HC-KAR

NC: 2026:KHC:48625-DB
ITA No. 379 of 2013

CNR: KAHC010312602013

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. 379 OF 2013

BETWEEN:

1. THE COMMISSIONER OF INCOME-TAX
C.R. BUILDING, QUEENS ROAD
BANGALORE
2. THE DEPUTY COMMISSIONER OF INCOME-TAX
CIRCLE - 11 (2), 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)

THIS ITA IS FILED UNDER SECTION 260-A OF INCOME TAX ACT, 1961, ARISING OUT OF ORDER DATED 28/03/2013 PASSED IN ITA NO.1076/Bang/2011, FOR THE ASSESSMENT YEAR 2007-2008, PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN AND ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE INCOME-TAX APPELLATE TRIBUNAL, BANGALORE IN ITA NO.1076/Bang/2011 DATED 28/03/2013 AND CONFIRM THE ORDER PASSED BY THE DISPUTE RESOLUTION

PANEL, TRANSFER PRICING OFFICER AND ASSESSMENT ORDER PASSED BY THE DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE-11(2), 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 the order dated 20.03.2013 passed by the learned Income Tax Appellate Tribunal [**the Tribunal**] in IT [TPA] No.1076/BANG/2011 for the assessment year 2007-08. The respondent [**Assessee**] had preferred the appeal before the Tribunal, impugning the order dated 30.12.2010 passed by the Assessing Officer [**AO**].

2. The said Assessment Order dated 30.12.2010 was passed under Section 143(3) of the Act. 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

had passed the order dated 28.10.2010 making transfer pricing adjustment in a sum of ₹80,52,22,112/- 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 to 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 02.09.2011 issuing certain directions. The DRP, *inter alia*, held that the approach of the TPO 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 30.12.2010, *inter alia*, adding a sum of ₹80,52,22,112/- 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, which established 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 TNMM as the most appropriate method. The TPO held that the Assessee's functional profile was that of a trader as it was purchasing products from its AE and reselling them to the AE's customers in India. The learned TPO held that given the FAR[1] analysis, the Resale Price Method [**RPM**] is the most appropriate method for determining the ALP.

8. The Asseesee 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

[1] Functions, Assets and Risks

benchmarked with other service providers and not with entities 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). The Assessee stated that 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 also belong to the CISCO group.

10. The Assessee stated that the CISCO group provides the warranty for its products and also sells AMC to its distributors. It is for these purposes that it supplies spare parts through the Assessee. It is stated that the Assessee supplies the products received from its AE free of cost to customers and sends back product replacement to its AE. For its services CISCO has mark up 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. The Assessee claimed that if 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 AE also reimburses the customs duties paid by the Assessee on import.

12. However, 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.

13. The learned TPO rejected TNMM as the most appropriate method and used RPM instead.

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

15. 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.

16. 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.

17. 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.

18. 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 of the case and in law the Tribunal was correct in holding that the Resale Price Method (RPM) as adopted by the TPO is not applicable in the case of the assessee on the ground that the purchase and transactions are with the same associated enterprise and that TNMM is the right method to be adopted?
>
> 2. Whether on the facts and in the circumstances of the case and in law the Tribunal was correct in holding that the tax payer is not a trader merely because it has no right to fix the resale price and that the assessee is performing functions akin to those of C & F agents?
>
> 3. Whether on the facts and in the circumstances of the case and in law the Tribunal was correct in holding that the comparables adopted by the TPO are to be rejected while upholding one of the comparables of the TPO whereas there is no significant difference between the other 3 comparables of the TPO and this company in terms of functions performed assets owned and risk undertaken?
>
> 4. Whether on the facts and in the circumstances of the case and in law the Tribunal was correct in holding that the benefit of 5% range as provided

under the erstwhile proviso to Section 92C(2) of the Act is to be granted to the assessee?

5. Whether on the facts and in the circumstances of the case and in law the Tribunal was correct in holding that Tata Elxi Limited and Flextronic Software Limited cannot be taken as comparables on the ground of functional difference without appreciating the fact it satisfies all the quantitative and qualitative filters applied by the Transfer Pricing Officer while segmental results have been used and recorded a perverse finding?

6. Whether on the facts and in the circumstances of the case and in law the Tribunal was correct in holding that the expenses excluded from export turnover has to be reduced from total turnover for computing deduction under Section 10A of the Act contrary to the provisions of Section 10A of the Act?"

19. This Court considered the present appeal and, on 11.07.2018, 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. 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. The Department challenged the said judgment dated 11.07.2018.

20. 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.

21. 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*)**.**

22. 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 the Court to examine whether the guidelines laid down under the Act and Rules would be followed while determining the ALP.

23. The learned counsel appearing for the Department fairly stated that the only questions to be examined would relate to the determination of the ALP and whether the same was contrary to the provisions of the Act and the Rules.

24. The learned counsel appearing for the Department fairly stated that question No.6 is 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.

25. In the present case, the principal controversy is regarding the use of adoption of TNMM as the most appropriate method for determining the ALP. The Assessee had adopted the said method as it claimed 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

26. The Tribunal had, after considering the functional profiles and after analysing the functional profile and risks, 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.

27. We find no fault with the learned Tribunal's reasoning. The learned counsel appearing for the Department also does not argue that the learned Tribunal's decision regarding the functional profile of the Assessee is perverse.

28. The question involved is similar to the question involved 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

sd, List No.: 1 Sl No.: 19