HC-KAR
CNR: KAHC010096662021

NC: 2026:KHC:58389-DB
ITA No. 249 of 2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH 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. 249 OF 2021

BETWEEN:

1. PRINCIPAL COMMISSIONER OF INCOME TAX
BMTC COMPLEX,
KORAMANGALA,
BENGALURU.

2. THE DEPUTY INCOME TAX OFFICER
CIRCLE 7(1)(1), BANGALORE.

...APPELLANTS

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

AND:

Digitally signed by AASEEFA PARVEEN
Location: HIGH COURT OF KARNATAKA

M/s. TRIDENT MICROSYSTEMS INDIA
PVT. LTD.,
NO. 2924, THIRD FLOOR,
14TH CROSS, K R ROAD,
BSK II STAGE,
BANGALORE-560070
PAN :AADCN1384L

...RESPONDENT

(RESPONDENT SERVED-UNREPRESENTED)

THIS ITA / INCOME TAX APPEAL IS FILED UNDER SEC.260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 14/08/2020 PASSED IN IT(TP)A NO. 2234/BANG/2016, FOR THE ASSESSMENT YEAR 2012-2013 (ANNEXURE-A) PRAYING TO

DECIDE THE FOREGOING QUESTION OF LAW AND / OR SUCH OTHER QUESTIONS OF LAW AS MAY BE FORMULATED BY THE HON'BLE COURT AS DEEMED FIT AND SET ASIDE THE APPELLATE ORDER DATED 14/08/2020 PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, BENGALURU, IN APPEAL PROCEEDINGS NO. IT(TP)A NO. 2234/BANG/2016 (ANNEXURE-A) FOR THE ASSESSMENT YEAR 2012-2013 AS SOUGHT FOR IN THIS APPEAL.

THIS APPEAL, COMING ON FOR HEARING, 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 under Section 260A of the ITA Act, 1961 is directed against 14.08.2020 in IT(TP)A No.2234/BANG/2016 passed by the Income Tax Appellate Tribunal, 'A' Bench, Bangalore for the assessment year 2012-13.

2. The above appeal was admitted for hearing on the following Substantial Questions of Law by order dated 19.02.2025:

"1. Whether on facts and the circumstances of the case and in law, Tribunal's order can be said as

perverse in nature as Tribunal has directed Transfer Pricing officer to exclude M/s.Genesys International Corporation Ltd on the ground of functional dissimilarity though the Transfer Pricing Officer after application of required tests rightly held that comparable-company's functions are similar to that of assessee?

2. Whether on the facts and in the circumstances of the case, the Tribunal is not justified in law in not appreciating that there is no direct relationship between turnover of comparable and the margin earned by the companies engaged in Software Development Services and as such excluding of comparable-companies on ground of turnover filter is unwarranted?

3. Whether on the facts and in the circumstances of the case, the Tribunal is right in law in directing Transfer Pricing Officer to exclude comparable's when TPO has satisfied all required tests set out in Rule 10B and as such, the order passed by Tribunal is perverse as Tribunal has ignored the materials brought on record by TPO?"

3. The above appeal relates to transfer pricing and particularly exclusion of comparables as directed by the ITAT.

4. In the matter of transfer pricing, the Co-ordinate Bench of this Court in ITA No.10/2011 and connected appeals between the Sap Labs India Private

Limited and The Income Tax Officer and others, by judgment dated 28.08.2026 on considering the relevant judgments of the Hon'ble Apex, has recorded the following findings:

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.*

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 ±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.

5. In so far as Substantial Question of Law No.1, the same is covered by the decision of the Co-ordinate Bench in Sap Labs (*supra)*. The Co-ordinate Bench has held that in the absence of any statutory prescription fixing either a lower or an upper turnover limit, the adoption by the Tribunal of an upper turnover filter of Rs.200 crores cannot be said to be arbitrary. On the contrary, the said criteria is founded on a rational and logical basis. Such a determination being essentially a finding of fact, cannot be interfered with unless perversity is specifically prayed and demonstrated. In the instant case, the appellants-Revenue has failed to demonstrate the perversity and how the Assessee-Genesys International Corporation Limited performs similar function as that of the respondent-Assessee. Therefore, the said

question is answered against the appellants-Revenue and in favour of the respondent-Assessee.

6. Insofar as Substantial Questions of Law Nos.2 and 3, with regard to exclusion of comparables, is also covered by the decision in Sap labs *supra*. It is specifically held that the selection or exclusion of comparables is essentially a factual and data driven exercise, and that TPO cannot reject the taxpayer's comparables merely to substitute them with a standard departmental set. Such determination must strictly comply to the requirements of Rule 10B of the Rules. The Tribunal on taking note of the functionality of the comparable companies and the respondent-Assessee company and also taking note of the functions, assets and risks assumed by the comparable companies as well as the respondent-Assessee company, has rightly come to the conclusion that comparables are functionally dissimilar and rightly directed exclusion of those comparables. The appellants-Revenue has failed to

point out any perversity in the order of the Tribunal. Moreover, the appellants have not pointed out considering either irrelevant material or excluding relevant material while passing the impugned order.

7. Thus, the Substantial Questions of Law are answered against the appellants-Revenue and in favour of the respondent-Assessee. Accordingly, the appeal stands ***dismissed***.

Sd/-
(S.G.PANDIT)
JUDGE

Sd/-
(DR.CHILLAKUR SUMALATHA)
JUDGE

DS
CT:TSM
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