



CNR: KAHC010293552020

NC: 2026:KHC:50909-DB
ITA No. 49 of 2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH 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. 49 OF 2021

BETWEEN:

1. THE PR. COMMISSIONER OF INCOME TAX, (CIT)A
5TH FLOOR, BMTC BUILDING,
80 FEET ROAD, KORMANGALA,
BENGALURU-560095.
2. THE JOINT COMMISSIONER OF INCOME-TAX,
SPECIAL RANGE-3,
2ND FLOOR, BMTC BUILDING,
80 FEET ROAD, KORMANGALA,
BENGALURU-560095.

Digitally signed
by AASEEFA
PARVEEN

Location: HIGH
COURT OF
KARNATAKA

(BY SRI. RAVI RAJ Y V.,ADVOCATE)

...APPELLANTS

AND:

M/S. GOLDMAN SACHS SERVICES PVT LTD.,
WING A, WING B AND WING C
(GROUND FLOOR TO 6TH FLOOR)
HELIOS BUSINESS PARK,



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150 OUTER RING ROAD,
KADUBEESANAHALLI,
BENGALURU-560103.
PAN-AACCG 2435N.

...RESPONDENT

(RESPONDENT-SERVED, UNREPRESENTED)

THIS ITA / INCOME TAX APPEAL UNDER SEC.260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 29/01/2020 PASSED IN IT(TP)A NO. 3244/BANG/2018, FOR THE ASSESSMENT YEAR 2014-2015, PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE AND ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, BENGALURU IN IT(TP)A NO. 3244/BANG/2018 DATED 29/01/2020 FOR ASSESSMENT YEAR 2014-2015 ANNEXURE-D AND CONFIRM THE ORDER OF THE DRP CONFIRMING THE ORDER PASSED BY THE JOINT COMMISSIONER OF INCOME TAX, SPECIAL RANGE-3, BENGALURU.

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

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



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ORAL JUDGMENT

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

The above appeal filed by the Revenue under Section 260A of the Income Tax Act, 1961 is directed against the order dated 29.01.2020 passed by the Income Tax Appellate Tribunal 'B' Bench in IT(TP)A NO. 3244/BANG/2018 (Annexure-D).

2. The above appeal was admitted on 02.06.2021 to examine the following Substantial Questions of Law:

1. *"Whether the Tribunal was right in law and in fact seeking exact comparability under Transaction Net Margin Method"?*
2. *"Whether the Tribunal was right in law to ignore the parameters of analysis prescribed under Rule 10b, which are exhaustive and if so, whether it is legally permissible to bypass the same partially or by implication?"*
3. *"In the facts and circumstances of the case, whether the Tribunal was correct in ordering grant of Working Capital Adjustment ignoring the detailed observation of Transfer Pricing Officer on the same in the Transfer Pricing order"?*
4. *"Whether on the facts and circumstances of the case and in law, the Tribunal is right in law in deleting M/s.Infosys Ltd and M/s.Infosys BPO Ltd as comparable's without acknowledging the fact that the said comparable's were chosen by TPO on*



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the basis of materials on record and after applying the requires tests prescribed under the Rules and as such order passed by Tribunal is perverse in nature?"

5. *"Whether on the facts and in the circumstances of the case, the Tribunal was right in directing the assessing authority/Transfer Pricing Officer to allow actual working capital adjustment when Transfer Pricing Officer has disallowed the same considering the materials on record and analysis brought on record?"*

3. Heard learned Standing Counsel Sri.Y.V.Raviraj for the appellant-Revenue. Though respondent is served, it is un-represented.

4. To examine the above substantial questions of law, we have carefully gone through the impugned order passed by the Tribunal. The Tribunal on assigning reasons has directed the Transfer Pricing Officer i.e., (TP) to exclude M/s.Infosys Ltd. and M/s.Infosys BPO Ltd. from the list of comparables. While excluding the above two comparables, the Tribunal has recorded that M/s.Infosys Ltd. is not comparable to the profile of assessee on going through the Annual Report. Further, it is recorded that the



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comparable company is a giant risk taking company and is engaged in the development and sale of software products and own intangible assets. To exclude M/s.Infosys BPO Ltd., the Tribunal on taking note of the Annual Report of both the companies, has come to the conclusion that the activities are not at all comparable.

5. Further, the Tribunal has rightly directed the TPO to compute working capital adjustment as per actuals after considering exclusion/inclusion of comparable companies.

6. The Co-ordinate Bench of this Court vide judgment dated 28.08.2026 in ITA No.10/2011 and connected appeals in Sap Labs India Private Limited and The Income Tax Officer, on consideration of the entire case laws on transfer pricing, has recorded the following conclusions:

- i. *The Court concludes that Chapter X of the Income-tax Act, 1961 constitutes a self-contained code governing transfer pricing,*



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providing a complete statutory framework for determination of the Arm's Length Price (ALP), maintenance of documentation, and assessment of international transactions.

- 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 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*



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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.*

7. The Co-ordinate Bench has held that the selection or exclusion of comparables is essentially factual and data-driven exercise, the TPO cannot reject the taxpayer's comparables merely to substitute them with a standard departmental set. Further, it is held that the determination of comparables shall conform to the requirements of Rule 10B of the Income Tax Rules. The Co-ordinate Bench in Sap Labs India Private Limited, *supra*



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has held that there can be no fixed or scientific formula for granting Working Capital Adjustment, as the exercise necessarily depends upon the facts and circumstances of each case. The determination of such adjustment is essentially data-driven, and the manner as well as the extent of the adjustment are not specifically prescribed either under the Act or the Rules. Therefore, the grant or denial of Working Capital Adjustment invariably involves an appreciation of facts.

8. In the instant case, the Appellant/Revenue has failed to point out any perversity based on material on record. When the Tribunal has arrived at factual finding, the appellants-revenue have failed to point out as to how the said factual finding is contrary to the settled position of law. The appellants-revenue has also not pointed out as to whether the Tribunal has taken into consideration the irrelevant facts or excluded relevant facts while directing the exclusion of certain comparables.



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9. For the reasons recorded above, we are not inclined to entertain the appeal. Accordingly, Substantial Questions of Law are answered in favour of the respondent-assessee and against the Revenue.

Accordingly, the appeal stands **dismissed**.

Sd/-
(S.G.PANDIT)
JUDGE

Sd/-
(DR.CHILLAKUR SUMALATHA)
JUDGE

DS
CT:TSM
List No.: 1 SI No.: 25