IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, BANGALORE

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
and
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

ITA No.1388/Bang/2015
(Assessment year: 2008-09)

Deputy Commissioner of Income-tax,
Circle 2(1)(1),
Bangalore. … Appellant

Vs.

M/s.Cambridge Solutions Pvt. Ltd.
SJR Park, No.13, 14 & 15, EPI Indl. Area,
Phase I, Whitefield,
Bangalore-560066. … Respondent
PAN: AAVCS 9393 L

Appellant by : Shri Sunil Kumar Agarwal, JCIT(DR)
Respondent by : Shri Keerthi Narayan, CA.

Date of hearing : 21/04/2016
Date of pronouncement : 22/04/2016

O R D E R

Per INTURI RAMA RAO, AM :

This is an appeal filed by the revenue and is directed against the order of the CIT(A), Bengalure-2, Bengalure, dated 27/08/2015 for the assessment year 2008-09.

2. The revenue raised the following grounds of appeal:

1) The order of the Ld. CIT(A) is contrary to the facts and circumstances of the case and hence not sustainable.

2) The CIT(A) has erred in directing the AO to exclude the expenditure incurred in foreign currency from both export turnover as well as from total turnover by placing its reliance on the case of Tata Elxsi Limited v. ACIT ((349 ITR 98)) without appreciating that there is no provision in section 10A that such expenses should be reduced from the total turnover, as clause (iv) of the Explanation to section 10A provides that such expenses are to be reduced only from the export turnover.

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

4) The appellant craves leave to add, alter, amend and/or delete ant of the grounds mentioned above.

3. Brief facts of the case are that the assessee is a company duly incorporated under the Companies Act, 1956. It is engaged in the business of BPO. Return of income was filed on 30/09/2008 declaring nil income. After processing the return u/s 143(1), scrutiny assessment u/s 143(3) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short] was completed vide order dated 16/12/2011. While doing so, the Assessing Officer (AO) restricted the deduction u/s 10A by reducing the tele-communication charges of Rs.85,85,347/- and travelling expenses outside country of Rs.1,48,50,149/-, sub-contract charges of Rs.13,51,252/- aggregating to Rs.2,47,86,748/- from export turnover.

4. Being aggrieved, an appeal was filed before the ld.CIT(A). The ld.CIT(A), following the ratio laid down by the Hon'ble jurisdictional High Court in the case of *CIT vs. Tata Elxi Ltd* (349 ITR 98) held that those expenses should be excluded from export turnover as well as total turnover.

5. Being aggrieved by this direction of the ld.CIT(A), the revenue is in present appeal before us.

6. We heard rival submissions and perused material on record. The issue is no longer *res integra.* The Hon'ble High Court of Karnataka in the case of *Tata Elxi Ltd* (supra) held that expenses incurred towards freight, tele-communication charges, etc., should be excluded both from export turnover as well as from total turnover. The Hon'ble High Court held as follows:

> *"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 10-A is a beneficial section. It is intended to provide incentives to promote 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 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. 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 & the denominator cannot be different. Therefore, though there is no definition of the term 'term turnover' in Section 10-A, 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 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 chose 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 Section 10-A, would be as under:

$$\text{Profits of the business of the undertaking} \times \frac{\text{Export turnver}}{\text{Total turnover}} \quad (\text{Export turnover + domestic turnover})$$

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 10-A 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."

Since the CIT(A) has only followed the ratio laid down by the Hon'ble jurisdictional High Court, we do not interfere with the order of the CIT(A).

7. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on this 22nd day of April, 2016

sd/-	sd/-
(VIJAY PAL RAO)	**(INTURI RAMA RAO)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Place : Bangalore
D a t e d : 22/04/2016

srinivasulu, sps

Copy to :

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4 CIT
5 DR, ITAT, Bangalore.
6 Guard file

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore