

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'H': NEW DELHI**

**BEFORE SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER
AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

**ITA No.5763/DEL/2017
[Assessment Year: 2013-14]**

NXP India Private Limited, (formerly known as Freescale Semiconductor India Private Limited), 13, Abul Fazal Road, Bengali Market, New Delhi-110001	Vs	Joint Commissioner of Income tax, Range-3, Central Revenue Building, New Delhi
PAN-AAACZ1978P		
Appellant		Respondent

Appellant by	Shri Vishal Kalra, Adv. & Ms. Sumisha Murgai, Adv. & Shri Kashish Gupta, CA
Respondent by	Shri S K Jadhav, CIT-DR

Date of Hearing	05.05.2025
Date of Pronouncement	09.05.2025

ORDER

PER PRAKASH CHAND YADAV, JM

The present appeal of the assessee is arising from the order of the Ld. Assessing Officer dated 09.08.2017 passed u/s 92CA(3) r.w.s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to 'the Act') relates to Assessment year 2013-14.

2. Brief facts of the case as coming out of the orders of the authorities below are that the assessee company is engaged in the business of designing of Semiconductor Products, Software and providing technical

support services. The assessee filed its income tax return on 28.11.2013, declaring income of Rs.38.93,72.260/-. The return was processed u/s 143(1) of the I.T. Act, 1961. The case was selected for scrutiny through CASS and notice u/s 143(2) of the I. T. Act, 1961 was issued to the assessee on 04.09.2014, which was duly served on the assessee. Again, notice u/s 142(1) was issued to the assessee on 10.09.2015, which was served on the assessee. In response to these notices, Shri Naveen Jain, CA/AR attended the proceedings from time to time and filed details. Copy of profit & loss account and balance sheet along with Form No. 3CA and CD along with the details required were furnished by the assessee company during the course of assessment proceedings which has been placed on record. During the year under consideration, the assessee company has entered into certain international transactions with the associated enterprises (in short 'AE') accordingly a reference was made to the learned Transfer Pricing Officer (in short 'TPO') in respect of international transaction entered into by the assessee. The Transfer Pricing Officer vide order dated 10.10.2016 suggested to make an addition of Rs.9,45,75,460/- on account of Arm's Length Price. The Assessing Officer passed the draft assessment order.

3. Against the draft assessment order, the assessee filed objections to the learned Dispute Resolution Panel (in short 'DRP'). The DRP vide its order dated 29.06.2017 partly accepted the contentions of the assessee and directed the TPO to recompute the Arm's Length Price (in short 'ALP'). Thereafter, the TPO passed the order giving effect to the directions of the learned DRP in as much as the TPO has reduced the adjustment from

Rs.9.45 Crores to 8.91 Crores. Thereafter, the Assessing Officer passed the final assessment order after making the additions of Rs.8.91 Crores to the income of the assessee.

4. Aggrieved with the said order, the assessee has come up in appeal before us by raising the following grounds of appeal:-

“1. That on the facts and in the circumstances of the case and in law, the order passed by the learned Assessing Officer (“Ld. AO”) is bad in law and void ab-initio.

That on facts and circumstances of the case and in law, the Ld. AO/Ld. TPO/Ld. Dispute Resolution Panel (“DRP”) erred in:

2. Making addition of INR 89,144,212 u/s 92 of the Act.

3. Not accepting quantitative filters selected by the Appellant in its Transfer Pricing documentation/ fresh search and instead applying additional/ quantitative filters, which lack valid basis.

4. Rejecting some of the entities selected by the Appellant for comparability.

5. Selecting certain companies, which were not comparable to the Appellant in terms of Functions, Assets and Risk.

6. Rejecting companies having turnover of less than INR 1 Cr.

7. Computing the percentage of Related Party Transactions of certain companies incorrectly.

8. Applying RPT filter of more than 25% of revenue as against 10%.

9. Rejecting comparables solely on the ground that they follow different accounting year different from financial year.

10. Not correctly computing the working capital adjustment and the resultant margins.

11. Not making adjustment for difference in risk profile.

12. In charging and computing interest under section 234A, 234B and 234C of the Act.”

5. The ld. Counsel for the assessee filed a detailed chart and contended that the assessee seeks to exclude three comparables selected by the TPO and include three comparables which were rejected by the TPO. The ld. Counsel for the assessee pointed out that the TPO has wrongly applied certain filters while choosing the comparables for conducting the TP studies. The Ld. Counsel for the assessee thereafter addressed his arguments on each and every comparables required to be excluded and included for computing afresh mean for the purpose of determining the correct ALP.

6. The ld. Sr. DR strongly relied upon the orders of the authorities below.

7. We have heard the rival submissions and perused the materials available on record. We will decide the inclusion and exclusion of the comparables point by point as under:-

Company said to be excluded

A. Thirdware Solution Limited

8. At the outset, we observe that the comparable is not functionally similar to the assessee's profile. Further, this comparable has been discarded by the Tribunal in assessee's own case in ITA No.264/Bang/2021 for AY 2016-17. The Co-ordinate Bench of the Tribunal has dealt with this exclusion in para 17 of its order. Therefore, we hereby direct to exclude from the list of comparable relevant to this year.

B. Larsen & Turbo Infotech Limited

9. So far as the exclusion of this comparable is concerned, functionally difference and excluded by the Tribunal in assessee own case in ITA No.264/Bang/2021 for AY 2016-17. Therefore, we exclude the same from the list of comparable for the impugned year.

C. CG-VAK Software and Exports Ltd.

10. This comparable is functionally dissimilar and excluded by the Tribunal in assessee own case reported in (2019) 116 taxmann.com 421. Following the same, we exclude the same

Companies to be included in the list of comparables**A. Evoke Technologies Ltd.**

11. So far as the inclusion of this comparable is concerned. At the outset, we observe that this comparable has been accepted by the TPO in assessee's own case for AY 2011-12. Therefore, we direct the TPO to include this comparable in the list of comparables for the purpose of computation of the ALP.

B. CAT Technologies Ltd.

12. The TPO has rejected this comparable on the ground that this company is involved in various business and segmental data is not available. At the outset, we observe that this comparable has been included in the list of comparables by the Tribunal in assessee's own case, reported

in (2019) 116 taxmann.com 421 for AY 2012-13. Therefore, we direct the TPO to include this comparable in the list of the comparables.

C. Sankya Infotech Ltd.

13. So far as the inclusion of this comparable is concerned, we do not find any force in the argument of the learned counsel for the assessee. Therefore, we hereby dismissed this comparable from the list of comparables.

14. In view of the above observations, the learned TPO is directed to conduct fresh TP study after including and excluding the comparables as clarified by us in this order.

15. In the result, the appeal of the assessee is allowed as indicated above.

Order pronounced in the open court on 09th May, 2025.

Sd/-
[BRAJESH KUMAR SINGH]
ACCOUNTANT MEMBER

Sd/-
[PRAKSAH CHAND YADAV]
JUDICIAL MEMBER

Dated 09.05.2025.

Shekhar

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi