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W.P.No18377 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	02.02.2026
Pronounced on	06.02.2026

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANANW.P.No18377 of 2024andW.M.P.Nos.20189 & 20190 of 2024

Verizon Data Services India Private Limited
Rep by its authorized Signatory
Mr.Ramanth Subramanian
No.1, Olympia Tech Park,
Citius B Block, 8th floor, Guindy
Chennai 600032, Tamil Nadu, India

...Petitioner

Vs.

Deputy Commissioner of Income Tax
Corporate Circle 3(1), Chennai
131, Mahatma Gandhi Road, Nungambakkam
Chennai 600034

...Respondent

Prayer : Writ Petition is filed under Article of the 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus to call for the records of the respondent and quash the impugned Order No.1 in PAN: AABCV1758N bearing DIN:ITBA/PLN/F/270AA/2023-24/1059206899(1) passed by the respective u/s.270AA of the Act dated 29.12.2023 for the Assessment Year



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2020-21 as also the Impugned Order No.2 passed by the Respondent in PAN: AABCV1758N bearing DIN:ITBA/PNL/F/270A/2024-25/1065274075(1) levying penalty under Section 270A dated 30.05.2024 for the AY 2020-21 and thereby directing grant of immunity under Section 270AA of the Act for the Assessment Year 2020-21.

For Petitioner : Mr.Ajay Vohra
Senior Advocate

For Respondents : Mrs.S.Premalatha
Senior Standing Counsel

ORDER

In this Writ Petition, the Petitioner has challenged the impugned Order dated 29.12.2023 passed under Section 270AA of the Income Tax Act, 1961 and Order dated 30.05.2024 imposing penalty against the Petitioner under Section 270A of the Income Tax Act, 1961.

2. By the former Order dated 29.12.2023, the application filed by the Petitioner in Form 68 on 30.11.2023 for grant of immunity from imposition of penalty under Section 270A of the Income Tax Act, 1961 has been rejected.

3. By the second mentioned Order dated 30.05.2024, penalty has been



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imposed under Section 270A of the Income Tax Act, 1961 pursuant to a notice dated 02.11.2023.

4. The aforesaid notice was issued pursuant to an Assessment Officer dated 02.11.2023, wherein the Assessing Officer arrived at the following conclusion:-

The TPO after making a threadbare analysis of the issue involved and considering the various submissions made during the course of Transfer Pricing proceedings, passed order u/s 92CA(3) of the Act, on 30.03.2023 in order ITBA/TPO/F/92CA3/2022-23/10516605833(1), dated 30.03.2023, made the following upward adjustments:-

Sl.No.	Description	Adjustment u/s 92CA(In Rs.)
1.	Total Adjustment u/s 92CA	4,49,59,601/-

5. The facts on record reveals that the Petitioner had filed a return of Income on 24.12.2020 declaring a gross total income for a sum of Rs.283,97,38,290/- for Assessment Year 2020-2021.



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6. During the course of the proceedings, a reference was made to the Transfer Pricing Officer under Section 92CA(1), which ultimately culminated in an Order dated 30.03.2023 of the Transfer Pricing Officer under Section 92CA(3) wherein the Transfer Pricing Officer proposed to add to sum of Rs.4,49,59,601/- to the income of the petitioner.

7. In the Assessment Order dated 02.11.2023 itself, it was informed that a separate penalty proceedings under Section 270A for "misreporting" of the income for a sum of **Rs.4,99,59,650/-** will be added to the income. Relevant portion from the Assessment Order dated 02.11.2023 is extracted below for easy reference:

*Thus, **Rs.4,49,59,601/-** being upward adjustment made is hereby added to the total income of the assessee. Penalty proceeding u/s 270A for misreporting of income is initiated separately, in respect of the upward adjustments determined by the TPO.*

8. Later, the Transfer Pricing Officer made further adjustment vide Order dated 03.10.2023 under Section 154 of the Income Tax Act, 1961 pursuant to which, the assessment was completed under Section 143(3) r/w. 144 (c) on 03.11.2023, by which the total income of the Petitioner was arrived at Rs.2,85,99,58,545/- after adding a sum of Rs.2,02,13,455/- to the income



declared by the Petitioner for a sum of Rs.2,83,97,38,290/-.

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9. A final computation in the aforesaid Assessment Order is reproduced below:-

	<i>Particulars</i>	<i>Amount (Rs.)</i>
	<i>Total income as per return of income</i>	<i>283,97,38,290</i>
	<i>Income as computed u/s. 143(1) (a)</i>	<i>2,83,97,45,100</i>
Add:	<i>T.P.Adjustment (As per para-5)</i>	<i>4,49,59,601</i>
	<i>T.P.Adjustment reduced to Rs.2,02,13,445/- after the rectification order passed by TPO on 03.10.2023</i>	<i>285,99,58,545</i>
	<i>Total Assessed Income</i>	<i>285,99,58,545</i>

10. It is in this background on the same day, a notice under Section 274 r/w Section 270A was issued to proposing impose penalty under Section 270A of the Income Tax Act 1961. The said proceeding culminated in an Order dated 30.05.2024 impugned herein wherein penalty of Rs.1,01,74,640/ under Section 270A of the Income Tax Act, 1961 was imposed on the petitioner.

11. The Petitioner had earlier filed an application for immunity under Section 27AA of the Income Tax Act on 30.11.2023 which was followed by a Show Cause Notice dated 26.12.2023 to show cause as to why immunity for



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Section 270AA of the Income Tax Act, 1961 claimed by the petitioner should not be rejected.

12. The Petitioner replied on 28.12.2023 which reiterated it's reply dated 28.11.2023 filed before the National Faceless Assessment Centre. Content of this reply dated 28.11.2023 was reiterated and filed with the Annexure II to the aforesaid reply. By an Order dated 28.12.2023 the application filed for Waiver of penalty was however rejected.

13. Learned counsel for the Petitioner would submit that imposition of penalty under Section 270A of the Income Tax Act, 1961 vide impugned Order dated 30.05.2024 was unjustified particularly in the light of the fact that the Petitioner had opted for immunity under Section 270AA by filing an application in Form 68 on 03.11.2023.

14. It is further submitted that imposition of penalty and rejection of the application filed by the immunity without authority of law. It is therefore submitted that the Assessment Order itself confirms that there was misreporting and therefore, denial of the immunity of Section 270 AA of the Income Tax Act, 1961 was unjustified.



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15. Therefore, it is further submitted even otherwise there is no case for misreporting even as per the Assessment Order dated 02.11.2023. Specifically a reference was made to the Para No.4.4 of the Assessment Order dated 02.11.2023 content of which has already been extracted supra.

16. It is submitted that there was only a upward revision to the Return of Income filed by the Petitioner and that if at all there was only under reporting and not misreporting of income and therefore, impugned proceedings are liable to be interfered with.

17. Learned Senior Counsel for the Petitioner on the following decisions:-

i.P. M. Perianna pillair Vs. Commissioner, Board of Revenue (Commercial Taxes) (1980) 46 STC 94 (Mad.).

ii.State of Tamil Nadu Vs. Sri Swamy and Company (1977) 39 STC 85 (Mad.).

iii.The State of Tamil Nadu Vs. R.R. Ramachari and Sons (1977) 40 STC 542 (Mad.).

iv.CIT Vs. Anwar Ali (1970) 76 ITR 696 (SC).

v.CIT Vs. Durr India (P.) Ltd (2014) 41 taxmann.com 134 (Madras)



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vi. Schneider Electric South East Asia (HQ) PTE Ltd. Vs. ACIT, International Taxation Circle 3(1)(2), New Delhi and Ors. W.P.(C) NO. 5111 of 2022.

vii. Prem Brothers Infrastructure LLP Vs. NFAC (2022) 142 taxmann.com 38 (Delhi)

18. On the other hand, learned counsel for the Respondent would submit that penalty proceeding was initiated for misreporting of Income and therefore the Petitioner was not entitled to file Form-68 for immunity from Section 270AA of Income Tax Act, 1961.

19. It is further submitted that it is established in the impugned Order that there was indeed misreporting to attract penalty under Section 274 read with 270A of the Income Tax Act, 1961 and therefore Show Cause Notice that was issued to the Petitioner was in order.

20. It is submitted that jurisdictional Assessing Officer has considered the submission of the Petitioner dated 14.05.2024 and has clearly held that provisions of Section 270A(9) was attracted in the fact of the present case and has thus, levied penalty for misreporting of the Income under Section 274 read with 270A of the Income Tax Act, 1961.



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21. That apart, it is submitted that the case as relied upon by the Petitioner under Section 271(1)(c) were not applicable for the proceedings initiated under Section 270A of the Income Tax Act, 1961. It is submitted that the Order dated 29.12.2023 and Order dated 30.05.2024 have been passed after following due procedure of law and do not merit any interference under Article 226 of the Constitution of India.

22. Mrs.S.Premalatha, learned Senior Standing Counsel for the Respondent during the course of arguments also drew the attention to few passages from the impugned Order dated 30.05.2024 passed by the Respondent under Section 270 A of the Income Tax Act, 1961.

23. Specifically, the learned Senior Standing Counsel for the Respondent submitted that under Section 270A(8) of the Act, as a consequence of ‘Under-reporting’ of income penalty equivalent to 200% can be imposed. It is further submitted that in the impugned Order, it has been clarified that as consequence of misreporting, T.P.O. concluded that there was Underreporting of income due to misreporting.



24. By way of a rejoinder, Mr.Ajay Vohra, the learned Senior Counsel for the Petitioner has submitted that in the case of the Petitioner, neither any scope to infer “under-reporting nor under “mis-reporting” and at best, it can be construed that there was only “under-reporting” within the meaning of Section 27A(d) of the Act.

25. It is further submitted that to conclude that there was “mis-reporting”, the Respondent-Income Tax Department has to establish one of the following provisions of Section 270A(9) of the Act, viz., :-

- a.**Misrepresentation or suppression of facts:** Hiding crucial details to evade tax.
- b.**Non-recording of investments:** Failure to record investments in the books of account.
- c.**Substantiation failure:** Claiming expenditure not supported by evidence.
- d.**False entries:** Recording false entries in the books of account.
- e.**Unrecorded receipts:** Failure to record receipts that impact total income.
- f.**Transaction failure:** Failure to report international or specified domestic transactions (under Chapter X).

26. It is submitted that there was no violation on the part of the Petitioner while reporting the international transaction or any transaction deemed to be an



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international transaction or any specified domestic transaction, to which, the aforesaid provision of Chapter X would apply.

27. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondent.

28. In this case, the Assessment Order dated 02.11.2023 was passed pursuant to the Draft Assessment Order dated 20.09.2023 under Section 144C(3) of the Income Tax Act, 1961. On the very same day i.e., 02.11.2023, notice for initiating proceedings for Penalty under Section 274 read with Section 270A of the Income Tax Act, 1961 was issued to the Petitioner.

29. As per Section 270A of the Income Tax Act, 1961, the Assessing Officer or the Joint Commissioner (Appeals) or the Commissioner (Appeals) or the Principal Commissioner or Commissioner may, during the course of any proceedings under the Income Tax Act, 1961, direct any Person who has under-reported his income shall be liable to pay a penalty in addition to tax.

30. In the present case, the Petitioner has been subjected to a penalty of **two hundred percent (200%)** of the amount of tax payable on the under-



reported income, on the ground that such **under-reporting is in consequence of misreporting of income** under Section 270A(9)(a) of the Income Tax Act, 1961.

31. Section 270A of the Income Tax Act, 1961 is extracted as under for the sake of clarity:-

270A. Penalty for under reporting and misreporting of income.—

(1) The Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or Commissioner may, during the course of any proceedings under this Act, direct that any person who has under-reported his income shall be liable to pay a penalty in addition to tax, if any, on the under-reported income.

(2) A person shall be considered to have under-reported his income, if—

- | | |
|-----|---|
| (a) | <i>the income assessed is greater than the income determined in the return processed under clause (a) of sub-section (1) of section 143;</i> |
| (b) | <i>the income assessed is greater than the maximum amount not chargeable to tax, where no return of income has been furnished;</i> |
| (c) | <i>the income reassessed is greater than the income assessed or reassessed immediately before such reassessment;</i> |
| (d) | <i>the amount of deemed total income assessed or reassessed as per the provisions of section 115JB or section 115JC, as the case may be, is greater than the deemed total income determined in the return processed under clause (a) of sub-section (1) of section 143;</i> |
| (e) | <i>the amount of deemed total income assessed as per the provisions</i> |



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|-----|--|
| | <i>of section 115JB or section 115JC is greater than the maximum amount not chargeable to tax, where no return of income has been filed;</i> |
| (f) | <i>the amount of deemed total income reassessed as per the provisions of section 115JB or section 115JC, as the case may be, is greater than the deemed total income assessed or reassessed immediately before such, reassessment;</i> |
| (g) | <i>the income assessed or reassessed has the effect of reducing the loss or converting such loss into income.</i> |

(3) *The amount of under-reported income shall be,—*

- | | |
|------|---|
| (i) | <i>in a case where income has been assessed for the first time,—</i> |
| (a) | <i>if return has been furnished, the difference between the amount of income assessed and the amount of income determined under clause (a) of sub-section (1) of section 143;</i> |
| (b) | <i>in a case where no return has been furnished,—</i> |
| (A) | <i>the amount of income assessed, in the case of a company, firm or local authority; and</i> |
| (B) | <i>the difference between the amount of income assessed and the maximum amount not chargeable to tax, in a case not covered in item (A);</i> |
| (ii) | <i>in any other case, the difference between the amount of income reassessed or recomputed and the amount of income assessed, reassessed or recomputed in a preceding order:</i> |

Provided that where under-reported income arises out of determination of deemed total income in accordance with the provisions of section 115JB or section 115JC, the amount of total under-reported income shall be determined in accordance with the following formula—

$$(A - B) + (C - D)$$

where,



A = the total income assessed as per the provisions other than the provisions contained in section 115JB or section 115JC (herein called general provisions);

B = the total income that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of under-reported income;

C = the total income assessed as per the provisions contained in section 115JB or section 115JC;

D = the total income that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 115JC been reduced by the amount of under-reported income:

Provided further that where the amount of under-reported income on any issue is considered both under the provisions contained in section 115JB or section 115JC and under general provisions, such amount shall not be reduced from total income assessed while determining the amount under item D.

Explanation.—For the purposes of this section,—

- (a) *"preceding order" means an order immediately preceding the order during the course of which the penalty under sub-section (1) has been initiated;*
- (b) *in a case where an assessment or reassessment has the effect of reducing the loss declared in the return or converting that loss into income, the amount of under-reported income shall be the difference between the loss claimed and the income or loss, as the case may be, assessed or reassessed.*

(4) Subject to the provisions of sub-section (6), where the source of any receipt, deposit or investment in any assessment year is claimed to be an amount added to income or deducted while computing loss, as the case may be, in the assessment of such person in any year prior to the assessment year in which such receipt, deposit or investment appears (hereinafter referred to as "preceding year") and no penalty was levied for such preceding year; then, the under-reported income shall include such amount as is sufficient to cover such receipt, deposit or investment.



(5) *The amount referred to in sub-section (4) shall be deemed to be amount of income under-reported for the preceding year in the following order—*

- | | |
|-----|---|
| (a) | <i>the preceding year immediately before the year in which the receipt, deposit or investment appears, being the first preceding year; and</i> |
| (b) | <i>where the amount added or deducted in the first preceding year is not sufficient to cover the receipt, deposit or investment, the year immediately preceding the first preceding year and so on.</i> |

(6) *The under-reported income, for the purposes of this section, shall not include the following, namely:—*

- (a) *the amount of income in respect of which the assessee offers an explanation and the Assessing Officer or the Commissioner (Appeals) or the Commissioner or the Principal Commissioner, as the case may be, is satisfied that the explanation is bona fide and the assessee has disclosed all the material facts to substantiate the explanation offered;*
- (b) *the amount of under-reported income determined on the basis of an estimate, if the accounts are correct and complete to the satisfaction of the Assessing Officer or the Commissioner (Appeals) or the Commissioner or the Principal Commissioner, as the case may be, but the method employed is such that the income cannot properly be deduced therefrom;*
- (c) *the amount of under-reported income determined on the basis of an estimate, if the assessee has, on his own, estimated a lower amount of addition or disallowance on the same issue, has included such amount in the computation of his income and has disclosed all the facts material to the addition or disallowance;*
- (d) *the amount of under-reported income represented by any addition made in conformity with the arm's length price determined by the Transfer Pricing Officer, where the assessee had maintained information and documents as prescribed under section 92D, declared the international transaction under Chapter X, and, disclosed all the material facts relating to the transaction; and*
- (e) *the amount of undisclosed income referred to in section 271AAB.*



(7) *The penalty referred to in sub-section (1) shall be a sum equal to fifty per cent of the amount of tax payable on under-reported income.*

(8) *Notwithstanding anything contained in sub-section (6) or sub-section (7), where under-reported income is in consequence of any misreporting thereof by any person, the penalty referred to in sub-section (1) shall be equal to two hundred per cent of the amount of tax payable on under-reported income.*

(9) *The cases of misreporting of income referred to in sub-section (8) shall be the following, namely:—*

(a)	<i>misrepresentation or suppression of facts;</i>
(b)	<i>failure to record investments in the books of account;</i>
(c)	<i>claim of expenditure not substantiated by any evidence;</i>
(d)	<i>recording of any false entry in the books of account;</i>
(e)	<i>failure to record any receipt in books of account having a bearing on total income; and</i>
(f)	<i>failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X apply.</i>

