

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

**BEFORE SHRI VIJAYPAL RAO, JUDICIAL MEMBER
AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

IT(TP)A No.608/Bang/2013
(Asst. Year – 2008-09)

The Dy. Commissioner of Income-tax,
Circle-11(4),
Bangalore.

. Appellant

Vs.

M/s Informatica Business Solutions Pvt. Ltd.,
No.66/1, Bagmane, Commerz 02,
Bagmane Tech Park, CR Raman Nagar,
Bangalore-560 030.

Appellant by : Dr. PK Srihari, Addl. CIT

Respondent by : Shri PK Prasad, Advocate

Date of Hearing : 19-5-2016

Date of Pronouncement : 25-5-2016

ORDER

SHRI VIJAYPAL RAO, JUDICIAL MEMBER :

This appeal by the Revenue is directed against the order dated 20/2/2013 of Commissioner of Income-tax (Appeals) for the assessment year 2008-09.

2. The Revenue has raised the following grounds:

“1) The order of the ld CIT(A), in so far as it is prejudicial to the interest of revenue, is opposed to law and the facts and circumstances of the case.

2) The learned CIT(A) erred in excluding M/s Celestial Biolabs Ltd., Flextronics Ltd., iGate Global Solutions Ltd., Infosys Technologies Ltd., Mindtree Ltd., Persistent Systems Ltd., Sasken Communication Technologies Ltd., Tata Elsi Ltd., and Wipro Ltd., (Segment) from the final list of comparables in the Software services segment and Aditya Birla Minacs Worldwide Ltd., Coral Hubs Ltd. Eclerx Services Ltd, Infosys BPO Ltd, Jindal Intellicom Ltd, Moldtek Technologies Ltd, Wipro Ltd (segment) and Allsec Technologies Ltd in the ITes segment holding that the size and turnover of the company are deciding factor for treating a company as a comparable.

3. The learned CIT(A) erred in holding that M/s Avani Cincom Technologies Ltd., cannot be taken as comparable.

4. The learned CIT(A) erred in holding that M/s Avani Cincom Technologies Ltd., cannot be taken as comparable.

5. The learned CIT(A) erred in holding that M/s KALS Information Systems Ltd., cannot be taken as comparable without appreciating the fact that it qualifies all the qualitative and quantitative filters applied by the TPO.

6. The learned CIT(A) erred in excluding Celestial Biolabs Ltd. from the list of comparables being functionally different.

7. *The CIT(A) erred in directing the AO to include VMF Soft Tech Ltd in the final list of comparables holding that there was no reason to reject VMF Soft Tech Ltd as a comparable on applying the export revenue filter.*
8. *The CIT(A), on the facts and in the circumstances of the case, erred in including VMF Soft Tech Ltd as a comparable on the basis of export earnings without appreciating the fact that it fails the persistent loss filter.*
9. *The CIT(A) erred in Maars Software International Ltd., as a comparable rejecting the employee cost filter applied by the TPO to select companies which are predominantly into software development services.*
10. *The CIT(A) erred in not appreciating that the employee cost is used as a filter to exclude companies that do not have the characteristic feature of a software company.*
11. *The CIT(A), on the facts and in the circumstances of the case, erred in holding that Accentia Technologies Ltd., and Genesys International Corporation Ltd., cannot be taken as comparables.*
12. *The CIT(A) erred in directing the AO to exclude from the total turnover the expenses already excluded from export turnover and accordingly modify the computation of relief allowable u/s 10A.*
13. *The CIT(A) erred in holding that the decision in the case of ACIT V Tata Elxsi Ltd., [2011] TIOL 684 HC KAR IT is squarely applicable to the fact of the present case and the jurisdictional High Courts decisions is binding*

- 14. The learned CIT(A) erred in not appreciating the fact that there is no provision in section 10A which requires the concerned expenses; which are required to be reduced from the export turnover as per clause (iv) of the Explanation to sec. 10A, to be reduced from the total turnover also.*
- 15. The learned CIT(A) erred in not appreciating the fact that the jurisdictional High Court's decision relied upon by him has not been accepted by the department and an appeal has been filed before Hon'ble Supreme Court which is still pending.*
- 16. For these and such other grounds that may be urged at the time of hearing it is humbly prayed that order of the CIT(A) be reversed and that of the AO be restored."*

3. Ground No.1 is general in nature and does not require any specific adjudication.

4. Ground Nos. 2 to 11 are regarding transfer pricing adjustment and relief granted by the CIT(A).

5. At the time of hearing our attention was drawn to the letter dated 18/12/2015, whereby the ACIT, Circle-3(1)(1), Bangalore informed the assessee regarding the order dated 4/12/2015 passed by the competent authority of India to resolve the MAP proceedings for the assessment year 2005-06 to 2008-09.

6. The learned AR of the assessee has filed a copy of the letter dated 18/12/2015 as well as the order dated 4/12/2015, whereby the TP matter has been resolved under MAP proceedings as the parties have mutually agreed under the framework agreement in respect of the case involving IT Services and IT enabled services. In view of the fact that the dispute regarding transfer price has been resolved under MAP proceedings vide order dated 4/12/2015, the ground Nos. 2 to 11 of the Revenue appeal becomes infructuous and are accordingly dismissed.

7. Ground Nos.12 to 15 are regarding exclusion of expenditure incurred in foreign currency from the export turnover as well as total turnover.

8. At the outset, we note that this issue of exclusion of the expenses incurred in foreign exchange from the export turnover as well as from the total turnover is settled by the judgment of Hon'ble Jurisdictional High Court in the case of Tata Elxsi, 349 ITR 98 where in the Hon'ble High Court has held in para 17 and 18 as under :

“17. 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 sated 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 us 10A, would be as under:

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

In that view of the matter, we do not see any error committed by the Tribunal in following the judgments rendered I 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.”

9. The case of the Revenue is that the same should be excluded from the export turnover but should not be excluded from total

turnover. On this issue, the judgment of Hon'ble Karnataka High Court rendered in the case of Tata Elxsi (Supra) supports the case of the assessee because in this case, it was held by Hon'ble Karnataka High Court that the total turnover is sum total of export turnover and domestic turnover and, therefore, if an amount is excluded from export turnover, the total turnover is also reduced by the same amount as a consequences of deduction from export turnover. In this view of the matter, we find no infirmity in the order of the learned CIT(A) on this issue. Regarding the contention of the Revenue that the Revenue has not accepted the judgment of Hon'ble Karnataka High Court and has filed appeal before the Hon'ble Apex Court, we would like to observe that it is not the case of the Revenue that the judgment of Hon'ble Karnataka High Court has been stayed by Hon'ble Apex Court, and therefore, the judgment is valid and we are bound to follow the same. Accordingly ground Nos. 12 to 15 of the Revenue is rejected.

10. Respectfully following the judgment of Hon'ble Jurisdictional High Court, we do not find any error or illegality in the order of the learned CIT(A) to qua this issue.

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

Order pronounced in the open court on **25 May, 2015.**

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Vms.

Bangalore

Dated : 25/5/2015

Copy to :

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

Sd/-
(VIJAYPAL RAO)
JUDICIAL MEMBER

By order

Asst. Registrar, ITAT, Bangalore.