IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH : BANGALORE

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

ITA No. 3356/Bang/2018
Assessment year : 2014-15

Informatica Business Solutions Pvt. Ltd., No.66/1, Bagmane Commerz 02, Bagmane Tech Park, C V Raman Nagar, Bangalore – 560 093. **PAN: AABCI 0762M**	Vs.	The Joint Commissioner of Income Tax, Special Range 3, Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Tanmayee Rajkumar, Advocate
Respondent by	:	Shri Shashi Saklani, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	15.09.2025
Date of Pronouncement	:	05.12.2025

O R D E R

Per Prashant Maharishi, Vice President

1. ITA No. 3356/Bang/2018 is filed by Informatica Business Solutions Private Limited (the assessee/appellant) for assessment year 2014 – 15 against the assessment order passed under section 143(3) r.w.s. 144C of the Income Tax Act, 1961 [the Act] dated 29/10/2018 passed by the

Joint Commissioner Of Income Tax, Special Range – 3, Bangalore (the learned AO) determining the total income of the assessee at ₹ 603,863,180 against the returned income of ₹ 429,874,310/–.

2. The assessee is aggrieved with the assessment order raised following grounds of appeal:-

Sl. No.	Grounds of Appeal	Tax Effect (In Rs.)
1.	**Order/ Directions bad in law and on facts** The order passed by the Joint Commissioner of Income Tax, Special Range -3 ['the A01, under section 143(3) read with section 144C of the Income-tax Act, T 961 ['the Act') is bad in law and on facts.	NA
2.	**Addition of reimbursement received towards foreign exchange fluctuation loss on repayment of External Commercial Borrowing amounting to INR 4,88,45,724** a) The Assessing Officer {, AO'] erred in adding to the total income INR 4,88,45,724 for reimbursement received towards foreign exchange fluctuation loss on External Commercial Borrowing (‘ECB'). b) The AO erred in not appreciating the fact that the Appellant had disallowed the unrealised foreign exchange fluctuation loss in the earlier years and adding the same in the current year would lead to double taxation. c) The AO erred in considering the reimbursement of foreign exchange fluctuation loss as income under section 28(iv) of the Act, thus ignoring the fact that it is merely a reimbursement of expense without any markup and does not represent any benefit or perquisite. d) The Appellant also relics on the recent decision of the Hon'ble Supreme Court in the case of Commissioner vs. Mahindra and Mahindra Ltd (2018) 302 CTR 213.	1,66,02,662
3.	**Disallowance of provision for expenses amounting to INR 1,50,000 under section 37 of the Act** The AO erred in disallowing the 'provision for contract charges' created by the Appellant amounting to INR 1,50,000 by alleging that the same, being a provision, is an unascertained liability and contingent in nature.	50,985
4	**Disallowance of expenses amounting to INR 37,68,805 under section 40(a)(iii) of the Act.**	12,81,017

	The AO has erred in applying the provisions of section 40(a)(iii) of the Act and in disallowing an amount of INR 37,68,805.	
5.	**Addition of provision no longer required amounting to INR 9,41,162 under section 37 of the Act.** a) The AO erred in adding the provision for expense no longer required to the total income of the Appellant amounting to INR 9,41,162. b) The AO disregarded the fact that the said provision was disallowed in the year of creation and again offering the same to tax would tantamount to double taxation.	3,20,173
6.	**Levy of interest under Section 234B of the Act** While determining the income-tax liability of the Appellant, the AO erred in re-computing interest under section 234B of the Act at INR 3,82,79,329	3,20,173
7	**Initiation of penalty** The AO erred in initiating penalty proceedings under Section 274 read Section 271 of the Act.	NA
8	**Relief** a) The Appellant prays that directions be given to grant all such relief arising from the above grounds and also all relief consequential thereto. b) The Appellant desires leave to add to or alter, by deletion, substitution or otherwise, any or all of the above grounds of objections, at any time before or during the hearing of the Appeal.	NA
	Total tax effect	**1,85,75,010**

3. The brief facts shows that assessee is a company incorporated under the provisions of the Companies Act, 1956 and a wholly owned subsidiary of Informatica Corporation. It is engaged in providing software development services, sales and marketing support services and customer support services, all are in the nature of information technology enabled services to its associated enterprises. The assessee has entered into an international transaction of software development services of ₹ 1,612,069,027/–, ITeS services for a consideration of ₹ 600,191,927/– and marketing support services for a consideration of ₹

271,230,118/–. As the assessee has entered into an international transaction, the reference was made to the learned transfer pricing officer [TPO] to determine the arm's length price of the international transactions. The ld. TPO proposed an adjustment of ₹ 214,441,168/– and accordingly the draft assessment order was passed on 11/12/2017 wherein the above transfer pricing adjustment was included. The ld. AO made a further adjustment/addition to the total income of the assessee wherein he made an addition u/s. 28 (iv) of ₹ 48,845,724/–, further disallowance was made of ₹ 150,000 u/s. 37 and further disallowance was made under section 40 (a) (iii) of ₹ 3,768,805. The total income was determined at ₹ 69,80,21,969/–.

4. The assessee filed an objection before the learned Dispute Resolution Panel – 1 (DRP) against the draft order dated 11 December 2027. The ld. DRP passed the direction on 18 September 2018 and consequently the learned TPO revised the adjustment under section 92CA with respect to the software development services to ₹ 90,299,978/–, to the IT enabled services of ₹ 20,142,320 and marketing support services of ₹ 9,840,086/–. Thus the total transfer pricing adjustment was restricted to ₹ 120,282,384/–. With respect to the other addition made by the ld. AO, the ld. DRP upheld the same. Accordingly the final assessment order was passed on 29 October 2018 determining the total income of the assessee at ₹ 603,863,180/–. In the final assessment order over and above the transfer pricing adjustment of ₹ 120,282,384/– the disallowance under section 28 (iv) of ₹ 48,845,724/–, disallowance u/s. 37 of ₹ 150,000, the disallowance for non-deduction of tax at source of

₹ 3,768,805 and further disallowance u/s. 37 of ₹ 941,962 was retained. The assessee is aggrieved with the same and is in appeal before us.

5. During the course of hearing the assessee has filed a letter dated 12 September 2025 wherein it was stated that pursuant to the Mutual Agreement Procedure the grounds of appeal related to the transfer pricing adjustments are withdrawn. The revised grounds of appeal were also filed. These grounds are dealt with in this appeal.

6. As per ground No. 1 of the revised grounds of appeal which is general in nature, not pressed and therefore same is dismissed.

7. The second ground of appeal was with respect to the addition of ₹ 48,845,724/–. The facts shows that during the financial year 2011 – 12, the assessee availed External Commercial Borrowing [ECB] from its associated enterprise which was used for capital purposes. The assessee submitted the details of utilisation of the ECB. During the financial year 2011 – 12 and 2012 – 13 on restatement of the borrowing, the resultant loss was disallowed by the appellant while computing the taxable income as the borrowing was for capital purposes. During the financial year 2013 – 14, the assessee repaid the ECB and incurred a net realised loss of ₹ 48,850,000. This loss was computed at the time of repayment. Thus the external commercial borrowing of ₹ 221,915,000 availed by the assessee in the financial year 2011 – 12 was repaid during the current year of ₹ 270,800,000 and therefore the net realised loss on repayment of the ECB loan was determined at ₹ 48,850,000/–. According to the terms of agreement entered into by the assessee and

its associated enterprises, the realised loss arising on fluctuation of the foreign currency was to be reimbursed by the associated enterprises and accordingly loss of ₹ 48,850,000/– arising on the repayment of such borrowing was reimbursed by its associated enterprises. Since the loss incurred in the previous year was disallowed by the assessee, the above reimbursement was reduced by it while computing the taxable income. This is so because of the reason that assessee did not claimed the expenditure in the earlier years and therefore the reimbursement received for those expenditure could not be the income of the assessee. The ld. AO proposed to add the above amount under section 28 (iv) of the Act. The ld. DRP also upheld the same. And therefore assessee is in appeal in ground No. 2 of appeal.

8. The assessee submitted that as the unrealised losses arising on the restatement of the loan in the previous year was disallowed by it, the reimbursement of the same loss in the current year should not be added to the total income of the assessee u/s. 28 of the Act. The ld. AR submitted that on actual receipt of reimbursement of realised foreign exchange losses, it was reduced while computing the taxable income in the year of receipt in financial year 2013 – 14 for the reason that assessee has already disallowed the unrealised losses in the earlier years considering the same to be capital in nature and thereby taxing the same in the year of receipt would result in double taxation. It was further stated that external commercial borrowing pertained to a capital asset and hence any income or expenses relating to it should be capital in nature. It was further stated that realised forex loss incurred by the

appellant and reimbursed by the associated enterprises is merely as reimbursement of expenses incurred by the assessee and does not represent any benefit or perquisite in the hands of the assessee. She also submitted that the observation of the ld. AO that there is a waiver of liability is misconceived and incorrect as there is no waiver of liability in the present case. She further took us to the provisions of section 28 to show that it does not have application in the present case since the receipt is in capital in nature. For this proposition she relied upon the decision of the Hon'ble Supreme Court in case of Mahindra and Mahindra Ltd v. CIT (404 ITR 1) as well as other judicial precedents. It was further stated that the reimbursement received by the appellant cannot be brought to tax as it has no income element embedded therein. For this proposition she relied upon the decision of Hon'ble Supreme Court in case of 392 ITR 186. Therefore it was submitted that the addition deserves to be deleted. She further relied upon the decision of the Hon'ble Karnataka High Court in case of IG petrochemicals Ltd v. ITAT (2023) 155 taxmann.com 45 (Karnataka) and referred to paragraph No. 33 submitting that the amendment to section 28 of the Income Tax Act as per the Finance Bill 2023 also substantiates the interpretation of the decision of the Hon'ble Supreme Court that benefit in form of cash would fall outside the provisions of section 28 of the Act. Accordingly it was submitted that this issue is now covered in favour of the assessee.

9. The ld. CIT DR vehemently supported the orders of the learned lower authorities.

10. We have carefully considered the rival contention and perused the orders of the learned lower authorities. The facts clearly shows that the assessee company has reduced the reimbursement of foreign exchange fluctuation on external commercial borrowing amounting to ₹ 48,850,000 received from Informatica Corporation while computing the taxable income for the assessment year 2014 – 15. The facts also shows that the reimbursement is received from the parent company as per the agreement. The Ld. AO has treated it as any benefit or perquisite taxable under section 28 (iv) of the Act and therefore he held that this sum is the benefit received by the company which is required to be taxed under section 28 (iv) of the Act. The ld. AO relied upon the decision of the Hon'ble Madras High Court in case of CIT v. Romney Home Private Limited (2016) 384 ITR 530. The facts placed before us clearly show that the external commercial borrowing availed by the assessee in the financial year 2011 – 12 was ₹ 221,950,000/–. For the year ended on 31st March, 2012 unrealised loss on restatement of the ECB was accounted for at ₹ 32,428,000/–. Similarly loss for the year ended on 31st of March 2013 was also computed at ₹ 17,572,000 and similarly gain also realised on repayment of external commercial borrowing on 8th of May 2013 was accounted at 11,50,000. The amount of ECB was repaid by ₹ 270,800,000. Therefore there is a net realised loss on repayment of ECB loan of ₹ 48,850,000 which was reimbursed by the associated enterprises to the assessee. The loss on restatement of the ECB pertaining to 2012, 2013 was not claimed as

deduction by the assessee. Therefore the issue is whether the reimbursement of loss received by the assessee from its associated enterprises can be taxed in the hands of the assessee u/s. 28 (iv) of the Act. We find that this issue is squarely covered by the decision of the Hon'ble Karnataka High Court in case of IG petrochemicals Ltd v. ITAT (2023) 155 taxmann.com 45 (Karnataka) wherein the Hon'ble High Court has considered the provisions which has been inserted with effect from Finance Bill 2023 also. The Hon'ble High Court has recorded the facts in that case that the petitioner company has received a benefit by waiver of loans, the interest on such waiver of the loans though has been offered to tax, the waiver of the principal amount of loan is not offered to tax. The only contention of the revenue was that the loan availed would be taxable under section 28 (iv) of the Act. The Hon'ble High Court held that in view of the decision of the Hon'ble Supreme Court in case of Mahindra and Mahindra Ltd, the above receipt could not be taxed for the reason that the Hon'ble Supreme Court has held that to bring the benefits/perquisite within the term income under section 28 (iv) of the Act was that the benefit/perquisite should be other than in the shape of money. In the present case also it is in the shape of money that assessee has received ₹ 48,850,000 from its associated enterprises. Therefore respectfully following the decision of the Hon'ble Supreme Court we hold that the above sum is not chargeable to tax in the hands of the assessee under section 28 (iv) of the Act. The decision of the Hon'ble Karnataka High Court also supports the argument of the assessee. Accordingly we direct the ld.

AO to delete the addition of ₹ 48,845,724/– being reimbursement received towards the foreign exchange fluctuation loss on repayment of external commercial borrowing. Ground No. 2 of the appeal of the assessee is allowed.

11. The ground No. 3 is with respect to the disallowance of ₹ 150,000 u/s. 37 of Act which is not pressed by the assessee and therefore the same is dismissed.

