

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH: BANGALORE**

BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER

ITA No. 385/Bang/2025
Assessment year 2011-12

<p>M/s. Xchanging Solutions Limited (Formerly known as Cambridge Solutions Limited), Xchanging Tower, 39/40, Digital Park, HP Avenue, Electronic City, Hosur Main Road, Electronic City S.O., Konapanna Agrahara, Bangalore – 560 100</p> <p>PAN: AAFCS9303L</p>	Vs.	<p style="text-align: center;">The Deputy Commissioner of Income Tax Circle – 7(1)(1), Bangalore.</p>
APPELLANT		RESPONDENT

Appellant by	:	Shri Padamchand Kincha, CA
Respondent by	:	Dr. Divya K. J – CITDR

Date of hearing	:	13.01.2026
Date of Pronouncement	:	06.04.2026

ORDER

Per Prashant Maharishi, Vice President

1. This appeal is filed for assessment year 2011 – 12 against the assessment order passed by the Deputy Commissioner Of Income Tax, Circle 7 (1) (1), Bangalore (The learned AO) passed in pursuance of direction of the learned Dispute Resolution Panel's wherein the income tax appellate tribunal vide its order dated 19 January 2022 in ITA a No. 492/Bangalore/2015 and subsequent miscellaneous application No. 61/Bangalore/2022 dated 26/8/2022 was passed.
2. Over and above the several grounds raised by the assessee the main contention is that the order passed by the learned assessing officer on 27 December 2024 is invalid.

3. Brief facts of the case shows that the assessee company filed its return of income at the total income of Rs. Nil. The case was selected for scrutiny which resulted into the final assessment order passed under section 143 (3) read with section 144C (13) of The Income Tax Act, 1961 (The Act) determining the assessed income at ₹ 190,805,854/–.
4. The assessee preferred an appeal before the income tax appellate tribunal, the Tribunal passed order in IT (TP) 492/Bangalore/2015 on 19 January 2022.
5. Subsequently a miscellaneous application was preferred by the assessee in MA No. 61/Bangalore/2022 dated 26 August 2022 wherein the further partial relief was granted to the assessee.
6. It is interesting to note that what happened in the ITAT order. Before the ITAT, the assessee sought for exclusion of 5 comparable such as
 - i. E info Chips Limited
 - ii. Acropetal technologies Limited,
 - iii. E Zest solutions Ltd,
 - iv. ICRA Techno analytics Ltd and
 - v. persistent systems and solutions Ltd.
7. The coordinate bench as per paragraph No. 31 of its order dated 19 January 2022 restored the issue of exclusion of the above five comparables to the file of the learned Dispute Resolution Panel as the assessee did not put any objections before the learned Dispute Resolution Panel. The coordinate bench also noted that these issues were raised by the assessee for the first time before the ITAT. Thus, for exclusion of these comparables (5) the issue was restored to the learned dispute resolution panel.

8. The assessee also argued before the ITAT for inclusion of (i) R systems International Limited and (ii) Helios & Mathsons information technology Ltd. The ITAT restored the matter for inclusion of the above company to the file of the Learned Transfer Pricing Officer for fresh consideration.
9. Thus, for exclusion of the comparable the ITAT restored the matter to the DRP and for inclusion of the comparable ITAT restored the matter to the transfer pricing officer.
10. The learned transfer pricing officer passed an order under section 92CA read with section 254 of The ACT on 29 January 2024. The TPO did not exclude the above five comparables because naturally there was no direction to him. But he included both these comparables which were restored to him for inclusion.
11. Based on this transfer pricing order dated 29 January 2024, the learned AO passed the draft assessment order under section 144C of The Act on 29 February 2024.
12. Thus, the only grievance in the draft assessment order was that five comparables which were directed to be reconsidered by the ITAT to the DRP, were not considered by the DRP but the learned TPO retained the and passed the TP order. Thus, the direction of the ITAT to the learned DRP still remains to be complied with.
13. This draft order was objected to by the assessee before the learned dispute resolution panel. The learned dispute resolution panel issued direction on 29 January 2024 wherein it confirmed the action of the learned transfer pricing officer regarding inclusion of all the above five comparables (which were restored to the file of the learned dispute resolution panel by ITAT for fresh consideration).

14. Assessee raised direction as per objection No. 2 before the learned dispute resolution panel that there is a violation of principle of judicial discipline in the sense that the learned TPO has erred in law and in facts by issuing the order giving effect to the ITAT's order without considering the directions from the learned dispute resolution panel rendering the AO's order invalid and bad in law.
15. The learned dispute resolution panel disposed of this objection quite paragraph No. 3.1 stating that "it has to be noted that the scope for the DRP to issue direction is only under section 144C (5) wherein the DRP issued direction in pursuance of objections filed by the assessee under section 144C (2) (b) against the draft assessment order issued under section 144C (1) of the act and hence the DRP could issue directions only after receiving objections from the assessee against order giving effect issued by the TPO and the subsequent tour GE in the form of draft assessment order by the AO. Nonetheless, it is pertinent to note that the DRP was neither respondent in the appeal filed before the Honourable ITAT nor did the Honourable ITAT forwarded a copy of the appeal order to the DRP. Hence the DRP could not have initiated any action unless these objections are filed before the panel. In view of the above, we do not find any infirmity in the action of the TPO in passing an order giving effect to the direction of the honourable ITAT under section 92CF (3) read with section 254 of the act and the AO's action in passing of order giving effect in the form of draft assessment order incorporating TPO's order GE. Ground rejected."
16. Thus, based on these directions, the final assessment order was passed on 27 December 2024. This order is under challenge before us.
17. The argument of the learned counsel Shri Padam Chand Khincha CA is that the order passed by the learned TPO under section 92CA of the act dated 29 January 2024 is invalid. The reason being that the TPO considered and included five companies listed in the list of comparables

for which the direction was given by the ITAT to the learned dispute resolution panel. Though dispute resolution panel did not do anything but surprisingly the learned transfer pricing officer retained all these comparables. Thus, it was claimed that what is required to be done by the dispute resolution panel, has not been done, therefore, the act, which is performed by the TPO, which is not in his domain, by including these five companies as comparable is bad in law.

18. The learned CIT DR referred to the order of the ITAT and stated that the objections raised by the assessee should not be admitted. Although the ITAT has remitted the issue of exclusion of above five comparables to the learned dispute resolution panel for adjudication however it is to be noted that there is no valid provision of the act which allows for such direction by the ITA T2 DRP. Further when the same order has been set-aside to different authorities at different supervisory levels, it becomes impossible to give effect to the same. She further submitted that that the learned DRP according to the provisions of the law would only be invoked by the assessee and not by any authority of income tax or by any judicial authority. Even assessee can only invoke the reference to the dispute resolution panel only when he objects to the draft assessment order. Therefore, in the circumstances the DRP could not have complied with the direction of the ITAT. The ITA T also did not communicate its order to the DRP. In fact, she submitted that ITA T could have only directed to the learned assessing officer who is the respondent before the ITA T. She also submitted that the same is the case of the TPO. TPO is an advisor to the AO as DRP is also an advisor to the assessing officer. TPO advises the assessing authority for transfer pricing adjustment to be made. The DRP advises to the assessing officer on the draft assessment proposed by him. Therefore, neither the TPO and not the DRP is a party before the minimal to whether we may r) and any direction given to them would not have been an occasion to comply with by these two authorities. Thus, the direction of the ITAT to the DRP was impossible to perform. She also

submitted that law does not compel a man to do that which he cannot perform. And therefore, the ITAT order could not have been complied with by the learned dispute resolution panel.

