HC-KAR

NC: 2026:KHC:50456-DB
ITA No. 155 of 2015

CNR: KAHC010267312015

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH 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.155 OF 2015

BETWEEN:

1. COMMISSIONER OF INCOME TAX-III,
C.R. BUILDING, QUEENS ROAD,
BANGALORE - 560 001.

2. THE DEPUTY COMMISSIONER OF INCOME TAX,
CIRCLE - 12(4),
BANGALORE.

...APPELLANTS

(BY SRI. E.I. SANMATHI, ADVOCATE)

AND:

M/S TORRY HARRIS
BUSINESS SOLUTIONS PVT. LTD.,
71, SONA TOWERS,
MILLERS TANK ROAD,
BANGALORE - 560052.

...RESPONDENT

(BY SRI. T. SURYANARAYANA, SENIOR ADVOCATE FOR
MS. TANMAYEE RAJKUMAR, ADVOCATE)

THIS ITA IS FILED UNDER SECTION 260-A OF INCOME TAX ACT 1961, TO DECIDE THE FOREGOING QUESTION OF LAW AND / OR SUCH OTHER QUESTIONS OF LAW AS MAY BE FORMULATED BY THE HON'BLE COURT AS DEEMED FIT; SET ASIDE THE

APPELLATE ORDER DATED 21.11.2014 PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH, BANGALORE, IN APPEAL PROCEEDINGS NO.I.T.(TP).A.NO.113/BANG/2014 FOR ASSESSMENT YEAR : 2009-10, AS SOUGHT FOR IN THIS APPEAL.

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 21.11.2014 passed by the learned Income Tax Appellate Tribunal, Bangalore Bench 'C', Bangalore [**ITAT**] in IT (TP)A No.113(Bang)2014 in respect of Assessment Year [**AY**] 2009-10. The Assessee had filed the said appeal impugning the Assessment Order dated 31.01.2014 passed under Section 143 (3) read with Section 144C (13) of the Act.

2. The Assessee is engaged in the business of developing computer software for its Associated Enterprise. During the relevant assessment year, it filed its return of income for AY-2009-

10 on 30.09.2009, declaring a total income of ₹30,97,850/- after claiming an exemption of ₹17,54,94,079/- under Section 10A of the Act. The return filed by the Assessee was selected for scrutiny and since it involved international transactions, the Assessing Officer [**AO**] made a reference under Section 92CA of the Act to the Transfer Pricing Officer [**TPO**].

3. The Assessee furnished a Transfer Pricing Study, in which it adopted the Transactional Net Margin Method [**TNMM**] to determine the Arm's Length Price [**ALP**]. The Assessee referred to nine comparables with an average profit margin of 10.5% on sales, which was considered the Profit Level Indicator [**PLI**]. The Assessee had disclosed a margin of 13.08% on sales. On the said basis, the Assessee claimed that the international transactions were at arm's length.

4. The learned TPO accepted TNMM as the most appropriate method. However, the TPO found that certain filters applied by the Assessee, as well as comparables selected by it, were not apposite.

5. After considering the Assessee's objections to certain comparables and its submissions regarding certain additional comparables, the learned TPO selected a set of 11 comparable entities. The tabular statement setting out the comparables finally selected by the TPO, along with their respective margins on sales, is reproduced below:

Sl. No.	Name of the Comparable	Sale (in Rs.)	Cost (in Rs.)	Margin on Sales
1	Kals Information Systems Ltd.	2,14,04,686	1,87,93,813	12.20%
2	Akshay Software Technologies Ltd.	12,23,21,483	11,31,49,350	7.50%
3	Bodhtree Consulting Ltd	16,05,75,212	9,89,56,821	38.37%
4	R S Software (India) Ltd.	1,49,57,12,634	1,36,01,02,589	9.07%
5	Tata Elxsi Ltd (segmental)	3,78,43,03,000	3,14,63,15,000	16.86%
6	Sasken Communication Technologies Ltd	4,05,31,20,000	3,18,69,97,000	21.82%
7	Persistent Systems Ltd	5,19,69,10,000	3,67,52,70,000	29.28%
8	Zylog Systems Limited	7,34,93,51,475	6,81,69,98,160	7.24%

