



CNR: KAHC010114102012

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8<sup>TH</sup> 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. 23 OF 2012

**BETWEEN:**

1. THE COMMISSIONER OF INCOME-TAX  
C.R. BUILDING  
QUEENS ROAD  
BANGALORE
2. THE DY. COMMISSIONER OF INCOME-TAX  
CRICLE-11(2)  
C.R. BUILDING  
QUEENS ROAD  
BANGALORE

...APPELLANTS

(BY SRI E.I. SANMATHI, ADVOCATE)

**AND:**

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

...RESPONDENT

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



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THIS ITA IS FILED UNDER SECTION 260-A OF INCOME TAX ACT, 1961, ARISING OUT OF ORDER DATED 30/08/2011 PASSED IN ITA NO.1410/Bang/2010, FOR THE ASSESSMENT YEAR 2006-2007, PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE AND ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME-TAX APPELLATE TRIBUNAL, BANGALORE IN ITA NO.1410/Bang/2010 DATED 30/08/2011 AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE-11(2), BANGALORE & ETC.

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

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

**ORAL JUDGMENT**

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

1. The Revenue has filed the present appeal under Section 260A of the Income Tax Act, 1961 [**the Act**], impugning the order dated 30.08.2011 passed by the Income Tax Appellate Tribunal, Bengaluru [**the Tribunal**] in ITA No.1410/BANG/2010 for the Assessment Year [**AY**] 2006-07. The respondent [**Assessee**] had preferred the appeal before the Tribunal, impugning the order



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dated 24.01.2009 passed by the Assessing Officer [**AO**]. The Assessment Order dated 25.10.2010 was passed under Section 143(3) of the Act. The Assessee had disclosed certain transactions with its Associated Enterprise [**AE**]. Accordingly, the AO referred the matter to the Transfer Pricing Officer [**TPO**] under Section 92CA of the Act. The learned TPO had passed the order dated 30.10.2009 making a transfer pricing adjustment in the sum of ₹26,86,57,520/- in respect of Arm's Length Price [**ALP**] for spare replacement services rendered by the Assessee.

2. The AO passed the draft assessment order, which was forwarded to the Assessee on 24.12.2009. The AO, in addition to determining the ALP in respect of the international transactions, also proposed certain additions.

3. 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 09.09.2010 issuing certain directions. The DRP, *inter alia*, held that the approach of the TPO was in accordance with the correct interpretation of law.



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4. In view of the directions issued by the DRP, the AO framed the assessment order dated 25.10.2010, *inter alia*, adding a sum of ₹26,86,57,520/- on account of the transfer pricing adjustment as determined by the TPO.
5. 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.
6. The Assessee 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 the TNMM as the most appropriate method and held that, given the functional profile, the Assessee was carrying on the activities as a trader by purchasing products from its AE and re-selling them to the AE's customers in India. The learned TPO held



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that given the FAR<sup>1</sup> analysis, the Resale Price Method [**RPM**] is the most appropriate method.

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

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

9. The Assessee stated that the CISCO group provides a warranty for its products and also sells AMC to its distributors. For

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<sup>1</sup> Functions, Assets and Risks



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these purposes, 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 replacements to its AE. For its services, the Assessee is entitled to a markup of 1%.

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

11. The learned TPO examined the Assessee's functional profile but did not accept that the Assessee's functions were akin to those of a trader. The learned TPO proceeded on the basis that the Assessee purchases goods, holds inventory, and sells them to customers.



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

13. The learned Tribunal examined the Assessee's functional profile and did not concur with the TPO's finding. The Tribunal 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 a 1% markup on the cost of importing goods.

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



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

16. In the aforesaid view, the learned Tribunal remanded the matter to the TPO/AO with directions to re-compute the ALP by adopting proper comparables and 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 92C(2) of the Act, in light of the judicial precedents thereon.

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

1. "Whether the Tribunal was correct in holding that the freight and insurance expenses are required to be reduced from the total turnover also in the absence of any provisions to this effect in section 10B of the Act?
2. Whether 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



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enterprise and that TNMM is the right method to be adopted?

3. Whether 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?
4. Whether 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?
5. Whether 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?"

18. 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.



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

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

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



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22. The learned counsel appearing for the Department fairly stated that question No.1 is not required to be considered as the directions issued by the Supreme Court in **Sap Labs India Pvt. Ltd. v. The Income Tax Officer and other connected matters : ITA No.10/2011** were to examine whether the guidelines laid down in the Act and the Rules have been followed for determining the ALP. He also submitted that in addition to the questions of law as projected in the appeal, the following question of law may also be considered:

"Whether on the facts and in the circumstances of the case, the Tribunal's order can be said as perverse in nature in holding that Transaction Net Margin Method is the Most Appropriate Method applicable for arriving at Arms Length Price in respect of product replacement segment contrary to provisions of Section 92C(2) of the Act read with Rule 10B of IT Rules and ignoring findings of the Transfer Pricing Officer which are based on consideration of Annual reports, clauses in 'Product Replacement Agreement between the assessee and its Associated Enterprise?'"

23. Concededly, the question whether TNMM or RPM is the most appropriate method, would depend on the functional profile of the assessee. The Tribunal examined the functional profile and the risks undertaken and found that the Assessee's functional profile was akin to a service provider and not a trader. As noted, the



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Tribunal also explained that the Assessee cannot be considered as a trader as it undertakes no risks; it does not determine the resale price, it supplies the product at NIL sale price to the AE's customers; and it has no discretion to select its customers, or which particular spare part is to be supplied.

24. 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 in regard to the functional profile of the Assessee is perverse.

25. Concededly, if it is accepted that the functional profile of the Assessee is akin to a service provider, RMP would not be an appropriate method for determining the ALP.

26. Insofar as question No.4 is concerned, the same is covered by the decision of this Court in **Sap Labs** (*supra*) and other connected matters decided on 28.08.2026.

27. We may note that the Tribunal mainly directed the TPO/AO to consider allowing the benefit of the 5% range as provided under the erstwhile proviso to Section 92 (c)(2) of the Act, in the light of the judicial proceedings. The manner in which the 5% tolerance



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limit is to be applied is now no longer *res integra* and is covered by the decision of this court in **Sap Labs** (*supra*) and other connected matters.

28. In view of the above, no question of law arises for the consideration of this Court. The appeal is accordingly dismissed.

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

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