(10) *The tax payable in respect of the under-reported income shall be—*

(a)	<i>where no return of income has been furnished and the income has been assessed for the first time, the amount of tax calculated on the under-reported income as increased by the maximum amount not chargeable to tax as if it were the total income;</i>
(b)	<i>where the total income determined under clause (a) of sub-section (1) of section 143 or assessed, reassessed or recomputed in a preceding order is a loss, the amount of tax calculated on the under-reported income as if it were the total income;</i>
(c)	<i>in any other case determined in accordance with the formula</i>



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—
$(X-Y)$
where,
<i>X = the amount of tax calculated on the under-reported income as increased by the total income determined under clause (a) of sub-section (1) of section 143 or total income assessed, reassessed or recomputed in a preceding order as if it were the total income; and</i>
<i>Y = the amount of tax calculated on the total income determined under clause (a) of sub-section (1) of section 143 or total income assessed, reassessed or recomputed in a preceding order.</i>

(11) No addition or disallowance of an amount shall form the basis for imposition of penalty, if such addition or disallowance has formed the basis of imposition of penalty in the case of the person for the same or any other assessment year.

(12) The penalty referred to in sub-section (1) shall be imposed, by an order in writing, by the Assessing Officer, the Commissioner (Appeals), the Commissioner or the Principal Commissioner, as the case may be."

32. The aforesaid penalty under Section 270A of the Income-tax Act, 1961 has been imposed on the allegation of under-reporting of income in consequence of misreporting, purportedly arising out of the following adjustment made by the Transfer Pricing Officer (TPO) while determining the Arm's Length Price (ALP) of the petitioner's transactions under Section 92CA(3) of the Income Tax Act, 1961.



33. Under Section 92C(3) of the Income Tax Act, 1961, the Assessing Officer may proceed to determine the arm's length price in relation to an international transaction where during the course of any proceeding for the assessment of income, the Assessing Officer is of the opinion on the basis of material or information or document in his possession that:-

- (a) the price charged or paid in an international transaction has not been determined in accordance with Section 92C, or
- (b) any information and document relating to an international transaction have not been maintained by the Assessee; or
- (c) the information or data used in computation of arm's length price is not reliable or correct; or
- (d) the Assessee has failed to furnish any information or document,

34. Petitioner had arrived at margin of profit at Rs.139,01,96,202/- based on Transactional Net Margin Method (TNMM) and Comparable Uncontrolled Price Method (CUP) as per Rule 10B of the Income Tax Rules, 1961. The Petitioner placed reliance on details of the following companies for Comparable Uncontrolled Price Method (CUP) :-

1. Allsec Technologies Ltd.
- 2. Anderson Business Solutions Pvt. Ltd.**
3. Cosmic Global Pvt. Ltd.
4. Datamatics Business Solutions Ltd.
- 5. Digicall Global Pvt. Ltd.**



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- 6.Global Healthcare Billing Partners Pvt. Ltd.
- 7.Silgate Solutions Ltd.
- 8.WE Win Ltd. (Surevin BPO services Ltd.)

35. On examination of the above comparables offered by Petitioner for determination of Arm's Length Price, the Transfer Pricing Officer held that the data of the following two comparables were to be rejected. The reasons given for rejection were as under:-

S.No.	Name of the Comparable	Reason for rejection
1.	Anderson Business Solutions Pvt. Ltd.	Failed in Employee Cost Filter (<60%)
2.	Digicall Global Pvt. Ltd.	Failed in Employee Cost Filter (<60%) & Negative NCP margin

36. Therefore, the Transfer Pricing Officer proceeded to determine the Arm's Length Price (ALP) in accordance with sub-Sections (1) and (2) of Section 92C of the Income Tax Act, 1961 by conducting an independent search through Prowess IQ database applying the following filters:-

1.	Companies in predefined sets – Companies involves in ITeS and support Services
2.	Sales > 1 crore



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3.	Financial Year ending 31 st March
4.	Rejection of persistent loss-making companies
5.	Positive Net Worth
6.	Employee Cost to Sales > 60%
7.	Export Income to Total Sales > 75%
8.	RPT < 25%
9.	Functionally similar services

37. The Transfer Pricing Officer concluded that since the margin of petitioner was not within the range and therefore sent a SCN dated 06.03.2023 to show cause as to why the above comparables referred by the petitioner should not be considered as the benchmark for the International Transactions using TNMM with the profit margin of 17.67%.

38. The Profit Level Indicator (PLI) of the Petitioner Company was computed by the Transfer Pricing Officer (TPO) by dividing Operating Profit (OP) with Operating Cost (OC) [OP/OC] as determined under:-

Particulars	Amount in INR
Revenue from operation	1386980501
Exchange gain	9584757
Operating Income [OI]	1396565258
Expenses	
Employee benefit expenses	867009540
Technical and helpdesk	62034672



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services cost	
Depreciation and amortization expenses	56805097
Other expenses	239204456
Operating Cost [OC]	1225053765
Operating Profit [OP]	171511493
OP/OC	14.00

39. After considering objection of the Petitioner, the Transfer Pricing Officer by an order dated 30.03.2023 concluded as under:-

*The assessee has selected 8 comparables and six of the assessee's comparables were also included in the final list of comparables. This office has conducted an independent search to know the broader view of the operating margins reported by the companies in the segments submitted by the assessee. The independent search done by the undersigned has resulted in 12 comparable companies (including 6 of assessee's comparables). From the **weighted average margin** of the comparable companies, it is observed that, the 35th Percentile margin is 17.45% and the 65th Percentile Margin is 18.76%. **Since the margin of assessee is not within the range.** The assessee was sent a SCN dated 06/03/2023 to show cause as to why the above comparables should not be considered to benchmark the **international transactions using TNMM** with the profit margin of 17.67%. The same has been discussed elaborately in Para 6.1 supra.*

*There is no base on the assessee's request to include two more comparable companies at this stage. The assessee company is a well established reputed company with significant turnover. The assessee submitted that it **"being a captive service provider, assumes less than normal risks relating to business***



and operations and all significant business and entrepreneurial risks are borne by its AEs, outside India. In other words, VDSI is insulated from most of the business and operational risks which the comparable companies are exposed to, e.g., market risk, services liability risk, technology risk, credit risk, etc." This clearly shows that the assessee's margin is not within the arm's length price of the industry wide margins which is clearly visible from the margins computed by this office.

In view of the above discussion, the assessee's request for inclusion of two new comparables are not accepted as the assessee has cherry picked these two comparables as these companies have tendency to skew the results and cannot be considered representative of the industry. Hence, the claim of the assessee is denied.

Final List of Comparables:

ITES and supervisory support services		
S.No.	Name of the Comparables	WT OP/OC
1.	Global Healthcare Billing Partners Pvt. Ltd.	1.55
2.	Silgate Solutions Ltd.	7.60
3.	Cosmic Global Ltd.	10.34
4.	Sundaram Business Services Limited	14.99
5.	Tech Mahindra Business Services Ltd.	17.45
6.	M O L Information Processing Services (India) Pvt. Ltd.	17.57
7.	Bahar Infocons Pvt. Ltd.	17.76
8.	Allsec Technologies Ltd.	18.76
9.	WE Win Ltd. (Surevin BPO services Ltd.)	19.89
10.	Datamatics Business Solutions Limited	21.08
11.	Designed Products Ltd.	21.83
12.	Inteq BPO Services Private Limited	40.85
	35th PERCENTILE	17.45



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	65th PERCENTILE	18.76
	MEDIAN	17.67

40. The Arms Length Price was determined by the Transfer Pricing Officer vide order dated 30.03.2023 as follows:-

ALP Calculation:

Value of International Transactions =Rs. 13,65,65,258/-

Margin of Assessee Company = 14.00%

Median of Comparable Companies = 17.67%

	<i>Cost</i>	<i>Margin</i>	<i>Sale</i>
<i>Assessee Company</i>	<i>100</i>	<i>14.00%</i>	<i>114.00</i>
<i>Comparable Companies</i>	<i>100</i>	<i>17.67%</i>	<i>117.67</i>

<i>ALP Calculation</i>	<i>Amount in INR</i>
<i>139,65,65,258 X 117.67/114</i>	<i>144,15,24,859</i>
<i>Less AE Sale</i>	<i>139,65,65,258</i>
<i>ALP</i>	<i>4,49,59,601</i>

41. Thus, an upward adjustment of Rs.4,49.59,601/- was proposed in the Software development, testing and support services Segment for the AY 2020-21.