12. Ground No. 4 of the appeal is with respect to the disallowance under section 40 (a) (iii) of the Act of ₹ 3,768,805. The fact shows that on the perusal of the expenses incurred for contract charges by the assessee company during the year, the ld. AO found that assessee has paid an amount of ₹ 3,768,805/– to PT Business Intelligence Technologies. The assessee company has not deducted any tax at source on the same. Therefore the assessee was asked to explain that why the above amount should not be disallowed for non-deduction of tax. The assessee explained that it is engaged in the business of providing software development services and market support services to its holding company. The assessee has sent certain employees to Indonesia for such services. The assessee company entered into an agreement with PT Business Intelligence Technologies [PBIT] to obtain suitable work/entry permit as per that country's law. In this regard PBIT charged a service fee on the assessee company. The assessee company has utilised the services of this company for the purpose of earning income from Indonesia and hence service fees payable to that

international company was not taxable in India as per the provisions of section 5 and section 9 (1) of the Act. The assessee company also relied on the decision in case of Lufthansa cargo India. The ld. AO was also supplied with secondment agreement dated 21.11.2013 and invoices made by the assessee company. The ld. AO rejected the contention of the assessee for the reason that the secondment agreement between the assessee and PBIT where the assessee company has seconded its employees with that company to perform obligations under its contract with customers in Indonesia. Further the international company is required to sponsor work permit and visa that are required under the international law. The assessee company shall dispatch its employees to that company for designated period and specified purposes to assist international company to perform certain tasks under the customer agreement in Indonesia. The assessee company was also to bear all costs related to work done by its employees and the Indonesian company in turn makes payment to employees of the assessee company after getting funds from the assessee company. He further noted that a non-resident company charges the assessee company services fee of 15% of all payments made by the assessee company to its seconded employees. The fact shows that the assessee company makes the payment of salary and other benefit to its seconded employees through the Indonesian company and hence the above sum was found that the seconded employees employed by the assessee company and temporarily seconded to a non-resident company for rendering services abroad. All the cost including salaries are borne by the assessee

company and paid through international company. Since the assessee company is the real employer of seconded employees, the assessee should have deducted tax on the salary paid abroad. In absence of tax deduction at source the above expenses were disallowed under the provisions of section 40 (a) (iii) of the Act amounting to ₹ 3,768,805.

13. The ld. DRP vide paragraph No. 2.51 of the direction held that the ld. AO has examined in detail the facts relating to the issue and has for a valid reasons invoked the provisions of section 40 (a) (iii) of the Act. It was found not to be in dispute that the seconded employees are under the management and supervisory control of the assessee. Therefore the assessee is under an obligation to deduct tax at source on the payment of remuneration and salaries to its employees. As the assessee company has failed to discharge this obligation the disallowance made by the ld. AO was justified.

14. Before us the ld. AR submitted that that the provisions of section 40(a)(iii) of the Act has no application in the present case. It was submitted that for the section 2 to apply the payment made ought to be chargeable under the head salaries in terms of section 9 (1) (ii) of the Act. In order for a payment to be in the nature of salaries as perquisite condition, an employer-employee relationship ought to exist between the payer and the payee. In the present case there exists no employer-employee relationship between the appellant and the International entity and the payments made by the appellant to Indonesian entity can by no stretch of imagination be treated as salaries. It was further stated

that since the payment is not made towards any services rendered in India, the provisions of section 9 (1) (ii) of the Act are not applicable. The assessee relied upon the decision of Mother Dairy Fruit Vegetables Private Limited v. CIT (198 Taxman 33) and Ecorys Netherlands BV v. ACIT (ITA No. 6494/Del/2016 dated 11/11/2020). It was the claim of the assessee that since the payments made by the appellant are to a third party and the essential requirements of employee/employee relationship and services being rendered in India are absent, section 40 (a) (iii) of the Act has no application and therefore the disallowance ought to be set aside.

15. The learned CIT DR vehemently supported the orders of the learned lower authorities.

16. We have carefully considered the rival contention and perused the orders of the learned lower authorities. We find that as the assessee is engaged in the business of providing software development services, IT enabled and marketing support services to its holding company. In the course of provision of such services assessee sent certain employees to Indonesia. In order to enable the employees to obtain a suitable work/entry permit as per the law of that country, assessee entered into an agreement with the Indonesian entity. As per agreement, that Indonesian entity sponsored the work permit and visa for the employees who were sent to Indonesia and also paid salaries and other Social Security charges of such employees. The Indonesian entity charged a service fee on assessee. Assessee was liable to pay a sum of

₹ 3,768,805 during the financial year 2013 – 14 to the Indonesian entity for the above services. Further assessee did not withhold any taxes on the above sum. The claim of the assessee is that such sum is not chargeable to tax in India. The ld. AO after examining the secondment agreement dated 21 November 2013 and invoices made by the assessee considered the claim of the assessee. He noted in paragraph No. 5.3 – 5.4 as under:-

> "5.3 The submission along with the secondment agreement dated 21-11-2013 and invoices made by the assessee are considered, however, the claim is not acceptable for the following reasons;
>
> i. As per the secondment agreement between the company and M/s P T Business Intelligence Technologies' (PBIT) the assessee company has seconded its employees with PBIT to perform obligations under its contract with customers in Indonesia. Further, PBIT is required to sponsor work permit and visa that are required under Indonesian Law. The assessee company shall dispatch its employees to PBIT for designated period and specific purpose(secondment) to assist PBIT to perform certain tasks under the customer agreement in Indonesia.
>
> ii. The assessee company will bear all costs related to work done by its employees and will make payments to PBIT. PBIT will in turn make payments to employees of the assessee company after getting funds from the assessee company.
>
> iii. PBIT will have only limited management control over these seconded employees. After the expiry of secondment the employees shall revert to the assessee company. Therefore, it is clear that the assessee company exerts real control over its employees though the employees are under the temporary pay roll of PBIT and the assessee company is the real employer.
>
> iv. It is to be noted that the PBIT, non-resident company charges the assessee company, a service fee of 15% of all payments made by the assessee company to its seconded employees.

v. It is fact that the assessee company makes the payments of salary and other to its seconded employees through PBIT, a non-resident company. Hence, it is necessary to refer how salaries are taxed as per India-Indonesia DTAA. Relevant article is re-produced for the reference;

ARTICLE 15 Dependent Personal Services

Dependent Personal Services

1. Subject to the provisions of articles 16, 17, 18, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived there from may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

a. the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve-month period, and

b. the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and

c. the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

5.4 From the above facts mentioned above, it is clear that the seconded employees are employed by the assessee company and temporarily seconded to a non-resident company for rendering services abroad. All the costs including salaries are born by the assessee company and paid through PBIT. Since, the assessee company is the real employer of seconded employees, the assessee should have deducted tax on salaries paid abroad. In the absence of the same, these expenses are disallowed under section 40(a)(iii) of the IT Act.

[Addition Rs. 37,68,805]"

17. However when the issue was raised before the ld. DRP, the ld. DRP did not consider even the agreement and the written submission made by the assessee before them. In view of this, we restore this issue back to the file of the ld. AO with a direction to the assessee to substantiate the claim of the above transaction by placing on record the secondment agreement, invoices and also to establish about the nature of relationship between those employees and the assessee company as well as why the fees paid by the assessee to that International entity should not be considered as income chargeable to tax in India. Accordingly ground No. 4 is restored back to the file of the learned assessing officer.

18. Ground No. 5 of the appeal is with respect to the disallowance of ₹ 941,162 u/s. 37 of the Act. The brief fact shows that the during the financial year 2012 – 13 the assessee company created a provision of ₹ 2,826,912/– towards professional and contractors charges on which tax was not deducted at source. Consequently the assessee itself disallowed the above provision under section 40 (a) (ia) of the Act. During the financial year 2013 – 14, out of the above provision the assessee utilised an amount of ₹ 1,887,750/– towards expenditure incurred by it on which tax was deducted at source and remitted. The remaining provision of ₹ 941,162/– was reversed during the year under consideration as the same was no longer required. As the provision was disallowed in the year on creation, on a reversal during the current

year, it was excluded from the computation and not offered to tax. The ld. AO disallowed the above amount on the basis that tax was not deducted at source which was upheld by the ld. DRP.

19. The ld. AR submitted that when the assessee has not at all claimed the above sum at the time of making a provision for non-deduction of tax at source, the reversal of the same could not have been added to the total income of the assessee during this year.

20. The learned CIT DR supported the orders of the learned lower authorities.

21. We have carefully considered the rival contention and perused the orders of the learned lower authorities. As the assessee has created a provision of ₹ 2,826,912/– for assessment year 2013 – 14 and disallowed the same as no tax was deducted at source on the same. Out of the above sum a sum of ₹ 941,162/– which was provided and disallowed in the original computation for assessment year 2013 – 14 was reversed during the year. We find that the above income is not chargeable to tax as the original claim of expenditure was itself disallowed by the assessee. Accordingly we allow ground No. 5 of the appeal.

22. Ground No. 6 & 7 are consequential and premature respectively, therefore same are dismissed.

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

Pronounced in the open court on this 05th day of December, 2025.

Sd/-	Sd/-
(SOUNDARARAJAN K.)	(PRASHANT MAHARISHI)
JUDICIAL MEMBER	VICE PRESIDENT

Bangalore,
Dated, the 05th December 2025.

/Desai S Murthy /

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.