HC-KAR

NC: 2026:KHC:64365-DB
ITA No. 262 of 2016

CNR: KAHC010314452016

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF NOVEMBER, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

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

INCOME TAX APPEAL NO. 262 OF 2016

BETWEEN:

1. PR. COMMISSIONER OF INCOME TAX - 7
   BMTC COMPLEX
   KORAMANGALA
   BANGALORE - 01

2. THE DEPUTY COMMISSIONER OF INCOME TAX
   CIRCLE 12(5)
   BANGALORE

…APPELLANTS

(BY SRI SANMATHI E.I., ADVOCATE)

Digitally signed by AMBIKA H B
Location: High Court of Karnataka

AND:

1. M/S. UNISYS INDIA PRIVATE LTD.
   PURVA PREMIER
   135/1, RESIDENCY ROAD
   BANGALORE - 25

…RESPONDENT

(BY SRI T. SURYANARAYANA, SENIOR ADVOCATE FOR
MS. TANMAYEE RAJKUMAR, ADVOCATE)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF INCOME TAX ACT 1961 PRAYING TO SET ASIDE THE APPELLATE ORDER DATED: 30/09/2015 PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, BENGALURU, IN APPEAL

PROCEEDINGS NO. IT(TP)A No. 67/Bang/2015 for A.Y. 2009-10 & 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 an order dated 30.09.2015 passed by the Income Tax Appellate Tribunal [**ITAT**] in IT(TP)A No.67/Bang/2015 for the Assessment Year [**AY**] 2009-10.

2. The respondent [**Assessee**] had preferred the said appeal before the learned ITAT assailing an order dated 14.11.2014 passed by the Commissioner of Income Tax (Appeals)-IV, Bengaluru [**CIT(A)**]. The Revenue had also filed a cross appeal, being IT(TP)A No.70/Bang/2015, which was also disposed of by the impugned order. The present appeal is confined to the impugned order insofar as it relates to the Assessee's appeal in relation to the question relating to transfer pricing adjustment. The

said adjustment was made on account of determination of the Arms Length Price [**ALP**] of the international transaction relating to the software development services rendered by the Assessee to its Associate Enterprises [**AE**].

3. The Assessee was incorporated under the Companies Act, 1956 on 28.11.1994. It is a wholly owned subsidiary of M/s. Unisys Mauritius Limited, which is ultimately held by Unisys Corporation, USA. During the financial year [**FY**] 2008-09, the Assessee was engaged in providing IT-enabled services [**ITES**] and software development services [**IT segment**] to its AEs.

4. The Assessee filed its return on 25.09.2009 disclosing its international transactions relating to the IT segment at ₹85,14,82,906/-. The Assessing Officer [**AO**] referred the matter to the Transfer Pricing Officer [**TPO**].

5. The Assessee had filed its transfer pricing analysis to establish that its revenue from AEs was its ALP. The Assessee adopted Transactional Net Margin Method [**TNMM**] as the most appropriate method and selected the ratio of Operating Profit to

Operating Cost as the Profit Level Indicator [**PLI**] for benchmarking the international transactions.

6. The Assessee selected 14 comparable entities and computed the average PLI of the comparable entities at 14%. The Assessee disclosed its PLI at 10.18% and, therefore, contended that the international transactions were at ALP basis.

7. The learned TPO passed an order dated 03.01.2013 under Section 92CA of the Act. The learned TPO accepted TNMM as the most appropriate method but rejected the transfer pricing studies for various reasons. The learned TPO after applying the filters selected eleven number of entities as comparables for determining the mean PLI on arms length basis. A tabular statement setting out the final set of comparables considered by the learned TPO and the computation of mean PLI is set out below:

Sl. No.	Name of the Comparable	Sales (in Rs.)	Cost (In Rs.)	Margin
1	Kals Information Systems Ltd.	2,14,04,686	1,87,93,813	13.89%
2	Akshay Software Technologies Ltd	12,23,21,483	11,31,49,350	8.11%
3	Bodhtree Consulting Ltd	16,05,75,212	9,89,56,821	62.27%

4	R S Software (India) Ltd.	1,49,57,12,634	1,36,01,02,589	9.97%
5	Tata Elxsi Ltd (segmental)	3,78,43,03,000	3,14,63,15,000	20.28%
6	Sasken Communication Technologies Ltd	4,05,31,20,000	3,18,69,97,000	27.91%
7	Persistent Systems Ltd	5,19,69,10,000	3,67,52,70,000	41.40%
8	Zylog Systems Limited	7,34,93,51,475	6,81,69,98,160	7.81%
9	Mindtree Ltd (seg)	7,93,22,79,326	5,74,06,73,058	5.52%
10	Larsen and Toubro infotech	19,50,83,81,374	15,64,12,76,626	24.72%
11	Infosys ltd	2,02,64,00,00,000	1,39,17,00,00,000	45.61%
	Average mean			24.32%

8. After reducing the working capital adjustment from the mean PLI, the learned TPO computed the adjusted PLI at the rate of 23.19%. On the aforesaid basis, the learned TPO determined that the revenue from the IT segment was lower than the ALP by ₹10,06,02,174/-. The computation of the said adjustment as set out in the order passed by the learned TPO is reproduced below:

"Software Development Services

Arm's Length Mean Margin on cost	24.32%
Less: Working Capital Adjustment (Annex. C)	1.13%
Adjusted margin	23.19%
Operating Cost	77,29,72,192
Arms Length Price(ALP) @ 123.19% of Operating Cost	95,22,24,443
Price Received	85,16,22,269
Shortfall being adjustment u/s 92CA	**10,06,02,174**

9. The learned TPO also determined the shortfall in respect of ITES at ₹12,40,10,625/-. Thus, the learned TPO directed adjustment of ₹22,46,12,799/- (₹10,06,02,174/- + ₹12,40,10,625/-). Consequently, the AO passed an assessment order dated 24.05.2013 under Section 143(3) read with Section 144C(3) of the Act, assessing the taxable income, *inter alia,* by making a transfer pricing adjustment as directed by the learned TPO.

10. The Assessee filed an appeal against the final assessment order before the learned CIT(A), which was disposed of by an order dated 14.11.2014. The Assessee, *inter alia,* objected to the inclusion of certain companies as comparables for determining the mean PLI of the comparables and the ALP. The learned CIT(A)

partly allowed the appeal and excluded Infosys Limited from the list of comparable companies but rejected the Assessee's challenge to the inclusion of the other companies.

11. The Assessee appealed the learned CIT(A)'s decision before the learned ITAT. The learned ITAT examined the Assessee's objections to the other companies and partly allowed the appeal by directing the exclusion of certain companies selected by the TPO.

12. The Revenue has projected the following questions for consideration in the present appeal:

> "(1) Whether on the facts and in the circumstances of the case, the Tribunal is right in law in rejecting the comparables, namely, KALS Information Systems Ltd., Bodhtree Consulting Ltd., Tata Elxsi Ltd., Persistent Systems Ltd., and Infosys Ltd., when the said comparables satisfies all the quantitative and qualitative filters?
>
> (2) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the few companies are functionally different from assessee when it satisfies all the qualitative and quantitative filters applied by the TPO and the Tribunal has used a narrower functionality filter than TPO, but, has not tested other comparables against the narrower functionality filter applied by it ?"

13. As is apparent, the first question relates to exclusion of the following companies for the purpose of determination of ALP:

(i) KALS Information Systems Ltd.,
(ii) Bodhtree Consulting Ltd.,
(iii) Tata Elxsi Ltd.,
(iv) Persistent Systems Ltd. and
(v) Infosys Ltd.

14. It is relevant to note that the CIT(A) had directed exclusion of Infosys Ltd. as a comparable for determining the ALP. The Revenue had appealed the said decision. However, the learned ITAT rejected the Revenue's appeal. As noted above, at the outset, the present appeal is confined to the learned ITAT's decision in regard to the Assessee's appeal. Thus, the question of exclusion of Infosys does not arise in the present appeal. However, we also note that the learned ITAT, as well as the courts in several decisions, have accepted the stand of the assessees who are similarly placed as the Assessee that Infosys Ltd. ought not to be included in the list of comparables for the reason that it owns significant intangibles and has revenues from software products.

15. In a recent decision in **Sap Labs India Private Limited vs. ITO and others**[1], this court had accepted the exclusion of Infosys Ltd. for determination of ALP for the same AY in ITA No.514/2016 which was related to Nett App India Private Limited. The functional profile of the assessee in that case was similar to the functional profile of the Assessee in the present case. Thus, the decision in **Sap Labs** (*supra*) squarely covers the exclusion of Infosys Ltd. as a comparable.

16. The exclusion of KALS Information Systems Ltd., Bodhtree Consulting Ltd. and Tata Elxsi Ltd. for the same AY in respect of the assesses who have the same functional profiles as the Assessee are covered by the decisions of this Court in **Sap Labs** (*supra);* **Commissioner of Income Tax-III and Another vs. M/s. Torry Harris Business Solutions Pvt. Ltd.**[2] and **The Principal Commissioner of Income-Tax, CIT (A) vs. M/s ARM Embedded Technologies Pvt. Ltd**[3] .

[1] ITA No.10/2011 and other connected matters decided on 28.08.2026
[2] Order dated 16.09.2026 passed in ITA No.155/2015
[3] Order dated 14.10.2026 in ITA No.146/2016

17. The learned ITAT accepted that Persistent Systems Limited was required to be excluded as a comparable on the basis of the functional profile. The learned ITAT relied on the decision of the ITAT in **Yodlee Infotech Pvt. Ltd. vs. ITO**[4]**,** wherein the learned ITAT had noted that the said company was engaged in product designing services and software product development which are not similar to the functional profile of the Assessee.

18. It is material to note that the learned counsel appearing for the Revenue did not contest that Persistent Systems Limited was involved in product development and product designing services which were not similar to the activities carried on by the Assessee. Thus, their functional profiles were different. However, the learned counsel contended that the learned ITAT had adopted a very narrow approach and that the entities which were broadly involved in software development ought not to have been excluded.

19. The determination of the ALP under the TNMM is premised on ascertaining the PLI companies which are similar, on a FAR basis. The object is to determine what the PLI of the Assessee

[4] Order dated 12.12.2014 passed in ITA No.108/Bang/2014

would be in the event the transactions were not with its AE but with unrelated parties on ALP. This is for the purpose of ensuring that the assessee's real income is brought to tax. This is derived by adjusting the income as declared for any distortion that may have arisen because transactions were not on an arm's length basis. It is thus essential to ensure that the comparable entities selected for benchmarking the international transactions are as similar as possible on parameters that bear on generating income. Thus, the selection of comparable entities is made on FAR (Function, Assets and Risks) basis.

20. In view of the above, we are unable to accept that the learned ITAT can be faulted in adopting an approach to ensure that the functional profile of the comparable entities is similar to that of the Assessee. It is also relevant to note that the question as to whether the functional profile of a comparable entity is similar to that of an Assessee is a question of fact in the present case. We are unable to accept that the learned ITAT's decision in excluding Persistent Systems Ltd. as a comparable on the basis of the functional profile, is perverse.

21. As noted above, the learned ITAT had referred to earlier decision in **Yodlee** (*supra*). It is material to note that the Revenue had preferred an appeal against the said decision (order dated 12.12.2024 passed by the learned ITAT in ITA No.108/Bang/2014 captioned **Yodlee Infotech Pvt. Ltd. vs. ITO**), being ITA No.174/2025 which was dismissed by a coordinate Bench of this court by an order dated 25.07.2018. The Revenue had filed a special leave petition against the said decision before the Supreme Court [SLP(C) Diary No.26876/2019) which was dismissed by an order dated 06.09.2019.

22. In view of the above, no substantial question of law arises in regard to the exclusion of the companies as referred to by the Revenue.

23. The second question as framed by the Revenue is misconceived. The learned ITAT has not used a narrower functional filter. It has merely ascertained whether the comparables as selected by the learned TPO were not similar to the Assessee on the basis of the functional profile.

24. In view of the above, no substantial question of law arises for consideration of this Court in the present appeal.

25. The appeal is, accordingly, dismissed.

Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE

Sd/-
(K.S. HEMALEKHA)
JUDGE

AHB
List No.: 1 Sl No.: 17