42. Later, the said order dated 30.03.2023 was rectified by a Rectification Order dated 03.10.2023 under Section 92CA(5) read with Section 154 of the



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Income Tax Act, 1961 by the Transfer Pricing Officer with the following

observations in respect to an application filed by the Petitioner:-

The assessee filed rectification application under Section 154 of the Income Tax Act, 1961 regarding margin computation of comparable companies. The details submitted by the assessee has been duly verified with the financials. As this constitutes a mistake apparent from record, the same is rectified under Section 92CA(5) read with Section 154 of the Income Tax Act, 1961 and the revised computation of the comparables after Rectification are as under:

<i>ITES and supervisory support services</i>		
<i>S.No.</i>	<i>Name of the Comparables</i>	<i>WT OP/OC</i>
<i>1.</i>	<i>Global Healthcare Billing Partners Pvt. Ltd.</i>	<i>-2.66</i>
<i>2.</i>	<i>Designed Products Ltd.</i>	<i>3.97</i>
<i>3.</i>	<i>Silgate Solutions Ltd.</i>	<i>7.54</i>
<i>4.</i>	<i>Cosmic Global Ltd.</i>	<i>9.55</i>
<i>5.</i>	<i>Datamatics Business Solutions Limited</i>	<i>14.49</i>
<i>6.</i>	<i>Sundaram Business Services Limited</i>	<i>14.99</i>
<i>7.</i>	<i>WE Win Ltd. (Surevin BPO services Ltd.)</i>	<i>16.32</i>
<i>8.</i>	<i>Tech Mahindra Business Services Ltd.</i>	<i>17.45</i>
<i>9.</i>	<i>M O L Information Processing Services (India) Pvt. Ltd.</i>	<i>17.66</i>
<i>10.</i>	<i>Bahar Infocons Pvt. Ltd.</i>	<i>17.76</i>
<i>11.</i>	<i>Allsec Technologies Ltd.</i>	<i>18.76</i>
<i>12.</i>	<i>Inteq BPO Services Private Limited</i>	<i>40.85</i>
	<i>35th PERCENTILE</i>	<i>14.49</i>
	<i>65th PERCENTILE</i>	<i>17.45</i>
	<i>MEDIAN</i>	<i>15.65</i>

From the weighted average margin of the comparable companies, it is observed that, the 35th percentile margin is 14.49% and the 65th percentile margin is 17.45%. Since the margin of assessee i.e., 14.00% is not within the range, the ALP of the assessee is computed as follows.



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Value of International Transactions = Rs. 139,65,65,258

Margin of Assessee Company = 14.00%

Median of Comparable Companies = 15.65%

	Cost	Margin	Sale
<i>Assessee Company</i>	<i>100</i>	<i>14.00%</i>	<i>114.00</i>
<i>Comparable Companies</i>	<i>100</i>	<i>15.65%</i>	<i>115.65</i>

ALP Calculation	Amount in INR
<i>139,65,65,258 X 115.65/114</i>	<i>1,41,67,78,703</i>
<i>Less AE Sale</i>	<i>1,39,65,65,258</i>
ALP	2,02,13,445

Hence the original adjustment of INR 4,49,59,601 as per the earlier order dated 30.03.2023 is reduced to INR 2,02,13,445 as per this rectification order.

43. Penalty for “under-reporting of income” and for “under reporting of income is in consequence of any misreporting” are prescribed in Sub Section (7) and (8) to Section 270A of the Income Tax Act, 1961. They are as under:-

	Under-reporting of income	Under-reporting of Income is in consequence of misreporting
Provision	270A(7)	270(8)
Penalty	50% of the amount of tax payable on under-reported income	200% of the amount of tax payable on under-reported income



44. The immunity contemplated under **Section 270AA** of the Income Tax Act, 1961 is available to an assessee only for “**under-reporting of income**” *simplicitor*.

45. No immunity from penalty is available to an assessee under **Section 270AA** of the Income Tax Act, 1961 where “under-reporting of income is as a consequence of misreporting of income” as is contemplated in Sub Section (8) and (9) to Section 270A of the Income Tax Act, 1961.

46. Situations for “Under-reporting of income is in consequence of any misreporting of income” has been stipulated under Sub Section (9) to Section 270A of the Income Tax Act, 1961.

47. “Under-reporting of income as a consequence of misreporting of income” would arise only if any of one or more of the ingredients mentioned in Sub Section (9) to Section 270A of the Income Tax Act, 1961 were present.

