



CNR: KAHC010162522020

NC: 2026:KHC:57053-DB
ITA No. 143 of 2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 8TH DAY OF OCTOBER, 2026
PRESENT
THE HON'BLE MR. JUSTICE S.G.PANDIT
AND
THE HON'BLE DR. JUSTICE CHILLAKUR SUMALATHA
INCOME TAX APPEAL NO. 143 OF 2021

BETWEEN:

1. PRINCIPAL COMMISSIONER
OF INCOME TAX-5
BMTC COMPLEX
KORAMANGALA
BENGALURU.
2. DEPUTY COMMISSIONER
OF INCOME TAX
CIRCLE -5(1)(1)
BANGALORE.

...APPELLANTS

(BY SRI. SANMATHI E. I., ADV.)

Digitally signed by
NANJUNDACHARI

Location: High
Court of
Karnataka

AND:

M/S. REITZEL INDIA PVT.LTD.
PLOT NO.98-99
KIADB, INDUSTRIAL AREA
KUNIGAL, TUMKUR-572101
PAN.AACRP4566P

...RESPONDENT

(BY SRI. NARENDRA KUMAR J. JAIN, ADV.)

THIS APPEAL IS FILED UNDER SEC.260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 08/11/2019 PASSED IN IT(TP)A NO.3329/BANG/2018, FOR THE ASSESSMENT YEAR 2014-2015, 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 (B) SET ASIDE



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THE APPELLATE ORDER DATED 08/11/2019 PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH, BENGALURU, IN APPEAL PROCEEDINGS NO. IT(TP)A NO.3329/BANG/2018 (ANNEXURE-A) FOR THE ASSESSMENT YEAR 2014-2015 AS SOUGHT FOR IN THIS APPEAL, AND TO GRANT SUCH OTHER RELIEF AS DEEMED FIT, IN THE INTEREST OF JUSTICE.

THIS APPEAL, COMING ON FOR ADMISSION, 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)

This appeal is filed by the Revenue under section 260A of the Income Tax Act, 1961 assailing the order dated 08.11.2019 in IT(TP)A No.3329/Bang/2018 passed by the Income Tax Appellate Tribunal 'C' Bench, Bangalore for the assessment year '2014-15', wherein the appeal filed by the assessee was allowed.

2. Heard Sri.E.I.Sanmathi, learned counsel for the Revenue and learned counsel Sri.Narendra Kumar Jain for respondent-assessee. Perused the entire appeal papers.



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3. The appeal was admitted on 16.02.2022 to examine the following substantial questions of law:

"(i) Whether on the facts and circumstances of the case and in law, the tribunal is right in law directing the assessing authority to treat export incentive to be part of operating income even though the export incentives like DEPB are incentives provided by Government as a matter of policy and as such they do not form part of eligible business whereas the same belong to the category of ancillary profits of such undertakings?

(ii) Whether on the facts and circumstances of the case and in law, the tribunal remanding the matter with regard comparable's and on interest on delayed trade receivable's without analyzing the reasoning for such remand merely on the ground that the main issue was restored to file of assessing officer / Transfer Pricing Officer?

4. A Coordinate bench of this Court in ITA No.10/2011 and connected appeals in **SAP Labs India (P) Ltd. V. Income Tax Officer**, vide judgment dated 28.08.2026, in an identical fact situation has, on a detailed discussion recorded its conclusion as follows:



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"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.*

(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.*



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(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 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



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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."

Re: Substantial Question of Law No.1

5. The 2nd Substantial question of law pertains to whether the export incentives provided to the assessee form part of the operating income or whether they are to be treated as ancillary profits. It is necessary to point out that the assessee would be eligible for export incentives only if the assessee is indulged in exporting its products. The assessee is indulged in the business of growing, processing and export of gherkins to its AE. The export incentives are available to the assessee on account of its export activity. Therefore, the incentives cannot be viewed in isolation from the business carried on by the assessee,



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as they have a direct nexus with its export activity. In the present case, the export incentives arise from the assessee's business of exporting gherkins. Having regard to the nature of the assessee's business and the principle laid down by the Bombay High Court in **COMMISSIONER OF INCOME-TAX V. WELSPUN ZUCCHI TEXTILES LTD., (2017) 391 ITR 211 (BOM)** as relied upon by the Tribunal, the export incentives cannot be excluded from its operating income merely on the ground that they are granted by the Government. The Tribunal was, therefore, justified in directing the TPO to treat the export incentives as part of the operating income for the purpose of determining the ALP. Accordingly, the substantial question of law No.1 is answered in favour of the assessee and against the Revenue.

Re: Substantial Question of Law No.2

6. The Coordinate bench of this Court in **SAP Labs India (P) Ltd. (supra)** has held that the selection or exclusion of comparables is essentially a factual and data-



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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. The said finding would be aptly applicable to the facts of the present case. The issue in the present case pertains to the exclusion of the rejection of the comparables selected by the TPO. A perusal at the records would indicate that the assessee is engaged in the business of growing, processing and exporting of a vegetable called gherkins to its Associated Enterprise. The Tribunal has rejected the comparables selected by the TPO and has merely remanded the matter back to the TPO for fresh consideration of some of the comparables as chosen by the assessee in its TP study. We do not find any merit in the contentions of the Revenue in this regard, inasmuch as, the comparables selected by the assessee in its TP Study and as well as some new comparables are also involved in the business of growing, processing and



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exporting of gherkins, whereas, the comparables opted by the TPO were in the business of food processing, which cannot be said to be functionally similar to the assessee. The learned counsel for the Revenue has not been able to point out the perversity in the aforesaid finding. Hence, substantial question of law No.2 is answered against the Revenue and in favour of the assessee

7. Thus, the appeal stands ***dismissed***.

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

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

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List No.: 1 Sl No.: 14