



CNR: KAHC010145832026

NC: 2026:KHC:49420-DB
ITA No. 27 of 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH 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. 27 OF 2026

BETWEEN:

1. PR. COMMISSIONER OF INCOME TAX-IT
KORMANGALA
BANGALORE
2. THE DY. COMMISSIONER OF INCOME TAX
ASSESSMENT CIRCLE - 2(1)
BENGALURU.

...APPELLANTS

(BY SRI E.I.SANMATHI, ADVOCATE ALONG WITH
SRI NIRMAL MATHEW, ADVOCATE)

AND:

1. QLIKTECH INTERNATIONAL AB
C/O QLIKTECH INDIA PVT. LTD.,
KALYANI SOLITAIRE
GROUND AND 1ST FLOOR
165/KRISHNA RAJU LAYOUT
DORAISANIPALYA
OFF BANNERGHATTA ROAD
BENGALURU 560 076.

...RESPONDENT

(BY SRI. VISHAL KALRA, ADVOCATE FOR
SRI PAI DHUNGAT ANKUR DEEPAK, ADVOCATE)



CNR: KAHC010145832026

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THIS INCOME TAX APPEAL IF FILED UNDER SEC.260-A OF INCOME TAX ACT 1961, PRAYING TO DECIDE THE FOREGOING QUESTION OF LAW AND/OR SUCH OTHER QUESTION OF LAW AS MAY BE FORMULATED BY THE HONBLE COURT AS DEEMED FIT AND SET ASIDE THE APPELLATE ORDER DATED.22.05.2025 PASSED BY THE INCOME TAX APPELLATE TRIBUNAL 'C' BENCH, BANGALORE, AS SOUGHT FOR, IN THE RESPONDENT-ASSEESSEES CASE, IN APPEAL PROCEEDINGS IN M.A.NO.6/BANG/2025 IN IT(IT)A NO.990/BANG/2023 FOR A.Y.2021/22 (ANNEXURE-A).

THIS APPEAL, COMING ON FOR ORDERS, 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 260-A of the Income Tax Act, 1961 [**the Act**] impugning an order dated 22.05.2025 passed by the learned Income Tax Appellate Tribunal [**ITAT**] in Miscellaneous Application (MA No.06/BANG/2025) in IT(IT) A No.990/BANG/2023. The Revenue



CNR: KAHC010145832026

has projected the following substantial questions for consideration of this Court:

- "1. "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, since the transaction between the assessee and its subsidiary for the sale of software product has been made subject to Transfer Pricing Adjustment, the question of treating the Indian subsidiary as dependent agency permanent establishment does not arise is contrary to concept of DAPE and would be rendered meaningless as intent of legislature behind Section 9 and Double Taxation Avoidance Agreements would be defeated"?
2. "Whether on the facts and in the circumstances of the case, the Tribunal's order can be said as perverse as Tribunal failed to observe that multinational enterprises would be able to structure around Permanent Establishment (PE) merely by Transfer Pricing Compliance"?
3. "Whether on the facts and in the circumstances of the case, the Tribunal's order can be said as perverse in not appreciating that during assessment proceedings of subsidiary company, the Transfer Pricing Officer has not invoked DAPE provisions for the transaction but this does not preclude the Assessing Officer in International Taxation to hold that Indian Company is DAPE of the assessee -company, especially when that assessing officer has reached such conclusion based on examination of evidence and material available on record"?
4. "Whether on the facts and in the circumstance's of the case, the Tribunal's order is perverse in nature in not appreciating that the Assessing officer after analysing the clauses in agreement entered into between parties rightly



CNR: KAHC010145832026

held that Indian Entity is carrying out all its work solely for benefit of the assessee and in doing so it as acts as a Dependent Agent of the Assessee and entire turnover of the Indian Company is on account of distribution of products and services of the assessee only?"

2. Before examining the projected questions, it is necessary to note that the present appeal is confined to the impugned order passed in Miscellaneous Application **[MA]**. The Assessee had filed the said application, *inter alia*, seeking modification of the order dated 16.12.2024 passed by the learned ITAT in IT(IT)A No.990/BANG/2023, in as much as the learned ITAT had restored the matter to the file of the Assessing Officer **[AO]** "for a fresh adjudication in the light of its findings".

3. In the aforesaid context, the Assessee contended that in view of the Tribunal's definite finding that the question of treating the Assessee's Indian subsidiary as a Dependent Agent Permanent Establishment **[DAPE]** would not arise if the sale of the software product in question was accepted as sale and purchase on an Arm's Length Price **[ALP]**, there was no necessity for an open-ended remand. The AO was merely required to verify whether the sale and purchase was at ALP.



CNR: KAHC010145832026

NC: 2026:KHC:49420-DB
ITA No. 27 of 2026

4. Briefly stated, the facts are that the Assessee is a company incorporated in Sweden. The Assessee had filed its return for income for assessment year 2021-2022, declaring a total income of ₹1,62,38,995/-. It had disclosed the said income as income from other sources (interest on income tax refund). The AO had noticed from Form 26AS that the Assessee had received a consideration of ₹55,91,48,515/- from its Indian subsidiary M/s.Qliktech India Pvt. Ltd. [QIPL], which had deducted an amount of ₹5,59,14,851/- as TDS. Since the Assessee had not offered the consideration of ₹55,91,48,515/- to tax, the AO had examined the said transaction. The AO noticed that the Assessee had entered into a Master Distribution Agreement with its Indian subsidiary, under which QIPL was engaged to market and distribute software materials in India.

5. The AO referred to Article 7 of the Double Taxation Avoidance Agreement between India and Sweden, which read as under :

"The profits of an enterprise of [Sweden] shall be taxable only in [Sweden] unless the enterprise carries on business in the [India] through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in [India]



CNR: KAHC010145832026

NC: 2026:KHC:49420-DB
ITA No. 27 of 2026

but only so much of them as is attributable to that permanent establishment."

6. According to the AO, the QIPL was a dependent agent of the Assessee, and therefore the profits of the business of the Assessee which are attributable to its DAPE would be assessable to tax under the Act. The AO noted that the revenue from the sale of products earned by QIPL was ₹9687.02 lakhs and accordingly attributed 30% of the said amount (₹29,06,10.600) as income of the Assessee.

7. The Assessee assailed the same before the Dispute Resolution Panel [**DRP**], but was unsuccessful. Its appeal was rejected, and the AO issued the final assessment order. Thereafter, the Assessee filed an appeal before the learned ITAT challenging the order dated 13.09.2023 passed by the AO.

8. The learned ITAT substantially allowed the appeal and, by an order dated 16.12.2024, remanded the matter to the AO. Paragraph 10 of the said order, which is central to the controversy in the present appeal is set out below:



CNR: KAHC010145832026

"We have heard the rival contentions of both the parties and perused the materials available on record. On perusal of the order of the TPO in the case of the subsidiary company namely Qliktech India private limited, we find that the transaction between the assessee and its, subsidiary for the sale of software product has been made subject to TPO adjustment. Accordingly, the question of treating the Indian subsidiary as dependent agency permanent establishment does not arise. The copy of the TP order in the case of the subsidiary company is available on record. However, we note that such document was filed before us as additional piece of evidence and therefore we are of the view that such TP order has not been verified at the level of the lower authorities. Accordingly, we set aside the issue to the file of the AO for fresh adjudication in the light of the above stated discussion and as per the provisions of law. Hence the ground of appeal of the assessee is hereby allowed for statistical purposes."

9. The Assessee contended that in view of the ITAT's unequivocal finding that the "question of treating the Indian subsidiary as a dependent agent permanent extension does not arise" as the transaction between the Assessee and its subsidiary is a subject matter of the TPO adjustment, restoration of the matter to the AO for consideration afresh was not warranted. In this context, the Assessee filed the MA for modification of the order dated 16.12.2024, which was disposed of by the impugned order.



CNR: KAHC010145832026

The learned ITAT modified paragraph 10 of the order dated 16.12.2024 as under:

"10. We have heard the rival contentions of both the parties and perused the materials available on record. On perusal of the order of the TPO in the case of the subsidiary company namely Qliktech India private limited, We find that the transaction between the assessee and its subsidiary for the sale of software product has been accepted as sale and purchase and further made subject to TPO adjustment. Accordingly, the question of treating the Indian subsidiary as dependent agency permanent establishment does not arise. The copy of the TP order in the case of the subsidiary company is available on record. However, we note that such document was filed before us as additional piece of evidence and therefore we are of the view that such TPO order has not been verified at the level of the lower authorities. Accordingly, it is clarified that if, upon verification, the Revenue finds that the transaction between the assessee and the Indian subsidiary has been accepted as a transaction of purchase and sale and has been subjected to arm's length price determination, then the Revenue shall not treat the Indian subsidiary as a DAPE in the case of the assessee. Hence, we set aside the issue to the file of the AO to decide in the light of the above stated discussion and as per provisions of law. Hence the ground of appeal of the assessee is hereby allowed for statistical purposes."

[emphasis added]



CNR: KAHC010145832026

10. As is apparent, the last part of paragraph 10 of the order, which we have emphasised by underlining, has substituted the last few sentences of paragraph No.10 of the order which prior to modification read under:

"Accordingly, we set aside the issue to the file of the AO for fresh adjudication in the light of the above stated discussion and as per the provisions of law. Hence the ground of appeal of the assessee is hereby allowed for statistical purposes."

11. We note that the opening sentences of paragraph No.10 which records the following finding was not altered:

"10..We find that the transaction between the assessee and its subsidiary for the sale of software product has been accepted as sale and purchase and further made subject to TPO adjustment. Accordingly, the question of treating the Indian subsidiary as dependent agency permanent establishment does not arise..."

12. In the aforesaid context, it is clear that the questions of law that are projected by the revenue do not arise from the impugned order. The learned ITAT returned an unequivocal finding that, since the transaction between the Assessee and its subsidiary for sale of the software was accepted as a sale and purchase and made subject to TPO adjustment, the question of treating the Indian subsidiary as a dependent agent did not arise.



**NC: 2026:KHC:49420-DB
ITA No. 27 of 2026**

CNR: KAHC010145832026

13. The revenue appears to be aggrieved by the said finding and the questions of law as projected are essentially directed against that finding. However, the aforementioned finding has not been amended or altered by the order impugned in the present appeal.

14. In view of the above, the present appeal is dismissed. We clarify that this order will not preclude the Revenue from assailing the order dated 16.12.2024, *albeit*, in accordance with law.

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

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

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List No.: 1 Sl No.: 3