

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 26TH DAY OF JUNE 2018

PRESENT

THE HON'BLE DR.JUSTICE VINEET KOTHARI

AND

THE HON'BLE MRS.JUSTICE S.SUJATHA

I.T.A. No.884/2017

BETWEEN :

1. Pr. COMMISSIONER
OF INCOME TAX (CENTRAL)
C.R.BUILDING, QUEENS ROAD,
BENGALURU-560001
 2. Dy. COMMISSIONER OF INCOME TAX
CIRCLE-6(1)(2), BMTC COMPLEX,
KORAMANGALA,
BENGALURU
- ...APPELLANTS

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

AND :

M/s SWISS RE GLOBAL BUSINESS
SOLUTIONS INDIA PRIVATE LIMITED,
(FORMERLY KNOWN AS SWISS RE SHARED
SERVICES (INDIA) PRIVATE LIMITED)
VASAWANI CETROPOLIS,
2ND TO 5TH FLOOR, FAIRWINDS BUILDING
EMBASSY GOLF LINKS
BUSINESS PARK
CHALLAGHATA VILLAGE
BANGALORE-560071

...RESPONDENT

(BY SRI MALLAHA RAO K., ADV. A/W
SRI SANDEEP KARHAIL. ADV)

THIS ITA IS FILED UNDER SECTION 260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 13.04.2017 PASSED IN ITA NO.2315/BANG/2016, FOR THE ASSESSMENT YEAR 2012-2013 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 13.04.2017 PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, BENGALURU, IN APPEAL PROCEEDINGS ITA NO.2315/BANG/2016 FOR ASSESSMENT YEAR 2012-13, AS SOUGHT FOR IN THIS APPEAL AND TO GRANT SUCH OTHER RELIEF AS DEEMED FIT.

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

J U D G M E N T

Mr.E.I.Sanmathi., Adv. for Appellants - Revenue
Mr. Mallaha Rao.K. A/w Mr. Sandeep Karhail, Advs.
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, 'B' Bench, Bangalore, in **IT [TP]A No.2315/Bang/2016** dated **13.04.2017**, relating to the Assessment Year **2012-13**.

2. The proposed substantial question of law framed by the Revenue in the Memorandum of Appeal is as under:

“Whether on the facts and in the circumstances of the case, the Tribunal was right in excluding comparable’s namely, M/s. Universal Print Systems Ltd, Informed Technologies India Ltd, Infosys BPO Ltd, M/s. Microgenetics Systems Ltd, TCS E-Serve Ltd and BNR Udyog Ltd contrary to its own earlier decisions in cases of M/s. Societe General Global Solution Centre Pvt. Ltd., and also in case of Vmoksha Technologies Pvt. Ltd., and all the required tests were satisfied in case of the comparable’s chosen by TPO”?

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

“7. Having considered the rival submissions as well as relevant material on record we find that the turnover is a relevant factor for the purpose of determining the comparability of the proposed companies for the purpose of determining the arms length price. The Hon’ble Bombay High Court in case of Vs M/s. Pentair Water India Pvt. Ltd.

(supra) while dealing with the issue of the comparability of companies having high turnover in comparison to the assessee held in para 5 and 6 as under.

“5. On perusal of the impugned Order passed by the Tribunal dated 23.05.2014, we find that the Tribunal has recorded the reasons for not accepting the said three companies are comparable by stating as follows:

[i] HCL Comnet Systems & Services Ltd:-

We find force in the submission of the learned AR that this company cannot be a comparable as the turnover of this company is 260.18 crores while in the case of the Assessee, the turnover is around Rs.11 crores only. While making the selection of comparables, the turnover filter, in our opinion, has to be the basis for selection. A company having turnover of Rs.11 crores cannot be compared with a company which is having turnover of Rs.260 crores which is more than 23 times the turnover of the Assessee. This company cannot be regarded to be in equal size to the Assessee. We, accordingly, direct the AO to exclude this company out of the comparables.

[ii] Infosys BPO Ltd.:-

In this case also we noted the turnover in respect of this Company is Rs.649.56 crores while the turnover of the Assessee company is around Rs.11 crores which is much more than 65 times of the Assessee's turnover. We, therefore, do not find any illegality or infirmity in the order of CIT(A) in excluding this Company out of the comparable.

Accordingly, we confirm the order of the CIT(A).

[iii] Wipro Ltd.:-

After hearing the rival submissions, we noted that the CIT(A) applying the turnover filter has excluded this company out of the comparables. The turnover reported in the case of Wipro Ltd., is Rs.939.78 crores while in the case of the Assessee the turnover is around Rs.11 crores. Therefore, on the basis of the turnover filter itself this company cannot be regarded to be comparable to the Assessee company and accordingly, we do not find any infirmity in the finding of CIT(A) while he excluded this company on the turnover criteria following the decision of this tribunal in:

*Sony India (P) Ltd., V/s. DCIT,
114 ITD 448 Delhi,*

*E-Gain Communication, 2008
TIOL 282 ITAT (Pune)
Deloittee Consulting India Pvt.
Ltd., V/s. DCIT, ITA
No.1082/Hyd/2010
Genisys Integrating System (India)
(P) Ltd., V/s. DCIT, 53 Sot 159 (Bang)”*

6. The said findings of the Tribunal in respect of the said three Companies are on the basis of appreciation of evidence on record. We find no infirmity in the said findings of the Tribunal on tat count. In fact, the Tribunal has endorsed the views of theCIT Appeals whilst coming to such conclusions. The concurrent findings of facts arrived at by the Authorities below, cannot be re-appreciated by this Court in the present Appeal.”

8. Thus the Hon’ble High Court has upheld that there was no infirmity in finding of the Tribunal on this issue wherein it was held that the company having turnover of more than 23 times of the assessee’s turnover cannot be compared with the assessee. A similar view has been taken by the Hon’ble Punjab and Haryana High Court in case of Agilent Technologies (International) Pvt. Ltd., V/s. ACIT (supra). It is pertinent to note that this Tribunal in a series of decision has taken

a consistent view that in case turnover filter is applied it should be in the multiple of the assessee's turnover and accordingly the Tribunal has taken a view that in normal circumstances ten times of the assessee's turnover on both sides lower as well as higher would be an appropriate tolerance range of turnover while selecting the comparable companies. In the case in hand the assessee's turnover is Rs.71.37 crores. Accordingly by applying the said parameter of ten times of assessee's turnover on both sides the companies which are having less than 7.1 crores and more than Rs.713 crores on turnover would be excluded. Thus we find from the above details that these six companies are breaching the said tolerance range of turnover either on the lower side or on the higher side. In view of the above discussion as well as facts and circumstances of the case, we direct the AO/TPO to exclude the above mentioned six companies from the set of comparables."

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 and 537/2015** dated **25.06.2018**, 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:

*“32. Let us briefly now discuss the Scheme of assessment under **Chapter X** relating to Transfer Pricing cases of International Taxation under these provisions in income arising from international transactions which shall be computed having regard to the ‘Arm’s Length Price’ (Sec.92).*

*33. **Section 92-A** defines an ‘Associate Enterprise’ viz., the Company which participates directly or indirectly, or through one or more intermediaries, in its Management or control or Capital of the other Enterprise by holding more than 26% of the share holding in such other Enterprises and*

*satisfy the other criterias as stated in
Section 92-A of the Act.*

34. The word '**International Transaction**' is defined in **Section 92-B** of the Act.

35. The most important provision concerning us in this batch of cases is **Section 92-C** of the Act which provides for '**Computation of Arm's Length Price**' and the said provision stipulates that the '**Arm's Length Price**' in relation to the international transactions shall be determined by following any of these methods enumerated in **Section 92-C** of the Act which is considered to be the '**Most Appropriate Method**' by the Authorities under the Act. The methods provided are:

Clause (a): Comparable Uncontrolled Principles Method (**CUP**);

Clause (b): Resale Price Method (**RP**)

Clause (c): Cost Plus Method (**CP**)

Clause (d): Profit Split Method (**PS**)

Clause (e): Transactional Net Margin Method (**TNMM**); and

Clause (f): *such other Method as may be prescribed by the Board.*

36. *It appears from the true facts of the various cases before us and the arguments of the learned counsels that the **TNNM Method** appears to be the most popular and widely adopted Method for determining the ‘**Arm’s length price**’ in which the Operating Profit Margin of comparable Companies are considered by the Authorities and applied to the cases of the Assesseees to determined the ‘**Arm’s Length Price**’ and make Transfer Pricing Adjustments.*

Rules 10-A, 10-AB, 10-B, 10-C & 10-CA of the **Income Tax Rules, 1962** prescribe the manner for working out ‘**Arms Length Price**’ under aforesaid prescribed Methods.

37. **Section 92-CA** of the Act envisages that the Assessing Authority, if he considers necessary or expedient so to do, he can with the previous approval of the Principal Commissioner, refer the computation of ‘**Arm’s Length Price**’ to **Transfer Pricing**

Officer (TPO), another Departmental Authority only, who is supposed to have special knowledge and training for computing the '**Arm's Length Price**' in the international transactions. The Report of the Transfer Pricing Officer is binding on the Assessing Authority as per **Section 92-CA (4)** of the Act, but where the Assessee raises an objection against the Draft Assessment Order of the Assessing Authority based on such Report of the Transfer Pricing Officer, the Assessee Company within 30 days can either accept the said Draft Order or file its objections before the Dispute Resolution Panel (**DRP**) and the Assessing Officer as per **Section 144-C** of the Act. The said Dispute Resolution Panel comprises of a Collegium of three Principal Commissioners or Commissioners of Income Tax constituted by the Board as defined in **Section 144-C (15)** of the Act and it has to comply with the principles of natural justice by giving an opportunity of hearing to the Assessee. The order passed by the Assessing Authority in pursuance of the directions of the Dispute

*Resolution Panel (DRP) is directly appealable to the Income Tax Tribunal under **Section 253 (1) (d)** of the Act. **Section 254** of the Act empowers the Appellate Tribunal to pass such orders on the appeals ‘as it thinks fit’ after giving an opportunity of hearing to both the parties.*

38. From the aforesaid Scheme of assessment with regard to international transactions, it is clear that the process of determination of ‘**Arm’s Length Price**’ has to be undertaken by the Expert Wing of the Income Tax Department which is manned by **Transfer Pricing Officer (TPO)** and at the higher level by a Collegium of three Commissioners in the form of **Dispute Resolution Panel (DRP)** whose orders on questions of facts are appealable before the highest fact finding body, viz., the Appellate Tribunal.

39. The process of determination of ‘**Arm’s Length Price**’ as observed above, necessarily takes into account the comparable cases of other similarly situated or nearly

similarly situated Corporate Entities whose data are in public domain or on the Data Bases like Prowess and Capital Line Data Base etc.

**No Substantial Question of Law
Arises in these Cases:**

40. *The dispute essentially before us is the pairing and matching such comparables with the Transfer Pricing Analysis of the profit margins given by the Assessee himself during the course of determination of such ‘Arm’s Length Price’.*

41. *The shades of arguments raised by both the sides before us in these appeals and most of which have been filed by the Revenue are that either the wrong Filters have been applied or Filters have been wrongly applied, particularly qua Turnover Filter giving a far too wide or narrower range of comparables or even though comparable Entities were functionally different entities from the Entities in the list of Departmental comparables, as against the comparables sought to be*

provided by the assessees but the Revenue Department generally insists on their inclusion to get high profit ratio leading to higher Transfer Pricing adjustments, whereas the assessee would like to keep the comparables in a narrower range to justify its Transfer Pricing Analysis and profits declared.

42. In sum and substance, we find that such an exercise having been undertaken by the Authorities below may have resulted not only in high pitched Transfer Pricing Adjustments in the declared profits of the Assessee, but a flood of such appeals go before the Tribunal itself where finally the inclusion or exclusion of comparables has been determined by the Tribunal on due analysis giving its own reasons.

*43. The contention raised before us that in view of some different views taken by the Tribunal by different Benches at different places, the present appeals under **Section 260-A** of the Act deserve to be entertained and admitted by this Court for laying down*

*certain Guidelines about the Filters or Most Appropriate Method to be adopted for determination of the ‘**Arm’s length price**’, does not, in our considered opinion falls within the parameters of the substantial question of law. None of the sides was able to point out any perversity in the Orders of the Appellate Tribunal in this regard.*

44. This Court cannot be expected to undertake the exercise of comparison of the comparables itself which is essentially a fact finding exercise. Neither the sufficient Data nor factual informations nor any technical expertise is available with this Court to undertake any such fact finding exercise in the said appeals under Section 260-A of the Act. This Court is only concerned with the question of law and that too a substantial one, which has a well defined connotations as explained above and findings of facts arrived at by the Tribunal in these type of assessments like any other type of assessments in other regular assessment provisions of the Act, viz. Sections 143, 147

*etc. are final and are binding on this Court. While dealing with these appeals under **Section 260-A** of the Act, we cannot disturb those findings of fact under **Section 260-A** of the Act, unless such findings are ex-facie perverse and unsustainable and exhibit a total non-application of mind by the Tribunal to the relevant facts of the case and evidence before the Tribunal.*

