

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 31ST DAY OF JULY 2018

PRESENT

THE HON'BLE DR.JUSTICE VINEET KOTHARI

AND

THE HON'BLE MRS.JUSTICE S.SUJATHA

I.T.A. No.462/2016

BETWEEN :

1. THE PR. COMMISSIONER OF INCOME TAX
5TH FLOOR, BMTC BUILDING,
80 FEET ROAD, KORAMANGALA,
BENGALURU - 560095
 2. THE DEPUTY COMMISSIONER OF INCOME TAX
CIRCLE - 11(1),
PRESENT ADDRESS
CIRCLE -1(1) (1)
2ND FLOOR, BMTC BUILDING,
80 FEET ROAD,
KORAMANGALA
BENGALURU – 560 095
- ... APPELLANTS

(BY SRI.ARAVIND K V, ADV.)

AND:

M/S AMBA RESEARCH INDIA PVT. LTD.
12TH FLOOR, CONCORDE (TOWER C)
UB CITY BENGALURU PAN: AAECA9391N

... RESPONDENT

(RESPONDENT SERVED)

THIS ITA IS FILED UNDER SECTION 260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED:18/03/2016 PASSED IN IT(TP)A NO.622/BANG/2013, FOR THE ASSESSMENT YEAR 2008-2009 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.622/BANG/2013 DATED:18/03/2016 ANNEXURE - D CONFIRMING THE ORDER OF THE APPELLATE COMMISSIONER AND CONFIRM THE ORDER PASSED BY THE DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE-1(1)(1), BENGALURU.

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

J U D G M E N T

Mr.ARAVIND, Adv. for Appellants – Revenue.

This Appeal is filed by the Revenue purportedly raising substantial questions of law arising from the Order of the Income Tax Appellate Tribunal, ‘**B**’ Bench, Bangalore, in **IT [TP] A No.622/Bang/2013** dated **18.03.2016** relating to the Assessment Year **2008-09**.

2. This Appeal has been admitted on **09.01.2018** to consider the following substantial question of law :

“Whether on the facts and in the circumstances of the case, the Tribunal erred in directing the TPO to exclude comparable such as M/s. Accentia Technologies Ltd. M/s. Genesys International Corporation Ltd, M/s. Eclerx services Ltd, M/s. Mold-Tek Technologies Ltd, M/s.Coral Hubs Ltd, M/s. Aditya Biral Worldwide Ltd, M/s. Jindal Intellicom Pvt. Ltd and M/s Allsec Technologies Ltd even when the TPO has rightly chosen the said comparables considering the functions and as the said comparables satisfies all the required tests and even when the law and the international jurisprudence itself recognize that there cannot be an exact comparable to a given situation, especially with TNMM as the most appropriate method?”

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

“6. We have considered the rival contentions and perused the orders of Ld. CIT (A) and documents

placed on record. Even though Ld.CIT(A) has excluded the following comparables on various factors and filters, now the same comparables were examined in detail in various orders. The summary of reasons for exclusion are as under:

| <i>Companies</i> | <i>Reasons for exclusion</i> |
|---|--|
| <i>i. Infosys BPO Limited & ii. Wipro Limited (Seg)</i> | <i>These two companies are having turnover of multiple number of times and has huge brand value. They also have significant intangibles. In the case of Symphony vide para 24 & 25, these two companies are considered and excluded.</i> |
| <i>iii. Accentia Technologies Limited (Seg)</i> | <i>Merger of company effecting the profits.</i> |
| <i>iv. Eclerx Services Limited</i> | <i>Involved in data management services acquired companies during the year.</i> |
| <i>v. Genesys International Corporation Limited</i> | <i>Engaged in high end Global Information System Services, photo geometry.</i> |
| <i>vi. Mold-Tek Technologies Limited</i> | <i>Provides high-end structural engineering KPO services. Acquired company and demerger during the year.</i> |
| <i>vii. Coral Hubs Limited</i> | <i>Engaged in E-publishing business. Outsourced its portion of business.</i> |

We approve exclusion of the above comparables, following the analysis already done

by the Co-ordinate Benches as stated above. Revenue's grounds on these comparables are accordingly rejected.

7. Revenue in Ground No. 4 has contested on the reason of excluding on the 'abnormal profits' on the following three companies:

i. Aditya Birla Minacs Worldwide Limited;

ii. Jindal INtellicome Pvt Limited,; and

iii. Allsec Techonolgies Limited

As seen from the order of CIT(A) the reasons for rejection are that they are having 'negative margins'/ losses. Therefore, grounds raised by the Revenue are not maintainable. Hence, rejected.”

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- 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 Assessees, 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 assesseees with which the assesseees 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 the appellants-Revenue, We are of the considered opinion that no substantial question of law arises for consideration in the present case.

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

Copy of this order be sent to the respondent-Assessee, forthwith.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

ln.