pricing adjustment under Section 92CA of the Act in respect of the software development services segment.

6. The AO passed a draft assessment order dated 12.03.2013 incorporating the said adjustment. The draft assessment order also proposed a disallowance of ₹8,13,30,000/- under Section 40(a) of the Act in respect of the payments made by the Assessee to its overseas affiliates towards recharge of international assignee costs and other costs, on which tax had not been deducted at source; and recomputed the deduction under Section 10A of the Act.

7. The Assessee filed its objections before the Dispute Resolution Panel [**DRP**]. The DRP, by its directions dated 12.12.2013 issued under Section 144C(5) of the Act, rejected the Assessee's objections relating to the transfer pricing adjustment, including its objections to the inclusion of Bodhtree Consulting Limited, Infosys Limited, M/s. KALS Information Systems Limited and Tata Elxsi Limited as comparables and to the treatment of the foreign exchange fluctuation gain as non-operating in nature. The DRP, however, accepted the Assessee's alternate contention that the expenses excluded from the export turnover were also required

to be excluded from the total turnover for computing the deduction under Section 10A of the Act; and, in respect of the margin of Larsen & Toubro Infotech Limited, directed the TPO to verify whether depreciation had been treated as an operating expense,and, if not, to treat it as such.

8. Pursuant to the directions of the DRP, the AO passed the final assessment order dated 30.01.2014 under Section 143(3) read with Section 144C of the Act, *inter alia*, making a transfer pricing adjustment of ₹21,22,39,238/- (as revised by the TPO after treating depreciation as an operating expense in computing the margin of Larsen & Toubro Infotech Limited) and a disallowance of ₹8,13,30,000/-.The AO determined the total income of the Assessee at ₹39,25,64,487/-.

9. Aggrieved by the final assessment order, the Assessee preferred an appeal before the learned ITAT. By the impugned order, the learned ITAT partly allowed the appeal. The learned ITAT held that the foreign exchange fluctuation gain arising to the Assessee on realization of trade debtors, payment to creditors, etc., was operational income; and directed that the Assessee's

margin, which worked out to 37.38% on treating the said gain as operating income, be verified and accepted, if found correct. The learned ITAT also directed exclusion of Bodhtree Consulting Limited, Infosys Limited, M/s. KALS Information Systems Limited and Tata Elxsi Limited from the list of comparables, following its decision in the case of the Assessee's affiliate, **Cisco Systems (India) Private Limited v. DCIT**[1], and directed the TPO to rework the PLI of the comparables after including the operating foreign exchange gains. The learned ITAT did not find it necessary to adjudicate the Assessee's challenge to the rejection of certain comparables by the TPO, as the learned Authorised Representative of the Assessee had submitted that the same would be irrelevant once the foreign exchange fluctuation gain is considered as operating income. The learned ITAT remitted the issue relating to the disallowance under Section 40(a) of the Act to the AO for fresh consideration.

[1] IT(TP)A No.271/Bang/2014 dated 14.08.2014

10. Aggrieved by the impugned order, the Revenue has filed the present appeal. This Court, by an order dated 14.09.2015, admitted the appeal on the following substantial questions of law:

> "1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in allowing relief to the assessee based on decision of Tribunal in other decisions of Co-ordinate Benches, which have not reached finality and ought to have decided the comparability of the companies on the basis of specific facts brought on record by the TPO in the case of the assessee and recorded perverse findings?
>
> 2. Whether, on the facts and in the circumstances of the case, the Tribunal erred in directing to include forex gain/loss as income in the nature of operating income without ascertaining the nexus with the business activity of the taxpayer?
>
> 3. Whether, on the facts and in the circumstances of the case the Tribunal erred in holding that Bodhtree Consulting Ltd., Infosys Technologies Ltd., Kals Information Systems Ltd., Tata Elxsi Ltd., cannot be taken as comparables, being functionally different when they satisfy all the qualitative and quantitative filters applied by the TPO and selection of comparables in a case depends in transfer pricing on assessee specific FAR analysis and Tribunal failed to appreciate that the different year ending filter applied by the TPO is necessary to exclude companies which do not have the same or comparable financial cycle as the tested party and Tribunal the Tribunal accepted assessee's comparables without adducing any reason for the same and recorded perverse finding?"