9	Mindtree Ltd (seg)	7,93,22,79,326	5,74,06,73,058	5.23%
10	Larsen and Toubro infotech	19,50,83,81,374	15,64,12,76,626	19.82%
11	Infosys Ltd	2,02,64,00,00,000	1,39,17,00,00,000	31.32%
	AVERAGE MEAN			**18.07%**

6. After providing for the working capital adjustment and risk adjustment, the AO computed the ALP and determined an excess of ₹20,50,06,773/- over the amount disclosed by the Assessee. Accordingly, the learned TPO passed an order dated 30.01.2013, directing transfer pricing adjustment of the said amount.

7. Based on the above directions, the AO passed a draft assessment order dated 26.03.2013 under Section 144C (1) of the Act proposing the Assessee's income at ₹31,39,57,352/- as against the returned income of ₹30,97,850/-. The proposed assessment included a transfer pricing adjustment of ₹20,50,06,773/- as determined by the learned TPO.

8. The Assessee filed its objections before the Dispute Resolution Panel, Bangalore [**DRP**], *inter alia,* challenging the

transfer pricing adjustment. The DRP issued its directions on 12.12.2013 and the AO passed the final assessment order on the said basis on 31.01.2014.

9. The Assessee appealed against the assessment order before the learned ITAT on several grounds. However, for the purposes of the present appeal, only the grounds relating to the transfer pricing adjustments are relevant, as the present appeal is confined to those transfer pricing adjustments. This Court dismissed the present appeal by order dated 02.07.2018. The Court found that no substantial question of law arose for consideration by the Court.

10. The Court had also referred to its earlier decision in **Prl. Commissioner of income tax and another Vs. M/s. Softbrands India Private Limited**[1]. In the said decision, this Court held that appeals concerning whether the comparables had been rightly selected or the filters had been rightly applied would not give rise to any substantial question of law.

[1] ITA No.536/2015 c/w ITA No.537/2015 D.D. 25.06.2018

11. The Revenue had also challenged the decision in **Softbrands** (*supra*) before the Supreme Court. The Revenue also challenged the order dated 02.07.2018 passed in the present appeal before the Supreme Court, which tagged along with the appeals arising from the decision in **Softbrands** (*supra*).

12. The Supreme Court did not concur with the decision of this Court in **Softbrands** (*supra*). In **SAP Labs India Private Limited Vs. Income Tax Officer**[2] and other connected appeals, the Supreme Court held that questions relating to transfer pricing adjustment may give rise to questions of law, as it is necessary to consider whether the provisions of the Act and the Rules have been duly followed while determining the ALP. The present appeal was also part of the batch of appeals decided by the Supreme Court, which was remitted back to this Court to consider the questions relating to transfer pricing. Accordingly, this Court must consider the same without reference to the observations made in **Softbrands** (*supra*).

[2] (2024) 17 SCC 344

13. The Revenue has projected the following questions for consideration of this Court:

> "1) Whether on the facts and circumstances of the case, the Tribunal is right in law by directing the TPO to consider only those uncontrolled comparables which are having turnover between Rs.1 to 200 crores and as against the method of Arithmetical average of the PLIs of uncontrolled comparables as per the proviso to section 92C(2) of Income Tax Act, 1961?
>
> 2) Whether on the facts and circumstances of the case, the Tribunal is right in directing the TPO to apply turnover filter without any evidence in support of correlation between turnover and the profitability?
>
> 3) Whether on the facts and circumstances of the case, the Tribunal is right in holding that the size and turnover of the company are deciding factors for treating a company as a comparables and accordingly erred in excluding the comparables ?
>
> Exclusion of comparable being functionally different
>
> 4) Whether on the facts and circumstances of the case, the Tribunal is right in holding that M/s.Bodhtree Consulting Limited cannot be taken as comparable, being functionally different when it satisfies all the qualitative and quantitative filters applied by the TPO and per imposing the decision of other Benches of Tribunal in the case of assessee to reject these comparables when selection of comparables in a case depends in transfer pricing on assessee specific FAR analysis and even when comparable are similar without making a FAR analysis of functions of assessee?
>
> Working Capital Adjustment:
>
> 5) Whether on the facts and circumstances of the case the Tribunal has erred in directing the TPO to re-work the margins of the comparables even when any disturbance in any one of the criteria of the taxpayer or the TPO results in fresh comparability analysis and therefore a piecemeal