19. Even otherwise she submitted that there is no grievance left of the assessee that these five comparables were directed by the ITAT to the learned dispute resolution panel to reconsider. In the present case the learned TPO has reconsidered them, in pursuance of the order of the TPO, the assessing officer has passed the draft assessment order, this draft assessment order has been taken before the learned dispute resolution panel and the learned dispute resolution panel in its direction have also upheld the inclusion of the above 5 comparables. The assessee got complete opportunity before the learned TPO as well as before the learned DRP contesting exclusion of these five comparables. Therefore, there is no grievance at least on the side of the assessee that these five comparables have not been considered by the learned dispute resolution which were directed to be considered by the ITAT to the DRP. Therefore, she submitted that that the ground of the appellant that order giving effect to ITAT order is invalid as DRP failed to follow the directions of the ITAT.
20. With respect to the inclusion or exclusion of the above five comparables, the merits may be examined now by the ITAT but there is no infirmity in the order giving effect passed by the learned AO.
21. In rejoinder, the learned authorised representative submitted that according to the provisions of section 254 (1) of the act allows the Tribunal to pass such order thereon as it thinks fit, after giving both the parties to the appeal an opportunity of being heard. Thus, the powers of the Tribunal in respect of the appeal before it is wide and there is no restriction for remanding the issue to the learned dispute resolution panel. He further submitted that assuming for a moment that such direction was impermissible, the proper course of action for the learned assessing officer would have been to take the matter to the High Court in appeal or seek any clarification from ITAT through miscellaneous application. Having done neither of the above, now the revenue is not entitled, after a good lapse

of time and in a collateral proceeding raised this issue. He further submitted that the ITAT remanded the issue of exclusion of five comparables to the learned dispute resolution panel is the ground are pertaining to the same was taken in the earlier proceedings before the tribunal directly for the first time there is no restriction in section 144C or any other provision for the DRP to decide on issues remanded by the tribunal. Thus, the action of the learned transfer pricing officer in including the five comparables listed as comparables is invalid and bad in law. Therefore, these five companies held to be excluded from the list of comparables on this ground alone. He further stated that this is not the case of impossibility of the performance by the DRP on TPO as contended by the learned departmental representative. He further submitted that the learned transfer pricing officer has erroneously proceeded to include the five companies as comparable is without any authority. It is a settled principle that where a particular thing is to be done in a particular manner, it must be done in that manner and in no other manner. He placed heavy reliance on gender to shows versus Marvel façade (1999) eight SCC 266 (SC), J Roku the money was received Sec government of Andhra Pradesh (2015) 13 SCC 722 and other similar decisions. Thus, the order of the learned transfer pricing officer insofar as inclusion of five companies as comparable is without jurisdiction and bad in law and liable to be quashed.

22. We have carefully considered the rival contention and perused the order of the coordinate bench passed in the case of the assessee. Admittedly the ITA T restored and issue of exclusion of 5 comparables to the learned dispute resolution panel. In case of appeal before the tribunal, the respondent was the learned assessing officer. Therefore, in all fairness, any direction that needs to be given is to be given to the learned assessing officer and nobody else. Admittedly the learned TPO as well as the learned dispute resolution panel are not respondent in the appeal before the ITAT. Further according to the provisions of section 144C of the act, the DRP can be activated only by the eligible assessee whenever assessee would like to object to the draft assessment order passed in case

of him. The learned dispute resolution panel has wide power to guide the assessing officer. However, after that, the learned the learned dispute resolution panel cannot be activated by anybody else so far as the case of that assessee for that assessment year is concerned. Thus, the dispute resolution panel acts in an advisory capacity to the learned assessing officer and the advice of the learned dispute resolution panel mind the assessing officer. Similarly, the learned TPO is also an advisor to the assessing officer. The TPO can only act on the reference made by the learned assessing officer to determine the arm's-length price. Therefore, he is also not before ITAT is respondent. The only income tax authority which is respondent before us is the assessing officer and any direction in whatever manner is required to be given to that person i.e., assessing officer only.

23. According to provisions of section 254 (1) of the act ITAT is mandated to pass an order after giving both the parties to the appeal an opportunity of being heard, passed such order thereon as it thinks fit. Naturally the DRP or TPO are not at all parties before ITAT so both naturally are never heard by ITAT and therefore no direction should have been given to them. Though the powers of the IT AT are wide, but they are not so wide that they can give direction to any authority. The powers are with respect to the appeal before them and directions are only limited to the parties.
24. It is also the fact that in ITA (TP) A) No. 556/Bangalore/2016 for assessment year 2011 – 12 at page No. 14 of the order of the IT AT the assessee challenged as per ground No. seven these five comparables. This ground was decided as per paragraph No. 28 of the coordinate bench, the assessee challenged but as per paragraph No. 31 the coordinate bench remanded this issue to the file of the DRP. This was neither the prayer of the assessee nor of the learned DR at that time.
25. Though we do not have to comment upon the order of the ITAT which has already been passed, remained unchallenged by the parties, which is set-aside partly to the DRP and partly to the TPO where both these authorities

are not before us as respondent and to none of them the orders were served by the ITAT.

26. In this case the learned transfer pricing officer passed an order under section 92CA (3) read with section 254 of the income tax act 1960 one wherein the learned transfer pricing officer noted that there is a set-aside proceedings before the learned transfer pricing officer as per paragraph No. 4 of his order and subsequently in paragraph No. 5.4 the learned TPO included the comparable is our system International Limited and Helios and Mathson information technology Ltd. Therefore, whatever is restored by the ITAT to the learned transfer pricing officer with respect to the software development segment, he has made the adjustment. Further he was not authorised to make any adjustment with respect to other five comparable companies for which the ITAT restored back to the learned dispute resolution panel therefore he returned them.
27. Further with respect the ITAT upheld the arm's-length price of the guarantee fee at the rate of 0.5%, the learned transfer pricing officer the same at ₹ 2,047,608/-.
28. Thus, the transfer pricing officer retains the software development segment adjustment of ₹ 43,166,829 and corporate guarantee commission of ₹ 2,047,608 which resulted into total adjustment of ₹ 45,214,437/-.
29. Thus now the only dispute is with remaining with respect to the adjustment of software development segment wherein in case of Acropetal Technologies Limited the adjusted margin of ₹ 32.88 percent, E – Zest Solutions where the margin of ₹ 20.90 percent, E Infopchips Limited where the margin of 57.77%, ICRA Techno analyst Ltd where the margin is 24.74% and persistent systems and solutions Ltd margin is 23.11% are in dispute.
30. These comparable companies were restored by the ITAT to the file of the learned dispute resolution panel, but the learned dispute resolution panel did not pass any order. However, we find that the learned dispute resolution panel passed the direction on these comparable in direction issued on 29 November 2024 on draft assessment order passed pursuant

to the adjustment made by the learned transfer pricing officer, wherein in paragraph No. 5.1 the learned dispute resolution panel considered all the objections of the assessee and rejected them and retained these comparables. Therefore, in substance the argument of the revenue is that assessee got a complete opportunity before the learned dispute resolution panel to contest these four comparables. These comparables were decided by the learned dispute resolution panel only. The learned transfer pricing officer in its order dated 29 January 2024 has not at all touched these five comparables. Therefore, in substance there is no grievance left with the assessee.

31. However, the issue remains squarely that whatever was directed by the ITAT to the learned dispute resolution panel was not done by the dispute resolution panel in time and therefore, we direct the learned assessing officer to remove all these five comparables for computing the arm's-length price of the software development services. Thus, the arm's-length price adjustment of ₹ 43,166,829 requires to be recomputed by excluding the above five comparables. Thus, we correct the order only to the extent irregularity has happened.

32. We do not find any other infirmity in the order of the learned assessing officer.

33. Accordingly, the appeal of the assessee is allowed to the above extent. No other arguments were advanced before us and therefore those are not adjudicated.

34. In the result appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 06th April, 2026.

Sd/-
(SUNDARARAJAN K.,)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
VICE-PRESIDENT

Bangalore,
Dated, the 06th April, 2026.

TNTS

Copy to:

1. Appellant
2. Respondent
3. CIT
4. DR, ITAT, Bangalore
5. CIT(A)

By order

Assistant Registrar,
ITAT, Bangalore