

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH : BANGALORE**

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

IT(TP)A No.1218/Bang/2025
Assessment year : 2002-03

IBM India Private Ltd., No.12, Subramanya Arcade, Bannerghatta Road, Bangalore – 560 029. <b>PAN: AAACI 4403L</b>	Vs.	The Deputy Commissioner of Income Tax, Circle 3(1)(1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Sharath Rao, Ms. Vaidehi, CAs & Shri Dhiraj, Advocate
Respondent by	:	Dr. Divya K J, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	19.11.2025
Date of Pronouncement	:	09.02.2026

**ORDER**

*Per Prashant Maharishi, Vice President*

1. This appeal is filed by IBM India Private Ltd. (the assessee/appellant) for the assessment year 2002-03 against the appellate order passed by the CIT(Appeals), Bengaluru-12 [Id. CIT(A)] dated 31.3.2025 wherein the appeal filed by the assessee against the assessment order dated 29.3.2005 passed by the DCIT, Circle 11(1), Bangalore [Id. AO] was partly allowed.
2. The assessee has raised the following grounds of appeal :-

S. No.	Grounds of Appeal
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<b>I</b>	<b>Assessment and reference to the Transfer Pricing Officer are bad in law</b>
1.1	The Deputy Commissioner of income Tax, Circle — 11(1) ('Ld. AO') erred in making a reference to the Additional Director (Transfer Pricing) Bangalore ('Ld. TPO') , since he did not record an opinion that any of the conditions in Section 92C(3) of the Income-tax Act, 1961 ('the Act'), were satisfied in the instant case.
<b>2</b>	<b>The Ld. CIT(A)/ AO / TPO erred in law and on facts in determining an arm's length Gross Profit Margin ('GPM') of 1L89% for hardware trading segment and making a transfer pricing adjustment</b>
2.1	The Ld. CIT(A)/ AO / TPO followed an erroneous approach of segregation of the trading segment into trading of hardware segment and trading of software segment.
2.2	Without prejudice to the above, the Ld. CIT(A)/ AO / TPO erred in benchmarking trading of hardware segment using the comparable companies engaged in the trading of both hardware and software or only software.
2.3	The Ld. CIT(A)/ AO / TPO, while computing the GPM of the Appellant pertaining to trading of hardware segment, erred in including customs clearing charges as part of cost of goods sold for the hardware segment.
2.4	The Ld. CIT(A)/ AO / TPO erred in law and on facts in rejecting Infotrek Syscom Limited (previously known as Soni Infosys Limited) selected as a comparable in the TP Documentation, merely on the ground that appellant could not produce the data for FY 2000-01.
2.5	The Ld. CIT(A)/ AO / TPO erred in law and on facts in selecting Dynacon Systems & Solutions Ltd as a comparable company which is engaged in trading of hardware, software, development and services represented as a single segment viz "System
2.6	The Ld. CIT(A)/ AO / TPO erred in law and on facts in not adjudicating the following additional comparables proposed by the Appellant before the CIT(A) which are rejected by the Ld. TPO merely on the ground that these companies are not forming part of search matrix: <ul style="list-style-type: none"> <li>• Compuage Infocom Limited</li> <li>• SES Technologies Limited</li> <li>• Savex Computers Limited</li> <li>• ACI Infocom Limited</li> <li>• Priya Limited</li> </ul>

S. No.	Grounds of Appeal
2.7	The Ld. CIT(A)/ AO / TPO erred in law and on facts in considering two years data while computing the margins of comparable companies.
<b>3</b>	<b>Relief</b>
3.1	The Appellant prays that directions be given to grant all such relief arising from the preceding grounds and also all reliefs consequential thereto.

3.2	The Appellant craves leave to add to or alter, by deletion, substitution or otherwise, any or all of the above grounds of appeal, at any time before or during the hearing of the appeal.
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3. The assessee has challenged only ground No.2.7 of the appeal where it is claimed that the Id. CIT(A)/AO/TPO erred in not considering the data for 2 years while computing the margins of the comparable company.
4. The brief facts of the case show that as the assessee filed its return of income at a loss of Rs.61.56 crores on 31.10.2002, the return was picked up for scrutiny and as it has entered into international transaction exceeding Rs.5 crores, reference u/s. 92CA of the Act was made to determine the ALP of the international transaction. The Id. TPO determined the ALP of international transaction at Rs.231,67,29,623 and proposed an adjustment of Rs.35,27,95,703 as per order dated 31.3.2005.
5. Against this, the assessee preferred appeal before the Id. CIT(A) wherein the Id. CIT(A) set aside the TP adjustment for fresh consideration.
6. The matter reached the ITAT wherein by order dated 27.4.2010 the order of the Id. CIT(A) was set aside and issue was remanded back to him with a direction to dispose of the appeal on merits. On this basis, the Id. CIT(A) called for a remand report on the TP adjustment where in Id TPO confirmed and supported the TP adjustments.
7. The functions of the assessee were manufacture of personal computers and distribution of market support. The assessee maintained the segmental accounts and therefore in the TP Study Report the assessee claimed that it is a marketeer of IBM products and therefore distribution segment should be considered as a whole and cannot be artificially segregate in trading of hardware and software . According to the assessee, these are closely linked transactions. The Id. TPO did not consider the explanation of the assessee, segregated manufacturing and distribution segments separately and computed the ALP. However, while computing the ALP, the margins of the comparables were taken for only single year.
8. The assessee objected before the Id. CIT(A) stating that the Id. TPO should have taken the average of two year and one earlier year. Thus the claim of the assessee is that the single year data could not have been taken, but 3 years data should be taken.

9. The Id. CIT(A) rejected the above stating that Rule 10B(4) does not allow so. The Id CIT (A) held as under :-

" 5.4.1.2 The appellant contested this way of computation of profit margin for this assessment year and submitted that for assessment year 2003 – 04 onwards the TPO has correctly taken the figures for relevant assessment year only and not the average of assessment year and one earlier assessment year. The contention of the appellant is rejected as the proviso to rule 10 B (4) provides that "data related to a period not being more than two years prior to such financial year may also be considered, *if such data reveals facts which could have an influence on the determination of transfer prices in relation to the transactions being compared.*"

10. Thus, the only claim of the assessee is that the Id. CIT(A) has not considered the above explanation of the assessee that 3 years data should have been taken and averaged out instead of single year data. The LD AR submitted a chart Wherein it is submitted that the margin of the comparable companies for the current year is 8.32% whereas the margin of the assessee is 5.89% and if this contention is accepted, the adjustment would be either obliterated or substantially reduced.
11. The learned departmental representative vehemently submitted that the learned CIT – A has rejected the contention of the assessee and there is no infirmity therein.
12. We have carefully considered the rival contention and perused the order of the learned CIT – A. In this case the learned transfer pricing officer took 7 comparables and worked out the average profit margin by taking the mean of the figures for FY 2000 – 01 and FY 2001 – 02. Accordingly the adjustment was made. The contention of the assessee that he should have taken three years data for working out the difference in the ALP. The learned CIT – A also stated that such data may also be considered if it reveals facts which could have an influence on the determination of transfer prices in relation to the transaction is being compiled. It is for the assessee to show that it is more appropriate in the circumstances to determine the arm's-length price in the manner where the data related to a period not being more than two years prior to such financial year is considered.

13. In view of the above facts we restore the whole issue back to the file of the learned CIT – A with a direction to the assessee to show that if the computation of margin of the assessee as well as comparable would be proper if three years average data is considered and same would be in accordance with the provisions of rule 10 B of the income tax rules 1962. The chart submitted by the assessee is also required to be perused by the learned CIT – A and then decide the issue afresh. Thus ground No. 2.7 of the appeal is allowed as indicated above.
14. No other grounds are pressed before us and therefore they are dismissed.

In the result, the appeal by the assessee is partly allowed for statistical purposes.

Pronounced in the open court on this 9<sup>th</sup> day of February, 2026.

Sd/-

( SOUNDARARAJAN K. )  
JUDICIAL MEMBER

Sd/-

( PRASHANT MAHARISHI )  
VICE PRESIDENT

Bangalore,  
Dated, 09<sup>th</sup> February, 2026.

*/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.