

**IN THE INCOME TAX APPELLATE TRIBUNAL,
BANGALORE BENCH 'A'**

**BEFORE SHRI VIJAYPAL RAO, JUDICIAL MEMBER
AND
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

ITA No.691/Bang/2013
(Asst. Year – 2008-09)

The Dy. Commissioner of Income-tax,
Circle-12(5),
Bangalore.

. Appellant

Vs.

M/s Unisys India Pvt. Ltd.,
#4th & 5th Floor, Block “wrap” SJR Park,
White Filed Area, No.13,14 & 15, ,
K.R Puram,
Bangalore-560 066.

. Respondent

Appellant by : Shri Saravanan, JCIT

Respondent by : Shri Madhukar Dhakappa, C.A

Date of Hearing : 15-9-2015

Date of Pronouncement : 24-9-2015

ORDER

PER SHRI VIJAYPAL RAO, JUDICIAL MEMBER :

This appeal by the Revenue is directed against the order dated 6/3/2013 of Commissioner of Income-tax (Appeals) - III, Bangalore for the assessment year 2008-09.

2. The Revenue has raised the following grounds:

“i. On the facts and in the circumstances of the case the learned CIT(A) erred in law in directing the AO to exclude the reimbursement of expenses of telecommunication charges and bandwidth & internet charges and travel expenditure incurred in foreign currency both from the export turnover as well as from total turnover for the purpose of computation of deduction u/s 10A without appreciating the fact that the statute allows exclusion of such expenditure only from export turnover by way of specific definition of export turnover as envisaged by sub-clause (4) of Explanation 2 below sub-sec (8) of sec. 10A and the total turnover has not been defined in this section.

ii. For these and other grounds that may be urged at the time of hearing, it is prayed that the order of the CIT(A) is so far as it relates to the above grounds may be reversed and that of the AO may be restored.”

3. The only issue raised in the appeal of the Revenue is regarding the expenditure incurred on telecommunication charges and bandwidth & internet charges and travel expenditure incurred in

foreign currency excluded by the AO from the export turnover for the purpose of computing deduction u/s 10A.

4. We have heard the learned DR as well as learned AR and considered the relevant material on record. The AO has excluded the expenditure incurred on telecommunication charges bandwidth & internet charges and travel expenditure incurred in foreign currency from export turnover while computing the deduction u/s 10A. On appeal, the CIT(A) has directed the AO to exclude the said expenditure from the total turnover as well while computing the deduction u/s 10A by following the decision of Hon'ble Jurisdictional High Court in the case of Tata Elxsi, 349 ITR 98. At the outset we note that this issue is now covered by the decision of Hon'ble Jurisdictional High Court in the case of Tata Elxsi (Supra), the relevant finding of the Hon'ble jurisdictional High Court reads as follows:-

“.....Section 10A is enacted as an incentive to exporters to enable their products to be competitive in the global market and consequently earn precious foreign exchange for the country. This aspect has to be borne in mind. While computing the consideration received from such export turnover, the expenses

incurred towards freight, telecommunication charges, or insurance attributable to the delivery of the articles or things or computer software outside India, or expenses if any incurred in foreign exchange, in providing the technical services outside India should not be included. However, the word total turnover is not defined for the purpose of this section. It is because of this omission to define 'total turnover', the word 'total turnover' falls for interpretation by this Court;

.....In section 10A, not only the word 'total turnover' is not defined, there is no clue regarding what is to be excluded while arriving at the total turnover. However, while interpreting the provisions of section 80HHC, the courts have laid down various principles, which are independent of the statutory provisions. There should be uniformity in the ingredients of both the numerator and the denominator of the formula, since otherwise it would produce anomalies or absurd results. Section 10A is a beneficial section which intends to provide incentives to promote exports. In the case of combined business of an assessee, having export business and domestic business, the legislature intended to have a formula to ascertain the profits from export business by apportioning the total profits of the business on the basis of turnovers. Apportionment of profits on the basis of turnover was

accepted as a method of arriving at export profits. In the case of section 80HHC, the export profit is to be derived from the total business income of the assessee, whereas in section 10-A, the export profit is to be derived from the total business of the undertaking. Even in the case of business of an undertaking, it may include export business and domestic business, in other words, export turnover and domestic turnover. To the extent of export turnover, there would be a commonality between the numerator and the denominator of the formula. If the export turnover in the numerator is to be arrived at after excluding certain expenses, the same should also be excluded in computing the export turnover as a component of total turnover in the denominator. The reason being the total turnover includes export turnover. The components of the export turnover in the numerator and the denominator cannot be different. Therefore, though there is no definition of the term 'total turnover' in section 10A, there is nothing in the said section to mandate that, what is excluded from the numerator that is export turnover would nevertheless form part of the denominator. When the statute prescribed a formula and in the said formula, 'export turnover' is defined, and when the 'total turnover' includes export turnover, the very same meaning given to the export turnover by the legislature is to be adopted while understanding the

meaning of the total turnover, when the total turnover includes export turnover. If what is excluded in computing the export turnover is included while arriving at the total turnover, when the export turnover is a component of total turnover, such an interpretation would run counter to the legislative intent and impermissible. Thus, there is no error committed by the Tribunal in following the judgements rendered in the context of section 80HHC in interpreting section 10A when the principle underlying both these provisions is one and the same.

From the aforesaid judgments, what emerges is that, there should be uniformity in the ingredients of both the numerator and the denominator of the formula, since otherwise it would produce anomalies or absurd results. Section 10A is a beneficial section. It is intended to provide incentives to promote exports. The incentive is to exempt profits relatable to exports. In the case of combined business of an assessee, having export business and domestic business, the Legislature intended to have a formula to ascertain the profits from export business by apportioning the total profits of the business on the basis of turnovers. Apportionment on the basis of turnover was accepted as a method of arriving at export profits. In the case

of section 80HHC, the export profit is to be derived from the total business income of the assessee, whereas in section 10A, the export profit is to be derived from the total business of the undertaking. Even in the case of business of an undertaking, it may include export business and domestic business, in other words, export turnover and domestic turnover. The export turnover would be a component or part of a denominator, the other component being the domestic turnover. In other words to the extent of export turnover, there would be a commonality between the numerator and the denominator of the formula. In view of the commonality, the understanding should also be the same. In other words, if the export turnover in the numerator is to be arrived at after excluding certain expenses, the same should also be excluded in computing the export turnover as a component of total turnover in the denominator. The reason being the total turnover includes export turnover. The components of the export turnover in the numerator and the denominator cannot be different. Therefore, though there is no definition of the term 'total turnover' in section 10A, there is nothing in the said section to mandate that, what is excluded from the numerator that is export turnover would nevertheless form part of the denominator. Though when a particular word is not defined by the Legislature and an ordinary

meaning is to be attributed to the same, the said ordinary meaning to be attributed to such word is to be in conformity with the context in which it is used. When the statute prescribes a formula and in the said formula, 'export turnover' is defined, and when the 'total turnover' includes export turnover, the very same meaning given to the export turnover by the Legislature is to be adopted while understanding the meaning of the total turnover, when the total turnover includes export turnover. If what is excluded in computing the export turnover is included while arriving at the total turnover, when the export turnover is a component of total turnover, such an interpretation would run counter to the legislative intent and impermissible. If that were the intention of the Legislature, they would have expressly stated so. If they have not chosen to expressly define what the total turnover means, then, when the total turnover includes export turnover, the meaning assigned by the Legislature to the export turnover is to be respected and given effect to while interpreting the total turnover which is inclusive of the export turnover. Therefore, the formula for computation of the deduction under 10A, would be as under:

$$\begin{array}{l} \text{Profits of the business} \\ \text{Of the undertaking} \end{array} \quad \begin{array}{l} \text{Export turnover} \\ \times, \text{-----} \\ \text{(Export turnover + domestic turnover)} \\ \text{Total turnover} \end{array}$$

In that view of the matter, we do not see any error committed by the Tribunal in following the judgments rendered in the context of section 80HHC in interpreting section 10A when the principle underlying both these provisions is one and the same. Therefore, we do not see any merit in these appeals. The substantial question of law framed is answered in favour of the assessee and against the Revenue.”

5. The CIT(A) has decided this issue by following the judgment of Hon'ble Jurisdictional High Court in the case of Tata Elxsi (Supra). Therefore, we do not find any error or legality in the impugned order of the CIT(A) on this issue.

6. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on **24th Sept, 2015.**

**Sd/-
(JASON P BOAZ)
ACCOUNTANT MEMBER**

**Sd/-
(VIJAYPAL RAO)
JUDICIAL MEMBER**

Vms.
Bangalore
Dated : 24/9/2015

Copy to :

1. The Assessee
2. The Revenue
3. The CIT concerned.
4. The CIT(A) concerned.
5. DR
6. GF

By order

Asst. Registrar, ITAT, Bangalore.