

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
and
SHRI G.MANJUNATHA, ACCOUNTANT MEMBER**

**IT(TP)A No.1759/Bang/2013
(Assessment year: 2009-10)**

Deputy Commissioner of Income-tax,
Circle 11(2),
Bangalore. ... Appellant

Vs.

M/s.Bearing Point Business Consulting Pvt.Ltd.
No.401, Prestige Meredian-II,
M.G.Road,
Bangalore-560001. ... Respondent
PAN:AACCB9758R

Appellant by: Shri B.K. Panda, CIT(DR).
Respondent by: Shri Padamchand Khincha, CA.

Date of hearing : 06/10/2015.
Date of pronouncement: 16/10/2015.

O R D E R

Per VIJAY PAL RAO, JM :

This appeal by the revenue is directed against the assessment order dated 31/10/2013 passed u/s 143(3) r.w.s.144C(13) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short] in pursuance to the directions of the DRP dated 8/10/2013 for the assessment year 2009-10.

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2. The revenue has raised the following grounds.

- 1) *"The order of the Dispute Resolution Panel is opposed to law and the facts and circumstances of the case.*
- 2) *The DRP erred in directing the AO to follow the ratio laid down by the Hon'ble Court in the case of Tata Elxsi Limited 349 ITR 98 and exclude Rs 59,84,245/- of telecommunication expenses and Rs 15,72,520/- of travel expenses incurred in foreign currency attributable to delivery of software services outside India from the total turnover also while computing the deduction u/s 10A of the I.T. Act, without appreciating the fact that there is no provision in section 10A that such expenses should be reduced from the total turnover also, as clause (iv) of the explanation to section 10A provides that such expenses are to be reduced only from the export turnover.*
- 3) *The DRP erred in not appreciating the fact that the jurisdictional High Court's decision in the case of Tata Elxsi Limited 349 ITR 98 has not been accepted by the department and an appeal has been filed before the Hon'ble Supreme Court.*
- 4) *For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the DRP be reversed and that of the Assessing Officer be restored.*
- 5) *The appellate craves leave to add, to alter, to amend or delete any of the grounds that may be urged at the time of hearing of the appeal.*

3. The only issue that arises in the appeal of the revenue is regarding exclusion of telecommunication and traveling expenses incurred in foreign currency from the export turnover as well as from the total turnover for the purpose of computing the deduction u/s 10A of the Act.

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4. We have heard the learned Departmental Representative as well as the learned AR of the assessee and considered the relevant material on record. In the draft assessment order dated 5/3/2013, the AO proposed to exclude telecommunication and traveling expenditure from the export turnover while computing deduction u/s 10A of the Act. The assessee raised objections before the DRP and the DRP has directed the AO to exclude the said expenditure from the total turnover as well by following the judgment of the Hon'ble jurisdictional High Court in the case of *ACIT vs. Tata Elxsi* (349 ITR 98). Nothing has been brought before us by the revenue to take a different view and not following the judgment of the Hon'ble jurisdictional High Court on the point. Thus, we find that the issue is now covered by the judgment of the Hon'ble jurisdictional High Court in the case of *Tata Elxsi* (supra) wherein the Hon'ble High Court has held as under:

"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. Sec. 10A is a beneficial section. It is intended to provide incentives to promote exports. The incentive is to exempt profits relating 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 s. 80HHC, the export profit is to be derived from the total business income of the assessee, whereas in s. 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

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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 s. 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 s. 10A, would be as under :

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

11. *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 s. 80HHC in interpreting s. 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."*

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Following the judgment of the Hon'ble jurisdictional High Court, we do not find any error or illegality in the directions of the DRP on this issue.

5. In the result, the appeal of the revenue is dismissed.

Pronounced in the open court on 16th October, 2015.

sd/-
(G.Manjunatha)
ACCOUNTANT MEMBER
eksrinivasulu,sps

sd/-
(Vijay Pal Rao)
JUDICIAL MEMBER

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore