

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 31<sup>ST</sup> DAY OF JULY 2018

PRESENT

THE HON'BLE DR.JUSTICE VINEET KOTHARI

AND

THE HON'BLE MRS.JUSTICE S.SUJATHA

**I.T.A. No.521/2016**

**BETWEEN :**

1. THE Pr. COMMISSIONER  
OF INCOME-TAX  
5<sup>TH</sup> FLOOR, BMTC BUILDING  
80 FEET ROAD, KORMANGALA  
BENGALURU-560095.
2. THE Dy. COMMISSIONER  
OF INCOME-TAX  
CIRCLE-11[5], PRESENT ADDRESS  
CIRCLE-2[1][1], 2<sup>ND</sup> FLOOR  
BMTC BUILDING, 80 FEET ROAD  
KORMANGALA  
BENGALURU-560095. ....APPELLANTS

(BY SRI K.V.ARAVIND, ADV.)

**AND :**

- M/s. LOGICA PVT. LTD.,  
[NOW MERGED WITH CGI  
INFORMATION SYSTEMS AND  
MANAGEMENT CONSULTANTS PVT. LTD.,]  
E-CITY, TOWER 2, 95/1 & 95/2  
ELECTRONIC CITY PHASE 1 [WEST]  
BENGALURU, PAN: AAACL 3330M. ....RESPONDENT

(BY SRI SANDEEP HUILGOL, ADV. FOR  
SRI T.SURYANARAYANA, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 18.03.2016 PASSED IN ITA No.1621/BANG/2014, FOR THE ASSESSMENT YEAR 2009-10, ANNEXURE-D, PRAYING TO:  
1. FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE; 2. ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE ITAT, BENGALURU IN IT[TP]A No.1621/BANG/2014 DATED 18.03.2016, ANNEXURE-D AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE ASST. COMMISSIONER OF INCOME TAX, CIRCLE-2[1][1], BENGALURU; AND ETC.

THIS APPEAL COMING ON FOR HEARING, THIS DAY,  
**S. SUJATHA, J.**, DELIVERED THE FOLLOWING:

**JUDGMENT**

**Mr. K.V.Aravind**, Adv. for Appellants – Revenue.

**Mr. Sandeep Huilgol**, Adv. for

**Mr. T.Suryanarayana**, Adv. for Respondent – Assessee.

This Appeal is filed by the Revenue purportedly raising substantial questions of law arising from the Order of the Income Tax Appellate Tribunal, Bangalore Bench 'B', Bangalore, in **IT[TP]A No.1621/Bang/2014** dated **18.03.2016**, relating to the Assessment Year **2009-10**.

2. The appeal has been admitted on 09.01.2018 to consider the following substantial questions of law:

*“1. Whether on the facts and in the circumstances of the case, the Tribunal erred in directing the TPO to exclude comparables such as M/s. Kals Information Systems, Bodhtree Consulting Ltd., Tata Elxsi Ltd., and Infosys Technology Ltd., Wipro Ltd., on the basis of functional dissimilarity and has erred in directing the TPO to include comparables such as M/s. Thinksoft Global Services Pvt. Ltd., FCS Software Solutions Ltd., on the ground that they are functionally similar even when the TPO has rightly chosen the said comparables by applying all the required tests and FAR analysis in each case?*

*2. Whether on the facts and in the circumstances of the case, the Tribunal erred in directing the TPO to exclude comparables M/s. Accentia Technologies Ltd., Cosmic Global and Eclerx Services Ltd., Infosys BPO Ltd., and Birla Minacs World Wide Ltd., by following its earlier orders which have not reached finality even when the TPO has rightly chosen the said*

*comparables by applying all the required tests and Tribunal erred in not appreciating FAR analysis in each case?”*

3. The learned Tribunal, after discussing the rival contentions of both the Appellants-Revenue and Respondent-Assessee, has returned the findings as under:

**Regarding Substantial Question of Law No.1:**

*“11.2. The above three comparables were already considered and rejected in M/s. CISCO Systems (India) Private Ltd., in IT(TP)A No. 271/Bang/2014 dt. 14-08-2014 by the Co-ordinate Bench and the decision is as under:*

“xxxxx”

*11.3. Since the objections of assessee are similar and facts being same AO/TPO is directed to exclude the above three companies.*

*11.5. Inclusion of these two companies on similar submissions was already considered in the decision of ARM Embedded Technologies Pvt. Ltd., in ITA No. 1659/Bang/ 14 dt. 31-08-2015 for the same assessment year as under:*

“xxxxx”

*Respectfully following the above decision we direct the TPO to include them in the list of comparable companies for working out average PLI.”*

**Regarding Substantial Question of Law No.2:**

*“12.1. Assessee is objecting to the inclusion of three comparables: (1) Accentia Technologies Ltd., ; (2) Cosmic global : (3) E-clerk Services Ltd., on the basis of decisions of Capital IQ in ITA No. 170/Hyd/2014 and other decisions.*

*12.2. Co-ordinate Bench at Hyderabad has already considered (one of us, AM is the author) the same comparables in the case of Capital IQ Information Systems (India) P. Ltd., in ITA No. 124/Hyd/2014 dt. 31-07- 2014 as under:*

“xxxxx”

*12.3. Respectfully following the above, we direct the TPO to exclude the above comparables and arrive at the addition, if any, on the basis of provisions of Section 92C. Ordered accordingly.”*

4. The controversy involved herein is no more *res integra* in view of the decision of this Court in **I.T.A. Nos.536/2015 c/w 537/2015** dated **25.06.2018** [Prl. Commissioner of Income Tax & Anr. V/s. M/s. Softbrands India Pvt. Ltd.,] wherein it has been observed that unless the finding of the Tribunal is found ex facie perverse, the Appeal u/s. 260-A of the Act, is not maintainable. The relevant portion of the Judgment is quoted below for ready reference:

**“Conclusion:**

55. A substantial quantum of international trade and transactions depends upon the fair and quick judicial dispensation in such cases. Had it been a case of substantial question of interpretation of provisions of Double Taxation Avoidance Treaties (DTAA), interpretation of provisions of the Income Tax Act or Overriding Effect of the Treaties over the Domestic Legislations or the questions like Treaty Shopping, Base Erosion and Profit Shifting (BEPS), Transfer of Shares in Tax Havens (like in the case of Vodafone

*etc.), if based on relevant facts, such substantial questions of law could be raised before the High Court under **Section 260-A** of the Act, the Courts could have embarked upon such exercise of framing and answering such substantial question of law. On the other hand, the appeals of the present tenor as to whether the comparables have been rightly picked up or not, Filters for arriving at the correct list of comparables have been rightly applied or not, do not in our considered opinion, give rise to any substantial question of law.*

56. *We are therefore of the considered opinion that the present appeals filed by the Revenue do not give rise to any substantial question of law and the suggested substantial questions of law do not meet the requirements of **Section 260-A** of the Act and thus the appeals filed by the Revenue are found to be devoid of merit and the same are liable to be dismissed.*

57. We make it clear that the same yardsticks and parameters will have to be applied, even if such appeals are filed by the Assessee, because, there may be cases where the Tribunal giving its own reasons and findings has found certain comparables to be good comparables to arrive at an '**Arm's Length Price**' in the case of the assessee with which the assessee may not be satisfied and have filed such appeals before this Court. Therefore we clarify that mere dissatisfaction with the findings of facts arrived at by the learned Tribunal is not at all a sufficient reason to invoke **Section 260-A** of the Act before this Court.

58. The appeals filed by the Revenue are therefore dismissed with no order as to costs."

5. In the circumstances, having heard the learned Counsel appearing for both the sides, we are of the considered opinion that no substantial question of law arises for consideration in the present case.

6. Hence, the Appeal filed by the Appellants-  
Revenue is liable to be dismissed and is accordingly  
dismissed. No costs.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

NC.