

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH ' A '

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER AND
SHRI JASON P. BOAZ, ACCOUNTANT MEMBER

I.T. (T.P) A. No.542/Bang/2012
(Assessment Year : 2008-09)

M/s. Austin Medical Solutions Pvt. Ltd.,
No.23, Sydney Park, 2nd Floor,
Prestige Takt Kasturba Road Cross,
Bangalore-560 001
PAN AAECA 5725B

.... Appellant.

Vs.

The Income Tax Officer,
Ward 11(1), Bangalore.

..... Respondent.

Appellant By : Shri H.N. Khincha, C.A.
Respondent By : Shri P. Dhivahar, JCIT (D.R)

Date of Hearing : 24.06.2015.
Date of Pronouncement : 17.07.2015.

O R D E R

Per Shri Jason P. Boaz, A.M. :

This appeal by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-IV, Bangalore dt.24.2.2012 for Assessment Year 2008-09.

2. The facts of the case, briefly, are as under :-

2.1 The assessee, an Indian Company engaged in the business of export of software and ITES, filed its return of income for Assessment Year 2008-09 on 18.12.2008 declaring NIL income. In the return of income, the income from business was computed at Rs.63,02,287; which included an amount of Rs.28,61,352 by way of a suo moto transfer pricing adjustment to the Arm's Length

Price of the assessee's international transactions under Section 92 of the Income Tax Act, 1961 (in short 'the Act'). The assessee claimed deduction under Section 10A of the Act in respect of the entire business income of Rs.63,02,287 and arrived at NIL total income.

2.2 The assessee's return of income filed for Assessment Year 2008-09 was processed under Section 143(1) of the Act and the case was subsequently taken up for scrutiny. In the course of assessment proceedings, the Assessing Officer observed that the assessee's claim for deduction under Section 10A of the Act included the suo moto T.P. Adjustment of Rs.28,61,352. On being queried in respect of its claim, the assessee submitted that the T.P. Adjustment made suo moto by the assessee while filing the return of income is eligible for deduction under Section 10A of the Act. In support of this contention, the assessee placed reliance on the decision of a co-ordinate bench of this Tribunal in the case of *iGate Global Solutions Ltd. V ACIT in (2008) 24 SOT 3 (BANG)*. The Assessing Officer, however, did not agree with the assessee's contention. The Assessing Officer referred to the provisions of the 2nd proviso to Section 92C(4) of the Act which states that no deduction under Section 10A, 10AA, 10B or under chapter VIA of the Act shall be allowed in respect of the amount of income by which the total income of the assessee is enhanced after computation of income under this sub-section. The Assessing Officer held that the assessee's claim and contentions defeats the purpose for which Section 92C of the Act was legislated. It was also stated that the decision of the co-ordinate bench of the Bangalore Tribunal in the case of *iGate Global Solutions Ltd. (supra)* had not been accepted and the Department has preferred an appeal against the said decision before the Hon'ble Karnataka High Court. In that view of the matter, the Assessing Officer did not allow the

assessee's claim for deduction under Section 10A of the Act in respect of the suo moto T.P. Adjustment of Rs.28,61,352 and the same was separately assessed to tax. The Assessing Officer also varied the assessee's claim for deduction under Section 10A of the Act by reducing telecommunication expenses only from export turnover without reducing the same from total turnover. The Assessing Officer completed the assessment under Section 143(3) of the Act, incorporating the above adjustments to the assessee's claim for deduction under Section 10A of the Act, vide order dt.9.12.2010.

3. Aggrieved by the order of assessment dt.9.12.2010 for Assessment Year 2008-09, the assessee preferred an appeal before the CIT (Appeals) - IV, Bangalore. The learned CIT (Appeals) disposed off the appeal vide order dt.24.2.2012, allowing the assessee partial relief. The learned CIT (Appeals) held that the Assessing Officer was justified in denying the assessee's claim for deduction under Section 10A of the Act in respect of the suo moto T.P. Adjustment made by the assessee. The learned CIT (Appeals) relied on the decision of the Hon'ble Karnataka High Court in the case of Yokogawa India Ltd. & Others (ITA No.356/2010) to hold that profit derived from the export of articles or things or computer software from the business of the undertaking alone is eligible for deduction under Section 10A of the Act. The learned CIT (Appeals) also distinguished the decision of the co-ordinate bench in the case of iGate Global Solutions Ltd. (supra), holding that the Methodology of Computation of deduction under Section 10A of the Act was not brought to the notice of the Tribunal in the case of iGate Global Solutions Ltd.. In respect of the reduction of telecommunication expenses only from export turnover, the learned CIT (Appeals) relied upon the decision of the Hon'ble Karnataka

High Court in the case of CIT V Tata Elxsi Ltd. & Others (2011) 247 CTR 334 (Kar) to hold that the said expenses should be reduced both from export turnover as well as total turnover.

4. Aggrieved by the order of the CIT (Appeals) - IV, Bangalore dt.24.2.2012 for Assessment Year 2008-09, in denying its claim for deduction under Section 10A of the Act in respect of the suo moto T.P. Adjustment of Rs.28,61,352, the assessee has preferred this appeal raising the following grounds :-

- "1. The order of the Learned Appellate Authority is bad in law.*
- 2. The Learned Appellate Authority erred in confirming the action of the learned assessing authority in not granting the benefit of section 10A to the appellant on the suo moto adjustment made by the appellant under Section 92(1) of the Income Tax Act, 1961 determining the income having regard to the arm's length pricing.*
- 3. The Learned Appellate Authority erred in denying the benefit of Section 10A on Rs.28,61,352."*

5. Ground No.1 being general in nature, no adjudication is called for thereon.

6. Ground Nos. 2 & 3 - Deduction u/s. 10A of the Act.

6.1 These grounds are raised by the assessee are on the issue of the assessee's claim for deduction under Section 10A of the Act in respect of Suo Moto T.P. Adjustment of Rs.28,61,352 made by the assessee in its return of income for Assessment Year 2008-09. The learned Authorised Representative was heard in support of the grounds raised and relied for the assessee's claim on the decision of the co-ordinate bench in the case of iGate Global Solutions Ltd. V ACIT (2008) 24 SOT 3 (Bang) which dealt with a similar issue. The learned Authorised Representative also placed on record a copy of the decision of the Hon'ble Karnataka High Court in the same case in ITA No.453/2008 dt.17.6.2014 in which the Hon'ble Court dismissed Revenue's appeal against the above order of the co-ordinate bench.

6.2 Per contra, the learned Departmental Representative supported the orders of the authorities below.

6.3.1 We have heard the rival contentions and submissions and perused and carefully considered the material on record; including the judicial pronouncements placed reliance upon. We find that on similar facts, as in the case on hand, the co-ordinate bench of this Tribunal in the case of iGate Global Solutions Ltd. (supra) allowed deduction under Section 10A of the Act in respect of Suo Moto T.P. Adjustment made by the assessee and held as under at paras 2.1 to 23 thereof as under :-

" 21. The last grievance is in respect of not allowing deduction under Section 10A on the adjustment made by the assessee to the arm's length price.

22. In the instant case, the assessee company entered into transaction with associated enterprise. The assessee company determined arm's length price and accordingly made adjustment to the income because arm's length price determined was more than the consideration, at which the transactions were shown in the books of account. The deduction under Section 10A has not been allowed as per proviso to section 92C(4). As per this proviso, no deduction under Section 10A or 10B or under Chapter VI-A is to be allowed in respect of amount of income, by which the total income of the assessee is enhanced after computation of income under the sub-section. The learned Authorised Representative during the course of proceedings has referred to the word 'enhanced'. In case the income is enhanced, then deduction is not permissible. ; However, in the instant case, income has not been enhanced because the same was already returned by the assessee. In the Memo Explaining the Provisions of Finance Bill, 2006, it has been mentioned as under :-

(2006) 201 CTR (St) 147 : (2006) 281 ITR (St) 196

"Under sub-section (4), it has been provided that on the basis of arm's length price so determined, the Assessing Officer may compute the total income of an assessee. The first proviso to sub-section (4) provides that where the total income of the assessee as computed by Assessing Officer is higher than the income declared by the assessee, no deduction under Section 10A or section 10B or under Chapter VI-A will be allowed in respect of the amount of income, by which the total income of the assessee is enhanced after computation of income under sub-section."

23. From the Memo Explaining the Provisions of Finance Bill, 2006 as well as from the literal meaning of the word 'enhanced', it is clear that if income increased, as a result of computation of arm's length price, then such increase is not to be considered for

deduction under Section 10A. In the instant case, the assessee himself has computed the arm's length prices and has disclosed the income on the basis of arm's length prices. It is not a case, where there is an enhancement of income due to determination of arm's length price. Hence, it is held that assessee was entitled to deduction under Section 10A in respect of income declared in the return of income on the basis of computation of arm's length price."

6.3.2 Revenue, being aggrieved, carried the matter in appeal to the Hon'ble Karnataka High Court challenging the aforesaid finding/conclusion of the co-ordinate bench in the case of iGate Global Solutions Ltd. (supra). The Hon'ble High Court of Karnataka in its order in the case of iGate Global Solutions Ltd. In ITA No.453/2008 dt.17.6.2014, inter alia, considered the following substantial question of law raised by Revenue :-

"(4) Whether the Tribunal was correct in holding that deduction under Section 10A of the Act is allowable in respect of income computed on the Arm's Length Price by ignoring the proviso of Section 92(4) of the Act ?"

In respect of the above substantial question of law, the Hon'ble Karnataka High Court at paras 5 & 6 of its order held as under :-

"5. In so far as substantial question of law No.4 is concerned, the error committed by the Assessing Officer was relying on section 92(C)(4) to a case where Arm's Length Price was determined by the assessee, whereas the said provision applies to a case where Arm's Length Price was determined by the assessing authority. That mistake has been corrected by the Tribunal by setting aside the order passed by the Commissioner as well as the assessing authority.

6. In that view of the matter, we do not see any error committed by the Tribunal in the impugned order. Therefore, the said question is also answered in favour of the assessee and against the Revenue."

6.3.3 The Hon'ble jurisdictional High Court in the above decision (supra) has allowed the assessee's claim for deduction under Section 10A of the Act in respect of Suo Moto T.P. Adjustment made by the assessee. In our view, the decision of the Hon'ble High Court of Karnataka in the case of Yokogawa India Ltd. Reported in (2012) 341 ITR 385 relied on by the

learned CIT (Appeals) does not deal with the question of allowability of deduction under Section 10A of the Act, in respect of Suo Moto T.P. Adjustment made by the assessee while determining the Arm's Length Price of its international transactions. The said judgment deals with the issue of whether deduction under Section 10A of the Act should be allowed before or after set off of losses of other units, unabsorbed depreciation and brought forward losses. The said decision, in our view, does not apply to the issue before us in the case on hand and hence is distinguishable and not applicable.

6.3.4 Respectfully following the decision of the Hon'ble High Court of Karnataka in the case of iGate Global Solutions Ltd. (supra) and the decision of the co-ordinate bench in the same case reported in (2008) 24 SOT 3(Bang), we hold that the assessee in the case on hand be allowed deduction claimed under Section 10A of the Act, in the return of income filed, in respect of Suo Moto T.P. Adjustment amounting to Rs.28,61,352 while determining the Arm's Length Price of its international transactions. Consequently, assessee's grounds of appeal at S. Nos. 2 and 3 are allowed.

7. In the result, the assessee's appeal for Assessment Year 2008-09 is allowed.

Order pronounced in the open court on 17th July, 2015.

Sd/-
(P. MADHAVI DEVI)
Judicial Member

Sd/-
(JASON P BOAZ)
Accountant Member

*Reddy gp