48. Instances of “misreporting of income” for the purpose of Sub Section (8) to Section 270A of the Income Tax Act, 1961 are specified in Sub Section



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(9) to Section 270A of the Income Tax Act, 1961. Sub Section (9) to Section

270A of the Income Tax Act, 1961 is reproduced below:-

(9) The cases of misreporting of income referred to in sub-section (8) shall be the following, namely:—

- a) misrepresentation or suppression of facts;*
- b) failure to record investments in the books of account;*
- c) claim of expenditure not substantiated by any evidence;*
- d) recording of any false entry in the books of account;*
- e) failure to record any receipt in books of account having a bearing on total income; and*
- f) failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X apply.*

49. “Misreporting of income” represents an aggravated form of under-reporting, characterized by a deliberate and willful attempt to evade tax. In the facts of the case, there is no scope to infer aggravated form of under-reporting, characterized by a deliberate and willful attempt to evade tax.



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50. The entire basis for initiation of penalty proceedings is the transfer pricing adjustment proposed in the draft assessment order. Such adjustment, by its very nature, involves estimation and determination of arm's length price and cannot, in law, be equated with either concealment or misrepresentation so as to attract the Clause (a) to Sub Section (9) to Section 270A.

51. Since the Petitioner had maintained information and documents as prescribed under Section 92D, and complied with all statutory requirements under Chapter X of the Income Tax Act, 1961.

52. Therefore, the case squarely falls within the exception carved out under Clause (d) to Sub Section (6) to Section 270A, which expressly excludes such cases from the ambit of under-reporting. In the facts of the case, it cannot be held that there was “under-reporting of income as a consequence of misreporting of Income” either to impose penalty under Section 270A(8) read with Section 270A(9) of the Income Tax Act, 1961 as the ingredients thereof are not satisfied.

53. Unless tax is a clear and categorical incriminating facts to infer



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deliberate and conscious concealment or furnishing of false particulars, it cannot be said that there was “under-reporting of income as a consequence of misreporting of income” which is completely absent in the present case.

54. At best, it could have been surmised that the petitioner was guilty for “under-reporting of income” *simplicitor* to impose penalty under Section 270A(7) of the Income Tax Act, 1961. However, even that is not made out in view of Clause (d) to Sub Section (6) to Section 270A of the Income Tax Act, 1961.

55. As per Section 270A(6) of the Income Tax Act, 1961, “under-reporting of income” under shall not include the following, namely:—

(a)	<i>the amount of income in respect of which the assessee offers an explanation and the Assessing Officer or the Joint Commissioner (Appeals) or] the Commissioner (Appeals) or the Commissioner or the Principal Commissioner, as the case may be, is satisfied that the explanation is bona fide and the assessee has disclosed all the material facts to substantiate the explanation offered;</i>
(b)	<i>the amount of under-reported income determined on the basis of an estimate, if the accounts are correct and complete to the satisfaction of the Assessing Officer or the Joint Commissioner (Appeals) or] the Commissioner (Appeals) or the Commissioner or the Principal</i>



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	<i>Commissioner, as the case may be, but the method employed is such that the income cannot properly be deduced therefrom;</i>
(c)	<i>the amount of under-reported income determined on the basis of an estimate, if the assessee has, on his own, estimated a lower amount of addition or disallowance on the same issue, has included such amount in the computation of his income and has disclosed all the facts material to the addition or disallowance;</i>
(d)	<i>the amount of under-reported income represented by any addition made in conformity with the arm's length price determined by the Transfer Pricing Officer, where the assessee had maintained information and documents as prescribed under section 92D, declared the international transaction under Chapter X, and, disclosed all the material facts relating to the transaction; and</i>
(e)	<i>the amount of undisclosed income referred to in section 271AAB.</i>

56. In the present case, the income of under-reported was represented by addition made in conformity with the arm's length price determined by the Transfer Pricing Officer vide Order dated 30.03.2023 as modified vide Order dated 30.10.2023.

57. That apart, the Petitioner had maintained information and documents as was prescribed under Section 92D and had declared the international transaction under Chapter X, and, disclosed all the material facts relating to the



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international transaction. Therefore, the Petitioner was entitled for immunity under Section 270AA of the Income Tax Act, 1961.

58. Therefore, this Writ Petition deserves to be allowed and accordingly, it is allowed. Consequently, connected miscellaneous petitions stand closed. No costs.

06.02.2026

Neutral Citation: Yes/No

gv/raja

To

Deputy Commissioner of Income Tax
Corporate Circle 3(1), Chennai
131, Mahatma Gandhi Road, Nungambakkam
Chennai 600034



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C. SARAVANAN, J.

gv/raja

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