approach negates the whole concept of comparability analysis?

6) Whether on the facts and in the circumstances of the case, the Tribunal was justified in deleting the addition made by the Assessing Officer without appreciating that due to the amendment in section 194J and section 9 of the IT Act, the charges paid for leased line come under the purview of section 194J of the Act and therefore liable to TDS?

7) Whether on the facts and in the circumstances of the case, the Tribunal was justified in directing the Assessing Officer to reduce the expenditure incurred in foreign currency both from the Export Turnover and Total turnover for the purpose of computation of deduction u/s. 10A / 10AA of the IT Act without appreciating the fact that the statute allows exclusion of such expenditure only from the ETO by way of specific definition of export turnover as envisaged in the Act. On the other hand, there is no specific provision in section 10A / 10AA warranting exclusion of the above expenses from the total turnover also ?"

14. The Revenue did not press Question Nos. 6 and 7 in the earlier round, as noted in the order dated 02.07.2018. In view of the above, only the remaining questions fall for consideration in the present case.

15. Question Nos.1, 2 and 3 are admittedly covered by the decision of this Court in **SAP Labs India Private Limited Vs. Income Tax Officer**[3]. The Court held that there was no prescribed turnover filter. However, fixing a turnover limit of ₹200 crores could

[3] ITA No.10/2011 & other connected matters D.D. 28.08.2026

not be considered arbitrary, as it was based on a rational and logical basis. The entire exercise of finding a comparable is to identify entities as similar as possible to the assessee on the basis of their functional profile, assets, and risks. In this regard, the size of the company is material, and a wide difference in turnover would also affect their transaction pricing.

16. In the present case as well, the ITAT had applied a turnover filter of between ₹1 crore and ₹200 crores to ensure that the comparables identified through a search of the databases were of a similar size to that of the Assessee. In our view, in the given facts, none of the first three questions of law can, therefore, be said to be substantial.

17. Question No.4 concerns the selection of M/s Bodhtree Consulting Private Limited [**M/s. Bodhtree**] as a comparable. The learned ITAT noted that M/s. Bodhtree ought to be excluded as a comparable, since it is also a product company. The Assessee was engaged only in the development of software for its AE. It did not possess any intellectual property and was not engaged in the business of developing or marketing any software product.

18. The ITAT referred to an earlier decision in the case of **M/s. CISCO Systems India Private Limited Vs. DCIT[4],** wherein the learned ITAT noted that M/S. Bodhtree was engaged in the business of software products, providing open and end-to-end web solutions, software consultancy, and designing and developing software using the latest technology. The functional profile of M/s Bodhtree is not similar to the functional profile of the Assessee.

19. The learned counsel appearing for the Assessee also points out that, in the case of **M/s. Fiserv India Private Limited Vs. ITO**[5] for the same assessment year (AY 2009-10), the learned ITAT had examined the profile of M/s Bodhtree and found that the said company was not comparable to M/s Fiserv India Private Limited, which was engaged in software development services, *inter alia* for the reason that M/s Bodhtree was engaged in the development of software products. We note that the ITAT had also followed the decision in the **M/s. CISCO systems** (*supra*). Paragraph No.10 of the learned ITAT's decision in **M/s. Fiserv India** (*supra*) is relevant.

[4] IT (TP)A No.271/(B)/2014 D.D. 14.08.2014

[5] ITA No.1822/Del/2014 D.D. 26.06.2015

Accordingly, the relevant extract of the said decision is set out below:

> **"BODHTREE CONSULTING LTD:**
>
> 10. The learned AR submitted that this comparable be excluded on the ground that this company has experienced abnormally high increasing sales/profitability for the year under consideration i.e. F.Y. 2008-09. The Ld. AR (Asst. Year 2009-2010) further submitted that Bodhtree is a provider of innovating consulting and technology services. The company has niche strengths in building and managing a business oriented IT environment with rich experience in technology incubation, product engineering, business intelligence, data management, SOA consulting, CRM consulting, data warehousing and product engineering. It was submitted that merely because one segment of the company is of software development, the same does not entail the company to be used as a comparable. Further it was submitted that M/s Bodhtree collaborates with reputed software vendors of the Silicon Valley for implementation and development of solutions and does not carry out the development themselves. It was submitted that Bodhtree is functionally not comparable and should not considered as comparable company. The AR submitted that Bodhtree has experienced abnormally fluctuating sales/profitability. A chart in support of the same was highlighted which is as under:

F.Y.	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11
Sales	53,189,165	103,528,905	103,665,824	160,575,212	225,676,988	212,115,207
PBIT	925,404	46,255,168	16,199,521	71,439,120	50,515,860	(4,000,933)
PBIT/Sales	1.74%	44.68%	15.63%	44.49%	22.38%	-1.89%
Sales (Increase in % taking FY 2005-06 as the base)	Base year	195%	100%	155%	141%	94%
PBIT (Increas in % taking FY 2005-06 as the base	Base year	4998%	35%	441%	71%	-8%

10.1 On the basis of above, it was stated that increase in PBIT is 441% for FY 2008- 09 whereas the increase in sales is 155%, which indicates that there is a disproportionate increase in the profit of the company, hence the same ought to be rejected.:

10.2 The Ld. AR also draw attention to annual report of Bodhtree for subsequent year where it has categorically mentioned that margin of the company has fallen down due to termination of a contract with a customer. Based on the above the Ld. AR submitted it can be reasonably concluded that the operating margins of FY 2008-09 were significantly influenced by the above mentioned contract, in (Asst. Year 2009-2010) absence of which the normalized operating margin for F.Y. 2009-10 and F.Y. 10-11 were considerably lower. In this regard, reliance was placed on the decision in the case of PTC Software India Pvt. Ltd. vs. DCIT dated 31.10.2014 and Q. Logic India Pvt. Ltd. vs. DCIT dated 21.10.2014 in ITA No. 27/PN/2014 wherein the said company was excluded as comparable on account of fluctuating margin. Apart from the above, reference was also made to another decision in the case of Mindteck in ITA No. 17/Bangalore/2014 dated 21.10.2014 wherein ITAT has excluded Bodhtree Consulting Ltd. from the list of final comparables on account of fluctuations in margins over the years.

10.3 The ld AR also relied on the decision of the ITAT Bangalore Bench in M/s. Softtek India Private Limited Vs. ITO, ITA No.222/Bang/2014 for the Assessment Year 2009-10, wherein the Tribunal excluded Bodhtree Consulting Ltd. as a comparable since it is functionally different and engaged in developing software products and segmental data is available in public domain. 10.4 The learned DR supported the order of DRP and the TPO. 10.5 Having considered rival submissions, we find that the issue regarding the exclusion of the instant comparable stands examined by a coordinate bench of this Tribunal in the case of M/s. Softek India Pvt. Ltd. vs. ITO, ITA No. 222/Bang/2014 for assessment year 2009-10 wherein in an order dated 31.10.2014 it was held as under:

> "4.3 Having regard to the contentions of the rival parties and also the material on record, we find that the assessee is only a software services company whereas M/s. Bodhtree Consulting Ltd. is also into the business of software product development and segmented data is not available in the public domain. Therefore, we are satisfied that it is functionally different and cannot be considered as a comparable to the assessee-company. As regards revenue recognition model of the assessee and M/s. Bodhtree Consulting Ltd., are concerned, since the relevant material to determine the revenue model of the assessee herein is not available on record, we are not inclined to give any finding on this issue. Therefore, we direct the AO to exclude M/s. Bodhtree Consulting Ltd., from the list of comparables as it is functionally different."

10.6 Also another coordinate bench in the case of Cisco Systems (India) (P) Ltd. vs. DCIT 66 SOT 82 (Bang) has held as under:

> "26.1 Bodhtree Consulting Ltd.:- As far as this company is concerned, it is not in dispute that in the list of comparables chosen by the assessee, this (Asst. Year 2009-2010) company was also included by the assessee. The assessee, however, submits before us that later on it came to the assessee's notice that this company is not being considered as a comparable company in the case of companies rendering software development services. In this regard, the ld. counsel for the assessee has brought to our notice the decision of the Mumbai Bench of the Tribunal in the case of Nethawk Networks (P.) Ltd. v. ITO [2014] 41 taxmann.com 250 (Mum - Trib.). In this case, the Tribunal followed the decision rendered by the Mumbai Bench of the Tribunal in the case of Wills Processing Services (I) P. Ltd. v. Dy. CIT IT Appeal No.4547/Mum/2012, dated 13-11-2013. In the aforesaid decisions, the Tribunal has taken the view that Bodhtree Consulting Ltd. is in the business of software products and was engaged in providing open & end to end web solutions software consultancy and design & development of software using latest

> technology. The decision rendered by the Mumbai Bench of the Tribunal in the case of Nethawk Networks (P.) Ltd. (supra) is in relation to A.Y. 2008-09. It was affirmed by the learned counsel for the Assessee that the facts and circumstances in the present year also remains identical to the facts and circumstances as it prevailed in AY 08-09 as far as this comparable company is concerned. Following the aforesaid decision of the Mumbai Bench of the Tribunal, we hold that Bodhtree Consulting Ltd. cannot be regarded as a comparable. In this regards, the fact that the assessee had itself proposed this company as comparable, in our opinion, should not be the basis on which the said company should be retained as a comparable, when factually it is shown that the said company is a software product company and not a software development services company."
>
> 10.7 Having considered the above, we hold that since the assessee company is engaged in software development services; whereas M/s. Bodhtree Consulting Ltd. was engaged into software product development, we find force in the argument of the ld counsel for the assessee that M/s. Bodhtree Consulting Ltd. is functionally different from assessee company."

20. The Revenue had appealed the Tribunal's decision in **M/s. Fiserv** (*supra*) before the High Court of Delhi. In **Principal Commissioner of Income-Tax Vs. Fiserv Indiat (P) Ltd.,**[6] the Division Bench of the Delhi High Court of which one of us, Vibhu Bakhru, J., held that the findings recorded by the ITAT did not give rise to any substantial question of law and accordingly, dismissed the appeal.

[6] [2018] 92 taxmann.com 471 (Delhi)

21. The learned counsel appearing for the Revenue also fairly states that, given the functional profile of M/s. Bodhtree, the said company cannot be considered comparable to a pure captive software development company. In view of the above, question No.4, as projected by the Revenue is not a substantial question of law.

22. Insofar as question No.5 is concerned, it arises from the learned ITAT's decision to remand the matter to the AO/TPO to consider the matter afresh in light of the observations made by the learned ITAT. After considering the grounds of appeal, the learned ITAT, remanded the matter to AO/TPO for such consideration. It appears that the Revenue seeks to contend that on remand, the exercise of determining ALP must be considered afresh. We find no basis for the said contention. The learned TPO had determined a final set of comparables. As noted above, some of them were required to be excluded on the grounds set out by the learned ITAT. There is no requirement to conduct the exercise afresh, as it has already been conducted.

23. No substantial question of law arises in this regard as well.

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24. In view of the above, we cannot accept that there is any error in the decision of the learned ITAT. Accordingly, the appeal is dismissed.

Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE

Sd/-
(K.S. HEMALEKHA)
JUDGE

MBM
List No.: 2 Sl No.: 24

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