45. *Otherwise if the High Court takes the path of making such a comparative analysis and pronounces upon the questions as to which Filter is good and which comparable is really comparable case or not, it will drag the High Courts into a whirlpool of such Data analysis defeating the very purpose and purport of the provisions of **Section 260-A** of the Act. Therefore what we observed above appears to us to be the sustainable view that the key to the lock for entering into the jurisdiction of High Court under **Section 260-A** of the Act is the existence of a substantial question of law involved in the matter. The key of ex-facie*

perversity of the findings of the Tribunal duly established with the relevant evidence and facts. Unless it is so, no other key or for that matter, even the in-consistent view taken by the Tribunal in different cases depending upon the relevant facts available before it cannot lead to the formation of a substantial question of law in any particular case to determine the aspects of determination of 'Arm's Length Price' as is sought to be raised before us.

Need for giving Primacy to the Tribunal in the area of fact finding:

46. Undoubtedly, the Income Tax Tribunal is the final and highest fact finding body under the Act. It is manned by Expert Members (Judicial Members are selected from District Judges or Advocates and Accountant Members selected from practicing Chartered Accountants or persons of CIT level in the Department). Therefore this quasi-judicial forum is expected and as some of the nicely articulated Judgments and Orders from the Tribunal would indicate, the Orders

*passed by the Tribunal should normally put an end and quietus to the findings of facts and factual aspects of assessment. The lower Revenue Authorities cannot be allowed to make it their prestige issue, if their stand is not upheld by the Tribunal and agitate against their Orders before the higher Courts by resort to **Section 260-A** or **Section 261** of the Act merely because they are dissatisfied with the findings of facts by the Tribunal.*

47. In the case before us now, the pick of comparables, short-listing of them, applying of filters, etc., are all fact finding exercises and therefore the final Orders passed by the Tribunal are binding on the lower Authorities of the Department as well as High Court.

48. The Tribunal of course is expected to act fairly, reasonably and rationally and should scrupulously avoid perversity in their Orders. It should reflect due application of mind when they assign reasons for returning the particular findings.

49. For instance, while dealing with comparables or Filters, if un-equals like Software Giant **Infosys or Wipro** are compared to a newly established small size Company engaged in Software service, it would obviously be wrong and perverse. The very word “**comparable**” means that the Group of Entities should be in a homogeneous Group. They should not be wildly dissimilar or unlike or poles apart. Such wild comparisons may result in the best judgment assessment going haywire and directionless wild, which may land up the findings of the Tribunal in the realm of perversity attracting interference under **Section 260-A** of the Act.

Some Precedents from the High Courts holding Similar View:

50. Here, we would like to refer to some of the judgments of the different High Courts where the High Courts have refused to entertain such appeals under Section 260-A of the Act in these type of cases.

A. *The Division Bench of **Madras High Court** in the case of **Commissioner of Income Tax, Chennai Vs. Same Deutz-Fahr India (P) Ltd. [2018] 253 Taxman 32 (Madras)** decided on **05/12/2017**, after discussing the Supreme Court decisions laying down the parameters of Section 260-A of the Act and Section 100 of Civil Procedure Code held that right of appeal under Section 260-A of the Act is not automatic and it is limited right of appeal restricted only to cases which involve substantial questions of law and it is not open to the High Court to sit in appeal over the factual findings arrived at by the Tribunal.*

51. *The Court held that whether the case of **M/s. HMT Limited** was comparable case with the case of assessee before it or not was the factual issue, it held that the learned Tribunal has factually assessed the similarities between **M/s. HMT Limited** and the Respondent Assessee and the same does not warrant any interference under Section 260-A of the Act.*

The relevant factual background of the case and law pronounced by the Courts are quoted below.

*“9. The respondent assessee adopted Transactional Net Margin Method (TNMM) as the appropriate method to determine the ALP of its international transactions of purchase of raw materials and components. **The assessee identified five comparables** and it made adjustment on account of idle capacity on comparables in order to arrive at ALP of its purchase transaction. The respondent assessee arrived at weighted average.*

*10. **The TPO found that M/s. HMT Limited needed to be included in the comparables.** However, the TPO found that the turnover of M/s. HMT Limited was more than twice the turnover of the assessee company and, thus, could not be considered as a comparable.*

11...

12...

13. *The learned Tribunal observed that during the transfer pricing proceedings, the TPO had selected M/s. HMT Limited as one of the comparables on functional similarity, but while determining the ALP, he had not included M/s. HMT limited as a comparable. The learned Tribunal held:*

“7.3 We heard the rival submissions and perused the material placed on record.

*M/s. HMT Ltd., is in the segment of manufacturing of tractors and power tillers. **The functionality of the M/s. HMT Ltd., and the assessee are more or less in similar.** The Ld. AR of the assessee submitted that all the functions of M/s. HMT Ltd., and M/s. VST Tillers are one and the same. **The TPO has rejected M/s. HMT Ltd., as comparable merely because of the turnover.** The turnover of the M/s. HMT Ltd., for the AY 2005-06 was **Rs.248.00 Cr.** **as against the assessee's company***

turnover of Rs.120.00 Cr. It is impossible to find out comparable with all similarities inclusive of turnover. Even M/s. VST Tiller selected by TPO was with Rs.130.00 Cr. The turnover filter with turnover 3-5 times is acceptable for selecting the comparable as per the decisions of the tribunals. In the Appellant's case, the TPO has adopted the turnover filter and the M/s. HMT Ltd., being functionally similar and the turnover was only two times of Appellant, we are of the considered opinion that the TPO should include M/s. HMT Ltd., as comparable. The case laws relied upon by the assessee also supports arguments of the assessee. Bo the assessee and TPO adopted TNMM as most appropriate method which would neutralize the differences such as turnover, etc. Therefore, we direct the TPO to include M/s. HMT Ltd., as comparable and re-work the comparable margin. This ground of appeal is allowed".

14. *The appeal is to the limited extent that the TPO has been directed to include M/s. HMT Limited as a comparable and re-work the comparable margin.*

15 to 23.....

24. *In M. Janardhana Rao v. Jt. CIT [2005] 273 ITR 50/142 Taxman 722 (SC), the Hon'ble Supreme Court held that the **principles contemplated under Section 100 of the Code of Civil Procedure would apply to Section 260-A of the IT Act too.***

25. *Right of appeal is not automatic. Right of appeal is conferred by statute. When **statute confers a limited right of appeal restricted only to cases which involve substantial questions of law, it is not open to this Court to sit in appeal over the factual findings** arrived at by the Appellate Tribunal.*

26. *In the instant case, whether M/s. HMT Limited **can be a comparable or not is a factual issue.** The learned Tribunal has factually assessed the similarities between*

*M/s. HMT Limited and the respondent assessee and the same, in our considered opinion, **does not warrant interference of this Court under Section 260-A of the Income Tax Act, 1961.***”

*B. Similarly, the Division Bench of **Delhi High Court** in the case of **Principal, Commissioner of Income Tax-9 Vs. WSP Consultants India (P) Limited** in the judgment dated **03/11/2017, [2017] 253 Taxman 58 (Delhi)** held that the learned Income Tax Appellate Tribunal was justified in upholding the contention of the assesseees that inclusion of three comparables i.e. M/s. Ashok Leyland Projects Services Limited, Kitco Limited and Mitcon Consultancy and Engineering Services Limited was not correct, the Court held that the reasons given by the Tribunal were justified and any inclusion or exclusion of comparables per se cannot be treated as a question of law unless it is demonstrated to the Court that the Tribunal or any other lower Authority took into account the irrelevant consideration or excluded the*

relevant entries in the ‘Arm’s Length Price’ determination.

The relevant paragraphs 9 to 11 of the said judgment is quoted below for ready reference:

“9. This Court is of the opinion that the rationale that Ashok Leyland was deriving major part of its revenue from wind energy segment and that there was an extraordinary event of merger and likewise M/s. Kitco Ltd. deriving income from government entity and Mitcon Consultancy & Engineering Services Ltd, is deriving less than 75% revenue from consultancy services, is a reasonable basis for their exclusion.

10. Any inclusion or exclusion of comparables per se cannot be treated as a question of law unless it is demonstrated to the Court that the Tribunal or any other lower authority took into account irrelevant consideration or excluded relevant factors in the ALP determination that impact significantly.

11. *In the present case, we find no such error. Consequently, the appeal is without merits and is, therefore, dismissed.”*

C. The Division Bench of **Bombay High Court** in the case of **Commissioner of Income Tax-II, Pune Vs. PTC Software (I)(P) Ltd. [2017] 395 ITR 176 (Bombay)** again reiterated similar position with reference to various comparables with regard to one of the comparables, **M/s. KALS Information Solutions Limited** whose case was in the appeals before us as well, held that that if there is a functionality difference between the two comparables and the Tribunal was justified in excluding the same on the challenge being raised by the assessee and such findings of Tribunal are findings of fact which do not give rise to any substantial question of law.

The relevant portion of the aforesaid judgment is quoted below for ready reference.

“Re-Question (ii)

(a) M/s. KALS Information Solutions Ltd. (KALS Ltd.) and Helios & Matheson Information Technology Ltd. (Helios & Matheson Ltd.) were included by the TPO in his comparability analysis. The grievance of the respondent assessee before the Tribunal was that both are functionally different from the respondent assessee and, therefore, could not be used as comparables. The respondent assessee pointed out that KALS Ltd and Helios & Matheson Ltd. are engaged in the business of selling of software products while the respondent assessee renders software services to its holding company.

*(b) The Tribunal in the impugned order records that for the preceding assessment year i.e. A.Y. 2006-07, the TPO had found that **KALS Ltd. and Helios & Matheson Ltd. were functionally not comparable with the respondent assessee.** In the subject assessment year also, on the basis of Annual Report, it was noted that the KALS was engaged in selling of software products which is different from the activity*

undertaken by the respondent assessee, namely, rendering of software service to its holding company. Further, the impugned order also records that no attempt was even made by the Revenue before it to bring on record any change in the nature of activities carried out by KALS Ltd. and Helios & Matheson Ltd. in the subject assessment year, making them functionally comparable to the respondent assessee. In the aforesaid facts, the Tribunal rendered a finding of fact that KALS Ltd. and Helios & Matheson Ltd. are not comparable with the respondent assessee.

Even before us, no submissions were advanced justifying the order of the Assessing Officer that the services rendered by KALS Ltd. and Helios & Matheson Ltd. are comparable for the subject assessment year with that of the respondent assessee.

*In the above view, as the findings of the Tribunal being one of the fact which has not been shown to be perverse, **the question as proposed does not give rise to any***

substantial question of law. Thus, not entertained.”

52. There are several such judgments from different High Courts which were cited at the bar, but there is no need to multiply them here, as in essence the ratio of all these judgments is similar with the view which we have taken above, viz. that unless a perversity in the findings of fact in this regard is established before the High Court, no substantial question of law arises for consideration under Section 260-A of the Act.

Need to give an early quietus and to the findings of fact by the Tribunal in the realm of International Taxation.

53. The huge quantum of borderless Trade and International Transactions earning lot of Foreign Exchange and revenues for India through international Corporates and Trade with them has a big interface with the Dispute Resolution of such cases in the Tax Administration Department as well as the Judiciary.

54. *The procedure of assessment under **Chapter X** relating to international transactions as indicated above is already a lengthy one and involves multiple Authorities of the Department. A huge, cumbersome and tenacious exercise of Transfer Pricing Analysis has to be undertaken by the Corporate Entities who have to comply with the various provisions of the Act and Rules with a huge Data Bank and in the first instance they have to satisfy that the profits or the income from transactions declared by them is at ‘**Arm’s length**’ which analysis is invariably put to test and inquiry by the Authorities of the Department and through the process of **Transfer Pricing Officer (TPO)** and **Dispute Resolution Panel (DRP)** and the **Tribunal** at various stages, the assessee has a cumbersome task of compliance and it has to satisfy the Authorities that what has been declared by them is true and fair disclosure and much of the Transfer Pricing Adjustments is not required but the Tax Authorities have their own view on the other side and the effort on the part of the Tax*

*Revenue Authorities is always to extract more and more revenue. This process of making huge Transfer Pricing Adjustments results in multi-layer litigation at multiple Fora. After the lengthy process of the same, the matter reaches the Tribunal which also takes its own time to decide such appeals. In the course of this dispute resolution, much has already been lost in the form of time, man-hours and money, besides giving an adverse picture of the sluggish Dispute Resolution process through these channels. If appeals under **Section 260-A** of the Act were to be lightly entertained by High Court against the findings of the Tribunal, without putting it to a strict scrutiny of the existence of the substantial questions of law, it is likely to open the flood-gates for this litigation to spill over on the dockets of the High Courts and up to the Supreme Court, where such further delay may further cause serious damage to the demand of expeditious judicial dispensation in such cases.*

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 Assesseees, 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 both the sides, 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.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

AN/-