

ITEM NO.20

COURT NO.6

SECTION IV-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition for Special Leave to Appeal (C) No.28652/2018

(Arising out of impugned final judgment and order dated 09-07-2018 in ITA No.10/2011 passed by the High Court Of Karnataka At Bengaluru)

SAP LABS INDIA PRIVATE LIMITED

Petitioner(s)

VERSUS

INCOME TAX OFFICER CIRCLE 6 (1) (1) BANGALORE

Respondent(s)

WITH

SLP(C) No.28694/2018 (IV-A)
 SLP(C) No.29204/2018 (IV-A)
 SLP(C) No.29180/2018 (IV-A)
 SLP(C) No.33631/2018 (IV-A)
 SLP(C) No.2641/2019 (IV-A)
 Diary No.1571/2019 (IV-A)
 SLP(C) No.3941/2019 (IV-A)
 Diary No.1981/2019 (IV-A)
 SLP(C) No.6108/2019 (IV-A)
 SLP(C) No.5361/2019 (IV-A)
 SLP(C) No.5365/2019 (IV-A)
 SLP(C) No.6106/2019 (IV-A)
 SLP(C) No.6104/2019 (IV-A)
 SLP(C) No.7376/2019 (IV-A)
 SLP(C) No.5362/2019 (IV-A)
 SLP(C) No.5364/2019 (IV-A)
 SLP(C) No.6103/2019 (IV-A)
 SLP(C) No.5366/2019 (IV-A)
 SLP(C) No.7372/2019 (IV-A)
 SLP(C) No.7369/2019 (IV-A)
 SLP(C) No.7373/2019 (IV-A)
 Diary No.5862/2019 (IV-A)
 SLP(C) No.7366/2019 (IV-A)
 SLP(C) No.7368/2019 (IV-A)
 SLP(C) No.7589/2019 (XIV)
 SLP(C) No.7374/2019 (IV-A)
 SLP(C) No.8289/2019 (IV-A)
 SLP(C) No.7367/2019 (IV-A)
 SLP(C) Nos.8141/2019 (IV-A)
 Diary Nos.6037/2019 (IV-A)
 Diary Nos.6043/2019 (IV-A)
 SLP(C) No.8290/2019 (IV-A)
 SLP(C) No.16205/2019 (IV-A)

SLP(C) No.8140/2019 (IV-A)
SLP(C) No.8145/2019 (IV-A)
SLP(C) No.8139/2019 (IV-A)
SLP(C) No.8147/2019 (IV-A)
Diary No.7805/2019 (IV-A)
SLP(C) No.9064/2019 (IV-A)
Diary No.7909/2019 (IV-A)
Diary No.8715/2019 (IV-A)
Diary No.8896/2019 (IV-A)
Diary No.8900/2019 (IV-A)
SLP(C) No.9066/2019 (IV-A)
Diary No.8914/2019 (IV-A)
Diary No.8916/2019 (IV-A)
Diary No.8921/2019 (IV-A)
SLP(C) No.9067/2019 (IV-A)
SLP(C) No.9070/2019 (IV-A)
Diary No.8940/2019 (IV-A)
SLP(C) No.9071/2019 (IV-A)
SLP(C) No.9072/2019 (IV-A)
Diary No.9010/2019 (IV-A)
Diary No.9014/2019 (IV-A)
Diary No.9997/2019 (IV-A)
SLP(C) No.10128/2019 (IV-A)
SLP(C) No.14973/2019 (IV-A)
SLP(C) No.11670/2019 (IV-A)
Diary No.11608/2019 (IV-A)
SLP(C) No.11671/2019 (IV-A)
SLP(C) No.16208/2019 (IV-A)
SLP(C) No.12346/2019 (IV-A)
Diary No.11689/2019 (IV-A)
SLP(C) No.14974/2019 (IV-A)
SLP(C) No.11071/2019 (IV-A)
Diary No.11858/2019 (IV-A)
SLP(C) No.11073/2019 (IV-A)
SLP(C) No.12344/2019 (IV-A)
SLP(C) No.11074/2019 (IV-A)
SLP(C) No.16209/2019 (IV-A)
SLP(C) No.11669/2019 (IV-A)
SLP(C) No.11675/2019 (IV-A)
SLP(C) No.11676/2019 (IV-A)
SLP(C) No.14976/2019 (IV-A)
SLP(C) No.16211/2019 (IV-A)
Diary No.13607/2019 (IV-A)
SLP(C) No.14978/2019 (IV-A)
SLP(C) No.11677/2019 (IV-A)
SLP(C) No.14979/2019 (IV-A)
SLP(C) No.16212/2019 (IV-A)
SLP(C) No.11672/2019 (IV-A)
SLP(C) No.14980/2019 (IV-A)
SLP(C) No.16216/2019 (IV-A)

SLP(C) No.12348/2019 (IV-A)
SLP(C) No.14982/2019 (IV-A)
SLP(C) No.14983/2019 (IV-A)
Diary No.15505/2019 (IV-A)
SLP(C) No.14972/2019 (IV-A)
Diary No.15523/2019 (IV-A)
SLP(C) No.14990/2019 (IV-A)
Diary No.15762/2019 (IV-A)
SLP(C) No.14991/2019 (IV-A)
SLP(C) No.14992/2019 (IV-A)
SLP(C) No.14996/2019 (IV-A)
SLP(C) No.14997/2019 (IV-A)
SLP(C) No.15801/2019 (IV-A)
SLP(C) No.15005/2019 (IV-A)
SLP(C) No.15006/2019 (IV-A)
SLP(C) No.15007/2019 (IV-A)
SLP(C) No.15011/2019 (IV-A)
SLP(C) No.15021/2019 (IV-A)
SLP(C) No.15015/2019 (IV-A)
SLP(C) No.15016/2019 (IV-A)
SLP(C) No.15019/2019 (IV-A)
Diary No.21305/2019 (IV-A)
Diary No.21399/2019 (IV-A)
Diary No.21406/2019 (IV-A)
Diary No.21498/2019 (IV-A)
Diary No. 22008/2019 (IV-A)
Diary No.22013/2019 (IV-A)
Diary No.22030/2019 (IV-A)
Diary No.22059/2019 (IV-A)
Diary No.22126/2019 (IV-A)
Diary No.22955/2019 (IV-A)
SLP(C) No.18595/2019 (IV-A)
Diary No.23113/2019 (IV-A)
Diary No.23114/2019 (IV-A)
Diary No.23130/2019 (IV-A)
Diary No.23141/2019 (IV-A)
Diary No.23146/2019 (IV-A)
Diary No.23147/2019 (IV-A)
Diary No.23273/2019 (IV-A)
Diary No.23277/2019 (IV-A)
Diary No.25119/2019 (XIV)
Diary No.25126/2019 (IV-A)
Diary No.25285/2019 (IV-A)
Diary No.25313/2019 (IV-A)
Diary No.25321/2019 (IV-A)
Diary No.26394/2019 (IV-A)
Diary No.26866/2019 (IV-A)
Diary No.26872/2019 (IV-A)
Diary No.26887/2019 (IV-A)

Diary No.27764/2019 (IV-A)
 Diary No.27869/2019 (IV-A)
 Diary No.28142/2019 (IV-A)
 Diary No.28295/2019 (IV-A)
 Diary No.28300/2019 (IV-A)
 Diary No.29371/2019 (IV-A)
 Diary No.29375/2019 (IV-A)
 Diary No.30481/2019 (IV-A)
 Diary No.30692/2019 (IV-A)
 Diary No.31535/2019 (IV-B)
 Diary No.32026/2019 (IV-A)
 Diary No.37058/2019 (IV-A)
 Diary No.37550/2019 (XIV)
 Diary No.37556/2019 (XIV)
 Diary No.38765/2019 (XIV)
 Diary No.1044/2020 (IX)

Date : 26-02-2020 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT
 HON'BLE MR. JUSTICE HEMANT GUPTA

Counsel for the Parties:

Mr. Zoheb Hossain, Adv.
 Mr. Vikrant Yadav, Adv.
 Mr. Rupesh Kumar, Adv.
 Ms. Vimla Sinha, Adv.
 Mr. K.V. Girish Chowdary, Adv.
 Mr. Piyush Goyal, Adv.
 Ms. Mehak Sachdeva, Adv.
 Ms. Anil Katiyar, AOR

Mr. Arvind P. Datar, Sr. Adv.
 Ms. Yugandhara Pawar Jha, Adv.
 Mr. Kunal Verma, AOR
 Mr. Ashwin Nair, Adv.

Mr. Tarun Gulati, Sr. Adv.
 Ms. Shashi Mathews, Adv.
 Mr. Ankit Sachdeva, Adv.
 Mr. Abhishek Boob, Adv.
 Mr. Kishore Kunal, AOR

Mr. Ajay Vohra, Sr. Adv.
 Ms. Kavita Jha, AOR
 Mr. Udit Naresh, Adv.
 Mr. Anant Mann, Adv.

Mr. Nageswar Rao, Adv.
Mr. Ambhoj Kumar Sinha, AOR
Mr. Sandeep S. Karhail, Adv.
Ms. Anwesha Saha, Adv.

Ms. Vanita Bhargava, Adv.
Mr. Ajay Bhargava, Adv.
Ms. Trishala Trivedi, Adv.
M/s. Khaitan & Co., AOR

Mr. Aurup Dasgupta, Adv.
Mr. Rohan Thawani, Adv.
Mr. Hardeep Singh Anand, Adv.
Ms. Vandana Sehgal, Adv.
Ms. Gunjan Ahuja, Adv.
Mr. Iqram Govind Singh, Adv.

Mr. Percival Billimoria, Adv.
Mr. Rajendra Singhvi, Adv.
Mr. R.P. Tolani, Adv.
Mr. Mahesh Tolani, Adv.
Mr. K.K.L. Gautam, Adv.
Ms. Arundhati Chakraborty, Adv.
Mr. T.R.B. Sivakumar, AOR

Mr. Anand Sukumaran, Adv.
Mr. S. Sukumaran, Adv.
Mr. Bhupesh Kumar Pathak, Adv.
For Ms. Meera Mathur, AOR

Mr. G.C. Srivastava, Adv.
Mr. Suvinay Kumar Dash, Adv.
Ms. Runamoni Bhuyan, AOR

Mr. V. Balachandran, Adv.
Mr. K.R. Vasudevan, Adv.
Mr. Siddharth Naidu, Adv.
M/s. KSN & Co., AOR

Mr. Vivek Sarin, Adv.
Mr. Manish Sharma, Adv.
Mr. Shauryaveer Saxena, Adv.
Mr. Aakarshan Aditya, AOR

Mr. Himanshu Sinha, Adv.
Mr. Bhuwan Dhoopar, Adv.
Mr. Syed Jafar Alam, AOR

Ms. Kavita Jha, AOR
Mr. Udit Naresh, Adv.
Mr. Anant Mann, Adv.

Mr. Salil Kapoor, Adv.
Ms. Ananya Kapoor, Adv.
Ms. Bela Kapoor, Adv.
Mr. Sumit Lalchandani, Adv.
Ms. Soumya Singh, Adv.
Mr. Praveen Swarup, AOR

Mr. Senthil Jagadeesan, AOR
Ms. Sonakshi Malhan, Adv.
Ms. Suriti Chowdhary, Adv.
Ms. Mrinal Kanwar, Adv.

Mr. Sanand Ramakrishnan, AOR
Mr. Rajeev Mishra, Adv.
Mr. Sanjeev Kumar Mahara, Adv.

Mr. Deepak Chopra, Adv.
Mr. Harpreet Singh Ajmani, AOR

Mr. H. Raghavendra Rao, AOR

Ms. Archana Sahadeva, AOR

Mr. T.R.B. Sivakumar, AOR

UPON hearing the counsel the Court made the following
O R D E R

Mr. Zoheb Hossain, learned Advocate representing the Revenue in all these matters submits that there are broadly following three issues which arise for consideration:

- "1. Whether the exclusion of a comparable entity can be sustained without determining the specific characteristics of the transaction; FAR (functions performed, assets deployed and risks assumed); contractual terms and market conditions as prescribed in Rule 10B(2) of the IT Act, 1962?
2. Whether the objection to the selection of comparable is legally sustainable?
3. Whether the parameters of analysis prescribed under Rule 10B are exhaustive and if so whether it is legally permissible to by-pass the same partially or by implication?"

Learned counsel appearing for various assessees, on the other hand, submitted that by very nature, the determination has to be case specific and there could be various nuances to the questions framed for consideration by the Revenue.

Be that as it may, we will initially start with these three questions as framed by the Revenue. Learned Counsel appearing for the assessees will be at liberty to point out any other additional questions or any other relevant aspects touching upon these issues.

After considering the matter from the perspective of the aforementioned three basic issues, we will thereafter take up all the cases to see whether answers to these questions would conclusively determine the controversy in each of those cases.

List all these matters for consideration on 03.03.2020 on top of the Board.

It is made clear that no adjournment shall be granted to any one on any count.

(MUKESH NASA)
COURT MASTER

(SUMAN JAIN)
ASSISTANT REGISTRAR