11. This Court, by a judgment dated 16.07.2018, dismissed the appeal holding that no substantial question of law arose for consideration, following its decision in **Prl. Commissioner of Income Tax and another v. M/s. Softbrands India Private Limited**[2].

12. The Revenue appealed the said judgment before the Supreme Court in C.A. No. 9027/2022 arising out of SLP(Civil) No. 22607/2022, and the said appeal was tagged along with a batch of matters including an appeal arising from the decision in **Softbrands** (*supra*). The Supreme Court did not concur with the view of this Court in **Softbrands** (*supra*) and held that questions relating to transfer pricing adjustments may also give rise to substantial questions of law. It was necessary to consider whether the provisions of the Act and the rules made thereunder had been followed while determining the ALP. The Supreme Court allowed the said batch of appeals in **SAP Labs India Private Limited v. Income Tax Officer, Circle 6, Bangalore**[3] and remitted the

[2] 2018 SCC OnLine Kar 2330
[3] (2024) 17 SCC 344

matters to this Court to consider the questions relating to the transfer prices afresh.

Re:Question No.1

13. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in allowing relief to the assessee based on the decision of the Tribunal in other decisions of Co-ordinate Benches, which have not reached finality and ought to have decided the comparability of the companies on the basis of specific facts brought on record by the TPO in the case of the assessee and recorded perverse findings?

14. Question No.1 is general in nature. There would be no infirmity in the learned ITAT deciding the questions based on its earlier decisions, provided the same were rendered in a relevant factual context. In the present case, the learned ITAT had followed its decision in **Cisco Systems (India) Private Limited** (*supra*), which was rendered in the case of the Assessee's affiliate, engaged in a similar line of business, for the same AY.

15. The said question, as projected by the Revenue, does not give rise to any substantial question of law.

Re:Question No.2

16. Whether, on the facts and in the circumstances of the case, the Tribunal erred in directing to include foreign exchange gain / loss as income in the nature of operating income without ascertaining the nexus with the business activity of the taxpayer?

17. A plain reading of this question as projected indicates that it is on an erroneous assumption that the learned ITAT had directed inclusion of foreign exchange gain and loss as operating income without ascertaining the nexus of such income with the business activities of the Assessee.

18. The learned ITAT had noted that the Assessee had given a break-up of its foreign exchange gain and had specifically excluded the exchange loss on purchase of fixed assets. The Assessee had asserted that the foreign exchange fluctuation gain arose from its operational transactions, such as realisation of trade debtors, payments to creditors, inter-company cross charges, etc. The learned ITAT noted that none of the authorities had returned any finding that the foreign exchange fluctuation gains were relatable to any capital receipts or outgoings.

19. In the aforesaid facts, the learned ITAT held that the gains arising on realisation of trade debtors and payments to creditors were operational income. The learned ITAT also followed its decision in **Cisco Systems (India) Private Limited** (*supra*), wherein the foreign exchange fluctuation gain arising on realization of the proceeds for rendering software development services was held to be a part of the operating income.

20. There is no material on record to doubt the Assessee's claim that its foreign exchange fluctuations had arisen on account of realisation of trade debtors and payments to creditors, etc., which are a part of its operations.

21. A Co-ordinate Bench of this Court, in its decision dated 28.08.2026 captioned **SAP Labs India Private Limited** (supra) has held that foreign exchange gain or loss can be treated as operating only where it has a direct nexus with the international transaction. In the present case, the Assessee’s operating revenue was entirely derived from the services rendered to its AE. The learned ITAT found that the gain arose on realization of trade

debtors, payments to creditors, etc. and directed that the Assessee's margin be verified and accepted, if found correct.

22. In view of the above, no substantial question of law arises in this regard.

Re: Question No.3

23. Whether, on the facts and in the circumstances of the case the Tribunal erred in holding that Bodhtree Consulting Ltd., Infosys Ltd., Kals Information Systems Ltd., Tata Elxsi Ltd., cannot be taken as comparables, being functionally different when they satisfy all the qualitative and quantitative filters applied by the TPO and selection of comparables in a case depends in transfer pricing on Assessee specific FAR analysis and Tribunal failed to appreciate that the different year ending filter applied by the TPO is necessary to exclude companies which do not have the same or comparable financial cycle as the tested party and Tribunal the Tribunal accepted Assessee's comparables without adducing any reason for the same and recorded perverse finding?

24. The question relates to the learned ITAT's decision to exclude the following four companies as comparables: M/s.KALS

Information Systems Limited, Infosys Limited, M/s.Bodhtree Consulting Limited, and Tata Elxsi Limited.

25. The learned ITAT directed exclusion of the said companies following its decision in **Cisco Systems (India) Private Limited** (*supra*), which was rendered in the case of the Assessee's affiliate company, engaged in similar activities, for the same AY.

26. A Co-ordinate Bench of this Court in **SAP Labs (KHC)**(*supra*) has also held that there is no prohibition against the ITAT following its earlier decision where the relevant facts remain the same; the Revenue has not demonstrated that the facts in the present case are different.

Re: Infosys Limited

27. In **Cisco Systems (India) Private Limited** (*supra*), the learned ITAT had excluded Infosys Limited as a comparable on the ground that the said company was functionally different and it owned significant intangible assets and had huge revenues from software products. Thus, on FAR analysis, it was not similar.

28. It is relevant to note that the learned ITAT in the case of **M/s.Cisco Systems (India) Private Limited** (*supra*) also referred

to its earlier decision in **M/s. DPLM Software Solutions Limited v. DCIT**, IT(TP)A. No. 1303/Bang/2012 decided on 28.11.2013. In the said decision, the learned ITAT had accepted the contentions that Infosys Limited had, *inter alia,* generated several inventions and filed for patents in India and USA;had substantial revenues from software products, the break-up of which was not available;and had incurred huge expenditure on research and development.

29. We may also note that the Delhi High Court in **Commissioner of Income-tax v. Agnity India Technologies (P.) Ltd.**[4]had held that the size of a company as well as its intangible assets would have a bearing on its revenues. Thus, we find no infirmity with the decision of the learned ITAT directing exclusion of Infosys Limited from the list of comparables on account of difference in the functional profiles of the two companies.

Re:Tata Elxsi Limited

30. The learned ITAT, in **Cisco Systems (India) Private Limited** (*supra*), had followed its earlier decision in the case of that

[4][2013] 36 taxmann.com 289 (Delhi); (2013) 219 Taxman 26 (Delhi)

assessee for AY 2007-08, wherein wherein the learned ITAT accepted the contentions of that assessee that Tata Elxsi Limited operates in the segment of software development services, which comprises embedded product design services, industrial design and engineering services and visual computing labs, besides a system integration services segment; that no break-up of the sub-services was available; and that the said company had itself, in its response to a notice under Section 133(6) of the Act, stated that it cannot be considered as comparable to any other software services company because of its complex nature. Accordingly, the learned ITAT found that the said company was functionally different. A Co-ordinate Bench of this Court, in its decisionin **SAP Labs (KHC)**(*supra*) had 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."

31. Concededly, the issue whether Infosys Limited and Tata Elxsi Limited are comparable to a company rendering software development services is covered by the said decision of the Co-ordinate Bench. Thus, the learned ITAT's decision to exclude Infosys Limited and Tata Elxsi Limited from the list of comparables does not give rise to any substantial question of law.

Re: Bodhtree Consulting Limited

32. Insofar as Bodhtree Consulting Limited is concerned, the learned ITAT followed its decision in **Cisco Systems (India) Private Limited** (*supra*), wherein the said company was held to be engaged in the business of software products and in providing open and end-to-end web solutions, software consultancy and design and development of software using latest technology, and thus, not comparable to a company rendering software development services. The said decision had followed the decisions of the Mumbai Bench of the Income Tax Appellate Tribunal in **Nethawk Networks Private Limited v. ITO**[5] and **Willis Processing Services (I) P. Ltd. v. Deputy Commissioner of Income Tax-2(3), Mumbai**[6].

33. The Delhi Bench of the Income Tax Appellate Tribunal in **Fiserv India Private Limited v. ITO**[7] had also found that Bodhtree Consulting Limited was not comparable to an assessee engaged in software development services; and the appeal preferred by the

[5] ITA No.7633/Mum/2012 dated 06.11.2013; [2014] 41 taxmann.com 250 (Mumbai – Trib.)
[6] IT Appeal Nos.4429 & 4547/Mum/2012 decided on 01.03.2013; [2013] 30 taxmann.com 350 (Mumbai-Trib.)
[7] ITA No.1822/Del/2014, decided on 26.06.2015

Revenue against the said decision was dismissed by the Delhi High Court in **Principal Commissioner of Income Tax v. Fiserv India (P) Ltd.**[8], as it did not give rise to any substantial question of law. This Court, in its recent decision in **Commissioner of Income Tax-III v. M/s. Torry Harris Business Solutions Private Limited**[9], has also upheld the exclusion of Bodhtree Consulting Limited from the list of comparables of an assessee rendering software development services to its AE, for AY 2009-10.

34. A Co-ordinate Bench of this Court in **SAP Labs (KHC)** (*supra*), while dealing with ITA No.492/2016 for AY 2009-10, has also declined to interfere with the exclusion of Bodhtree Consulting Limited and Infosys Limited from the list of comparables on the ground of functional dissimilarity, holding that the findings of the learned ITAT were in conformity with Section 92C of the Act and Rule 10B of the Rules and did not give rise to any substantial question of law.

[8] [2018] 92 taxmann.com 471 (Delhi)
[9] NC: 2026: KHC: 50456-DB

35. The finding of the learned ITAT that Bodhtree Consulting Limited is functionally not comparable to the Assessee is a finding of fact, which is based on relevant material, and cannot be considered as perverse.

Re: KALS Information Systems Limited

36. Insofar as M/s. KALS Information Systems Limited is concerned, the learned ITAT followed its decision in **Cisco Systems (India) Private Limited** (*supra*) which, in turn, had followed the decision in **Trilogy E-Business Software India Private Limited v. DCIT**[10]. In the said decision, the learned ITAT accepted the plea of the assessee in that case that the said company had revenues from both software development and software products and was also engaged in providing training, and found that the conclusions drawn by the TPO on the basis of the information obtained under Section 133(6) of the Act were contrary to the annual report of the said company.

[10] ITA No.1054/Bang/2011 dated 23.11.2012

37. The Bombay High Court, in **Commissioner of Income Tax-2, Pune v. Principal Global Services (P.) Limited**[11], had upheld the view of the Tribunal that M/s. KALS Information Systems Limited was not an apposite comparable to a company engaged in software development services, as it was also engaged in developing software products as well as running a training centre in the previous year relevant to AY 2009-10. A similar view was also expressed by the Bombay High Court in **Commissioner of Income Tax-II, Pune v. PTC Software (I) (P.) Limited**[12], *albeit*, in respect of AY 2007-2008.

38. A Co-ordinate Bench of this Court in **SAP Labs (KHC)**(*supra*), while dealing with ITA No.44/2015 for AY 2008-09, had declined to interfere with the exclusion of, *inter alia*, KALS Information Systems Limited, Tata Elxsi Limited and Infosys Limited from the list of comparables, where the learned ITAT had followed its decision in **3DPLM Software Solutions Limited** (*supra*). Thus, the exclusion of M/s. KALS Information Systems

[11] [2018] 95 taxmann.com 315 (Bombay)
[12] [2016] 75 taxmann.com 31 (Bombay)

Limited from the list of comparables does not give rise to any substantial question of law.

39. The question, as framed, also proceeds on the premise that the learned ITAT failed to appreciate the different year-ending filter applied by the TPO and had accepted the Assessee's comparables without adducing any reasons. The said premise is not borne out bythe impugned order. The learned ITAT had not interfered with the filter applied by the TPO for excluding companies having a different financial year ending; nor had it directed inclusion of any of the comparables selected by the Assessee and rejected by the TPO. As noted above, the learned ITAT did not find it necessary to adjudicate the Assessee's challenge to the rejection of such comparables.

40. In view of the above, the decision of the learned ITAT to exclude M/s. KALS Information Systems Limited, Infosys Limited, M/s. Bodhtree Consulting Limited and Tata Elxsi Limited from the list of comparables does not give rise to any substantial question of law.

41. In view of the above, we find no merit in the present appeal. The appeal is, accordingly, dismissed.

42. Pending applications, if any, stand disposed of.

Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE

Sd/-
(K.S. HEMALEKHA)
JUDGE

KPS
List No.: 2 Sl No.: 10