

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

BEFORE SHRI. ABRAHAM P. GEORGE, ACCOUNTANT MEMBER
AND
SHRI. VIJAY PAL RAO, JUDICIAL MEMBER

I.T(TP).A No.1046/Bang/2011
(Assessment Year : 2007-08)

M/s. Yahoo Software Development India P. Ltd,
Torry Pines, Embassy Golf Links Business Park,
Off Indiranagar, Koramangala Intermediate Ring Road,
Bemga;iri 560 071B .. Appellant
PAN : AAACY1876D

v.

Deputy Commissioner of Income-tax,
Circle -12(5), Bengaluru .. Respondent

I.T(TP).A No.1685/Bang/2013
(Assessment Year : 2008-09)
(By the Assessee)

I.T(TP).A No.1651/Bang/2013
(Assessment Year : 2008-09)
(By the Revenue)

Assessee by : Shri. Sharath Rao, CA
Revenue by : Shri. G. R Reddy, CIT – DR-I

Heard on : 05.07.2016
Pronounced on : 29 .07.2016

ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER :

Of the above appeals, IT(TP)A.1046/Bang/2011 is that of the assessee directed against an assessment order dt.29.08.2011 passed by the AO pursuant to directions issued by the DRP u/s.144C of the Income-tax

Act, 1961 ('the Act' in short), for A. Y. 2007-08. Appeal Nos.1685/Bang/2013 and 1651/Bang/2013 are cross appeals of the assessee and Revenue respectively directed against an order dt.30.9.2013 of CIT (A)-IV, Bengaluru, for A. Y. 2008-09.

02. When the appeals were taken up for hearing Ld. Counsel for the assessee submitted that in so far as its appeal for A. Y. 2007-08 was concerned, few of the grounds were on transfer pricing. As per the Ld. AR, assessee had filed an application with competent authority invoking Mutual Agreement Procedure (MAP) under Article 27 of the DTAA between India and USA. Further as per the Ld. AR the TP issues for A. Y. 2006-07 to A. Y. 2009-10 stood resolved by order dt.19.10.2015 of the Department of Treasury, Internal Department of Washington, DC 20224. However according to the Ld. AR in assessee's appeal for A. Y. 2007-08, apart from the issues relating to TP, assessee had also raised grounds on corporate tax issues appearing as grounds 7 to 13. In so far as appeal for A. Y. 2008-09 is concerned, Ld. AR submitted that grounds filed by the assessee were entirely on TP matters, and only other ground was on charge of interest u/s.234B and 234D of the Act.

03. Ld. DR fairly agreed to the above averments of the Ld. AR. However according to him, department in its appeal for A. Y. 2008-09 had apart from the TP issues which stood concluded by the MAP, also raised a ground regarding exclusion of telecommunication expenditure both from export and total turnover. As per the Ld. DR Department had not accepted the jurisdictional High Court in the case of CIT v. Tata Elxsi Ltd [349 ITR 98].

04. We have perused the orders and heard the rival submissions. Grounds raised by assessee apart from those relating to TP issues in its appeal for A. Y. 2007-08 appear as grounds 7 to 13. These are reproduced hereunder :

7. That the learned AO erred in not allowing deduction under section 10A in respect of the entire profit of the undertaking registered with the Software Technology Parks of India.
8. That the Learned AO erred while computing deduction under section 10A of the Act in treating the data link charges of Rs 12,540,884 and foreign travel expense of Rs 38,394,157 as attributable to delivery of software outside India.
9. That the learned AO erred in not applying the principles of section 80HHE to section 10A. Consequently, the learned AO erred in not relying on the various judicial decisions on the said matter.
10. Without prejudice to the above, that the learned AO erred in not adjusting the 'total turnover' of the Appellant by reducing the data link charges of Rs 12,540,884 and foreign travel expense of Rs 38,394,157.
11. That the learned AO erred in considering the rate of education cess at 3% instead of 2%, the applicable rate for AY 2007-08.
12. That the learned AO erred in consequently levying and computing interest under section 234B and section 234D of the Act.
13. That the Appellant craves leave to add to and/or to alter, amend, rescind, modify the grounds herein above or produce further documents before or at the time of hearing of this Appeal.

05. A reading of the above ground show that grounds 12, is on levy of interest u/s.234B and 234D of the Act, which is consequential in nature needing no specific adjudication and ground 13 is general in nature.

06. In relation to ground 7, we find that AO while computing the deduction available u/s.10A of the Act, had set off loss of Rs.15,955/- from a non-STPI unit. We find that by virtue of the judgment of Hon'ble jurisdictional High Court in the case of CIT (LTU) v. Yokogawa India Ltd [(2013) 341 ITR 0385], profits of the unit in which a claim u/s.10A is preferred by an assessee has to be worked out on a stand alone basis without setting of loss from non-10A units. Accordingly we are of the opinion that loss from non-STPI unit cannot be set off from the profits of 10A unit while computing the deduction under that section. Ordered accordingly. Ground.7 stands allowed.

07. Vide its grounds 8 and 9 grievance raised by assessee is on exclusion of data link charges of Rs.12,540,884/- and foreign travel expenses of Rs.3,83,94,157/- from export turnover while computing deduction u/s.10A of the Act. Alternatively in its ground 10 assessee states that such reduction if made from export turnover should also be reduced from total turnover while computing the deduction u/s.10A of the Act.

08. By virtue of definition of 'export turnover' given in Explanation (iv) to Section 10A of the Act, we are of the opinion that assessee cannot claim inclusion of data link charges, foreign travel expenses attributed to delivery of software products outside India from export turnover. However, with regard to its alternative pleading that such amounts which are reduced from export turnover should also be reduced from total turnover, we are inclined to agree, in view of judgment of Hon'ble jurisdictional High Court in the case of Tata Elxsi Ltd (supra). Accordingly we direct the AO to work out the deduction allowable by reducing such amounts from both export turnover and total turnover. Grounds 8 and 9 are dismissed, while ground.10 is allowed.

09. In its ground 11, issue raised by the assessee is with regard to rate of education cess levied at 3%. This matter can be verified by the AO if the cess charged on the assessee is not correct, it needs to be rectified. Ordered accordingly. Ground.11 is allowed for statistical purpose.

10. Coming to the appeal of the assessee for A. Y. 2008-09, there are no corporate tax issues except for a general ground regarding charge of interest u/ss.234B and 234C of the Act which being consequential in nature needs no specific adjudication.

11. Coming to the cross appeal of the Revenue for A. Y. 2008-09, grounds 1, 6 and 7 are general needing no specific adjudication.

12. Vide its grounds 2 and 3, Revenue is aggrieved on the direction of CIT (A) to exclude telecommunication expenditure from total turnover also while computing the deduction available to the assessee u/s.10A of the Act. Since CIT (A) has followed the judgment of Hon'ble jurisdictional High Court in the case of Tata Elxsi Ltd (supra), we do not find any reason to interfere with the order of CIT (A). Grounds 2 and 3 stand dismissed.

13. Grounds 4 and 5 are TP issues which stand resolved by virtue of MAP. Vide MAP closing letter dt.19.10.2015 of Department of Treasure Internal Revenue Service, Washington DC (supra), it is clear that mutual agreement has been reached by the said authority with the Indian competent authority with regard to the TP issues, for A. Ys. 2006-07, 2007-08, 2008-09 and A. Y. 2009-10. Since the TP issues involved in all the appeals are resolved, the grounds raised by both the parties on such issues become infructuous. In the result, these grounds are dismissed as infructuous.

14. To summarise the results, appeal of assessee for A. Y. 2007-08 is treated as partly allowed for statistical purpose. That for A. Y. 2008-09 is dismissed. Departmental appeal for A. Y. 2008-09 is also dismissed.

Order pronounced in open court on 29th day of July, 2016.

Sd/-

(VIJAY PAL RAO)
JUDICIAL MEMBER

Sd/-

(ABRAHAM P GEORGE)
ACCOUNTANT MEMBER

MCN

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax
4. Commissioner of Income-tax(A)
5. DR
6. GF, ITAT, Bangalore

By Order

Assistant Registrar

