HC-KAR

NC: 2026:KHC:60238-DB
ITA No. 210 of 2014

CNR: KAHC010216622014

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF OCTOBER, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

INCOME TAX APPEAL NO.210 OF 2014

BETWEEN:

1. THE COMMISSIONER OF INCOME-TAX,
   LTU,
   JSS TOWERS, BSK III STAGE,
   BANGALORE.

2. THE JOINT COMMISSIONER OF INCOME-TAX,
   LTU,
   JSS TOWERS, BSK III STAGE,
   BANGALORE-560085.

…APPELLANTS

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MAHALAKSHMI B M
Location: High Court
of Karnataka

(BY SRI. E.I. SANMATHI, ADVOCATE A/W
MR. NIRMAL MATHEW, ADVOCATE)

AND:

M/S. IBM INDIA PVT. LTD.,
NO.12, SUBRAMANYA ARCADE,
BANNERGHATTA MAIN ROAD,
BANGALORE-560029.

…RESPONDENT

(BY SRI. PERCY PARDIWALA, SENIOR ADVOCATE A/W
SMT. TANMAYEE RAJKUMAR, ADVOCATE;
MS. MAYURI K.V., ADVOCATE)

THIS ITA IS FILED UNDER SECTION 260A OF INCOME TAX ACT, 1961 AGGRIEVED BY THE ORDER DATED 20.12.2013 PASSED IN IT (TP)A NO.1543/BANG/2012, FOR THE ASSESSMENT YEAR 2008-09 PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE; ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME-TAX APPELLATE TRIBUNAL, BANGALORE IN IT(TP)A NO.1543/BANG/2012 DATED 20.12.2013 AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE JOINT COMMISSIONER OF INCOME TAX, LTU, BANGALORE.

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 present appeal was taken up for consideration on 10.09.2026, and this Court passed the following order:

> "1. The revenue has filed the present appeal under Section 260A of the Income Tax Act, 1961 impugning an order dated 20.12.2023 passed by the learned Income Tax Appellate Tribunal in IT(TP)A 1543/Bang/2012 in respect of assessment year 2008-2009. The revenue has projected the following questions for consideration before this court which were accepted by an order dated 13.07.2015 :
>
> > "*1. Whether the Tribunal was correct in setting aside the disallowance made by the assessing officer of the claim u/s.10A & 10AA of the Act, when the assessee has not maintained separate books of accounts, not maintained primary documents which are necessary to determine the income of individual*

units and in the absence of the details, the expenses have been apportioned on the basis of an allocation ratio which is unverifiable?

2. Whether the Tribunal was correct in holding that Avani Cincom Technologies, KALS Information Systems Ltd and Celesial Biolabs Ltd cannot be considered as comparables being functionally different without appreciating that the comparables satisfy all the qualitative and quantitative filers applied by the TPO?

3. Whether the Tribunal was correct in directing the exclusion of Infosys technologies and Wipro Ltd-IT segment by holding that the brand value of the company is a vital factor in deciding the profit margin of the company without appreciating that the brand is not a variable in data mining profit margin of a comparable?

4. Whether the Tribunal was correct in holding that Tata Elxsi Ltd cannot be included in the final list of comparables as it was functionally different without appreciating that it satisfied all the qualitative and quantitative filers applied by the TPO especially when the segmental results have been used?

5. Whether the Tribunal was correct in rejecting the six comparables included by the TPO in the final list without appreciating that the selection of comparables in a case depends upon assesses specific FAR analysis and without appreciating the specific facts brought on record by the TPO?

6. Whether the Tribunal was correct in holding that Birla Technologies should be taken as a comparables as there was no other basis for rejecting it as a comparable without appreciating that the company failed the obvious RPT filters?

7. Whether the Tribunal was right in holding that the entrance fee for acquiring corporate club

membership incurred by the assessee had to be allowed as revenue expenditure?

2. The learned counsel for the revenue fairly states that question No.1 as projected is covered against the revenue by the decision of this court in **The Commissioner of Income Tax and Another vs M/s IBM Global Services India Pvt. Ltd.**[1] He also fairly states that question No.7 is also covered against the revenue by the decision of the Supreme Court in **Commissioner of Income Tax vs United Glass Mfg. Co. Ltd.**[2] and the decisions of this court in **The Commissioner of Income Tax, Hubli vs The Sandur Manganese and Iron Ores Limited**, **Yeshwanthpur, Bellary District**[3] and **Commissioner of Income-tax, Central Circle vs Infosys Technologies Limited**[4].

3. List for further proceedings on the remaining questions of law on 15.09.2026."

2. Thus, this Court is required to consider the remaining five questions of law.

3. Question No.2 relates to the exclusion of the following companies as comparables:

a. Avani Cincom Technologies;

b. KALS Information Systems Limited; and

c. Celesial Biolabs Limited.

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[1] ITA No.286/2010, DD 3.11.2020
[2] [2012] 28 taxmann.com 429 (SC)
[3] Income Tax Referred Case Nos.13 to 24/2002, DD 21.03.2005
[4] [2012] 18 taxmann.com 169 (Karnataka)

4. Question Nos.3 and 4 relate to exclusion of Infosys Technologies, WIPRO Limited and Tata Elxsi Limited. Concededly, the exclusion of the aforesaid companies is covered in favour of the Assessee and against the Revenue by the recent decision of this Court in **The Commissioner of Income-Tax and another Vs. M/s. Logica Private Ltd.**[5].

5. Question No.5 is a general question which covers the specific companies that have been mentioned in the other questions. Thus, it does not require to be considered separately.

6. Question No.6, as projected, relates to the inclusion of Birla Technologies as a comparable. According to the Revenue, the Tribunal erred in including the said company as a comparable for the purpose of determining the Arm's Length Price [**ALP**] of international transactions, on the ground that the company had failed the Related Party Transaction [**RPT**] filters.

7. However, we note that M/s. Birla Technologies had been excluded not for the reason that it had failed the RPT filters, but on the ground that its exports were less than 25%.

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[5] Income Tax Appeal No.338/2013 D.D. 28.10.2026

8. The Tribunal found that excluding the said company on the aforesaid ground was factually erroneous, as the said company's income from software services and license fees was entirely derived from exports. The relevant extract of the impugned order is set out below:

> "**9.25** The learned counsel for the assessee also submitted that two comparables excluded by the TPO should be included as comparable.
>
> 1. M/s Birla Technologies: The reason assigned by the TPO for excluding this company as comparable was that the exports sales were less than 25%. In this regard, the learned counsel for the assessee drew our attention to pages-689 to 698 and page 317 of T.P. Paper book, which is a compilation of the annual reports of various companies filed by the assessee. Perusal of page-698 shows that total income from software services/licence fee of assessee was Rs.24,12,30,696/-. It is also clear from the Director's report that the entire income were derived from exports. It thus, appears that the reason assigned by the TPO for rejecting this company as comparable which was for the reasons that the company has export sales of less than 25% of the total sales is on an erroneous basis. We therefore, hold that this company should be taken as a comparable as there is no other basis for rejecting this company as comparable assigned by the TPO."

9. The question as to whether the income derived by Birla Technologies from exports is more than 25% is a question of fact. There is no challenge that the said finding is perverse; therefore, no substantial question of law in this regard falls for consideration of this Court.

10. In view of the above, no substantial questions of law arise for consideration of this Court. The appeal is accordingly dismissed.

Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE

Sd/-
(K.S. HEMALEKHA)
JUDGE

MBM
List No.: 1 Sl No.: 23