



CNR: KAHC010147302020

NC: 2026:KHC:49570-DB
ITA No. 93 of 2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 10TH DAY OF SEPTEMBER, 2026
PRESENT
THE HON'BLE MR. JUSTICE S.G.PANDIT
AND
THE HON'BLE DR. JUSTICE CHILLAKUR SUMALATHA
INCOME TAX APPEAL NO. 93 OF 2021

BETWEEN:

1. PRINCIPAL COMMISSIONER
OF INCOME TAX-4, BMTC COMPLEX
KORAMANGALA, BENGALURU.
2. THE DY. COMMISSIONER
OF INCOME TAX, CIRCLE-5 (1) (2)
BMTC COMPLEX
KORMANGALA, BENGALURU.

...APPELLANTS

(BY SRI. SANMATHI E. I., AND SRI M. DILIP, ADVS.)

AND:

M/S. NOVELL SOFTWARE
DEVELOPMENT INDIA PVT. LTD.,
(NOW KNOWN AS
MICROFOCUS SOFTWARE INDIA PVT. LTD).,
LAUREL, BLOCK-D 65/2
BAGMANE TECH PARK
C V RAMAN NAGAR,
BYRASANDRA POST
BANGALORE-560 093
PAN: AACN6992K.

...RESPONDENT

(BY SRI. T SURYANARAYANA, SR. COUNSEL FOR
MISS. TANMAYEE RAJKUMAR, ADV.)

THIS APPEAL IS FILED UNDER SECTION 260-A OF INCOME
TAX ACT 1961, ARISING OUT OF ORDER DATED 04.09.2019 PASSED
IN IT(TP)A NO. 1491/BANG/2014, FOR THE ASSESSMENT YEAR

Digitally signed by
NANJUNDACHARI
Location: High
Court of Karnataka



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2009-2010, PRAYING TO A) DECIDE THE FOREGOING QUESTION OF LAW AND /OR SUCH OTHER QUESTIONS OF LAW AS MAY BE FORMULATED BY THE COURT AS DEEMED FIT; AND ETC.

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

CORAM: HON'BLE MR. JUSTICE S.G.PANDIT
AND
HON'BLE DR. JUSTICE CHILLAKUR SUMALATHA

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE S.G.PANDIT)

Heard learned counsel Sri.E.I.Sanmathi for the appellants-revenue as well as learned senior counsel Sri.T.Suryanarayana for Miss.Tanmayee Rajkumar, learned counsel for the respondent-assessee. Perused the entire appeal papers.

2. This appeal was admitted to examine the following substantial question of law by order dated 31.01.2022.

"Whether on the facts and circumstances of the case and in law, the Tribunal is correct in holding that Accel Transmatic Ltd., (seg), Avani Cimcon Technologies Ltd., Celestial Labs Ltd., E-est Solutions Ltd., Flextronics Software Systems Ltd., (seg), Helios & Matheson Information Technology Ltd., Infosys Technologies Ltd., Ishir Infotech Ltd.,



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Kals Information Systems Ltd., (seg) Lucid Software Ltd., Persistent Systems Ltd., Sasken Communication Technologies Ltd., Persistent Systems Ltd., Tata Elxsi Ltd (seg), Thirdware Solutions Ltd (seg) and Wipro Ltd (seg) cannot be taken as comparable holding that these companies are functionally dissimilar and as such the order passed by Tribunal is perverse in nature?"

3. Today, during the course of hearing, learned counsel for the appellants-revenue files a memo, raising one more additional substantial question of law which reads as follows:

"Whether on the facts and in the circumstances of the case, the Tribunal's order can be said as perverse in nature in directing the Transfer Pricing Officer to exclude Comparables namely Persistent Systems Ltd., Zylog Systems Ltd, Mindtree Ltd, L & T Infotech Ltd., in software development segment by holding that size and turnover of the Company are deciding factors for treating a company as a comparable ignoring that economics of sale is not relevant in software industry and contrary to parameters set out in Rule 10B of IT Rules?"



4. At the outset, learned senior counsel Sri.Suryanarayana for respondent-assessee submits that the substantial questions of law raised herein are answered in judgment dated 28.08.2026 in ITA No.10/2011 and connected appeals (***SAP Labs India (P) Ltd. V. Income Tax Officer (and other appeals), [2023] 454 ITR 121 (SC)/ [2023] 149 taxmann.com 327 (SC) and connected matters.***)

5. We have gone through the above judgment in ***SAP Labs India (P) Ltd., (supra)*** wherein the co-ordinate bench on a detailed discussion has recorded its conclusion as follows:

"E. CONCLUSION

(i) The Court concludes that Chapter X of the Income-tax Act, 1961 constitutes a self-contained code governing transfer pricing, providing a complete statutory framework for determination of the Arm's Length Price (ALP), maintenance of documentation, and assessment of international transactions.



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(ii) The initial burden of determining the ALP and maintaining the prescribed documentation rests upon the taxpayer, while the Transfer Pricing Officer can interfere with the taxpayer's determination only upon satisfaction of the conditions stipulated under Section 92C(3) of the Act.

(iii) The selection or exclusion of comparables is essentially a factual and data-driven exercise, and the TPO cannot reject the taxpayer's comparables merely to substitute them with a standard departmental set. Such determination must strictly conform to the requirements of Rule 10B of the Rules.

(iv) The Tribunal's adoption of an upper turnover filter of Rs.200 crores is rational and legally sustainable, as turnover, brand value, economies of scale, bargaining power and ownership of intangibles materially influence comparability and profitability.

(v) An RPT filter of 15% is ordinarily preferable, though a higher threshold of 20% or 25% may be adopted only upon recording a specific finding that sufficient comparable companies satisfying the lower threshold are unavailable.

(vi) Foreign exchange gain or loss can be treated as an operating item only when it has a direct nexus



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with the international transaction. Where such nexus is absent, it cannot form part of the operating revenue or operating cost.

(vii) The burden of proof varies according to the nature of the dispute. While the taxpayer bears the initial burden of substantiating the ALP, once the TPO rejects the taxpayer's determination and substitutes comparables, the burden shifts to the TPO to justify such inclusion or exclusion.

(viii) There is no legal prohibition against inclusion or exclusion of comparables at the appellate stage, provided the subsequently relied upon data is reliable and the proposed comparables satisfy the requirements of the Act and the Rules.

(ix) The tolerance of $\pm 5\%$ prescribed under Section 92C of the Act is merely a permissible variation and not a standard deduction, and transfer pricing adjustment becomes necessary whenever the variation exceeds the prescribed statutory limit.

(x) Working Capital Adjustment is a comparability adjustment and not a selection filter, and its grant depends entirely upon the facts of each case. Findings on such adjustment, like the selection of comparables, ordinarily remain findings of fact and do not warrant interference unless shown to be contrary to the Act or vitiated by perversity."



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6. The substantial question of law on which the appeal was admitted on 31.01.2022 do not arise for consideration since the present appeal is against the dismissal of the appeal filed by the appellants-revenue before the ITAT. The question raised herein was not raised before the Tribunal. Hence, the said question would not arise for consideration before this Court.

7. With regard to additional substantial question of law raised today by way of memo, in terms of **SAP Labs India (P) Ltd.** (supra), adoption of an upper turnover filter of Rs.200 crores is rational and legally sustainable, as turnover, brand value, economies of scale, bargaining power and ownership of intangibles materially influence comparability and profitability.

8. The Tribunal, while excluding the comparables namely Persistent Systems Ltd., Zylog Systems Ltd, Mindtree Ltd, L & T Infotech Ltd., has observed that the comparables sought to be excluded are 100% software



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development companies having high turnover and therefore, following the decision in **GENESIS INTEGRATING SYSTEMS INDIA PVT. LTD. V/S DCIT** excluded on the counts of functionality not being similar with that of assessee and also because they have a high turnover of more than 200 Crores.

9. By following the decision of **SAP Labs** (supra), we are of the considered opinion that the substantial question of law would not arise for consideration in this appeal and accordingly, the same is answered against the revenue and in favour of the assessee. The appeal is accordingly, rejected.

**Sd/-
(S.G.PANDIT)
JUDGE**

**Sd/-
(DR.CHILLAKUR SUMALATHA)
JUDGE**