

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

BEFORE SHRI. VIJAY PAL RAO, JUDICIAL MEMBER  
AND

SHRI. S. JAYARAMAN, ACCOUNTANT MEMBER

I.T.A No.1469/Bang/2010  
(Assessment Year : 2006-07)

Xchanging Solutions Ltd,  
(Formerly Cambridge Solutions Ltd)  
Plot No.13, 14, 15, SJR iPark, EPIP Industrial Area,  
Phase-1, Whitefield, Bengaluru 560 066 .. Appellant  
PAN : AAFCS9303L

v.

Deputy Commissioner of Income Tax,  
Circle -11(2), Bengaluru .. Respondent

Assessee by : Shri. Chavali Narayan, CA  
Revenue by : Shri. G. R. Reddy, CIT, DR-I

Heard on : 09.11.2017  
Pronounced on : 06.02.2017

**ORDER**

**PER S. JAYARAMAN, ACCOUNTANT MEMBER :**

This is an appeal filed by the assessee against the order passed by the DCIT , Circle 11(2), Bengaluru, dt.18.10.2010, for the assessment year (a y ) 2006-07 in pursuance of the directions of the DRP u/s 144C(5) rw 144C (8) dt 20.09.2010 .

02. The brief facts relevant to this appeal are that Xchanging Solutions Ltd, formerly Cambridge Solutions Ltd, the assessee , primarily engaged in the provision of software development services to its Associated Enterprises

(AEs), i.e., its subsidiaries in US, UK, Germany and Singapore, as well as external customers, carried on its business during the year through the following four units :

(i) One unit in Bengaluru referred to as Bangalore unit ;

(ii) Two units in Chennai referred to as SSCL unit and SSIT Chennai unit; and

(iii) One unit in Mumbai referred to as SSIT Mumbai unit.

Of the above, Bangalore unit and both the Chennai units are registered with Software Technology Parks of India (STPI). The assessee is eligible for deduction under section 10A in respect of its Bangalore unit and the SSIT Chennai unit. For this a y , it filed its return on November 30, 2006 declaring a total loss of Rs.20,661,932/-. While completing the assessment, the AO, inter alia, did not reduce communication expenses of Rs. 6,78,838 attributable to the export of software outside India and the project work expenses of Rs 1,68,40,459 incurred in foreign currency for availing onsite services from its group companies from total turnover , for computing deduction under Section 10 , although they were reduced from the export turnover . Further, the AO held that the provisions of Section 10A are undertaking specific and consequently set off losses of certain units from the profits of the eligible unit before allowing the deduction u/s 10A and did not allow deduction u/s 10, the expenditure incurred in connection with issue of compulsorily convertible bonds on the increased eligible profits of eligible units. Aggrieved, the

assessee filed an appeal before the DRP. The DRP, inter alia, dismissed the appeal on these issues. When the AO gave effect to that order, the assessee filed this appeal with following grounds :

**General**

1. On the facts and in the circumstances of the case and in law, based on directions of DRP, the learned AO erred in assessing the total income at Rs. 33,283,682 as against NIL income returned by the Appellant.

**Deduction under Section 10A of the Act**

On the facts and in the circumstances of the case and in law:

2. The learned AO erred in law by not considering that the communication expenses of Rs. 678,838 attributable to the export of software outside India that are reduced from the export turnover should also be reduced from total turnover for computing deduction under Section 10A of the Act.
3. The learned AO erred in law and in facts in not considering that the project work expenses of Rs 16,840,459 as are incurred by the Appellant in foreign currency for availing onsite services from its group companies are in connection with rendering software development services and not with rendering technical services outside India. Accordingly, the learned AO erred in law in holding that such project work expenses are to be reduced from the export turnover for computing deduction under Section 10A of the Act.
4. Without prejudice to the above, the learned AO erred in law by not considering that, if the project work expenses attributable to the delivery of computer software outside India are reduced from export turnover, an equal amount should also be reduced from total turnover for computing the deduction under section 10A of the Act.
5. The learned AO has erred in not holding that the provisions of Section 10A of the Act are undertaken specific and consequently erred in setting off losses of other units from the profits of the eligible unit before allowing the deduction under Section 10A of the Act.
6. Without prejudice to the above, the learned AO erred in law by not considering that the quantum of deduction under Section 10A of the Act should not be restricted to the quantum of the total income of the Appellant before allowing deduction under Section 10A, in the absence of provisions similar to the deductions under Chapter VIA of the Act.
7. Without prejudice to the other grounds, the Learned AO has erred in not computing deduction under Section 10A of the Act for the profits of the Bangalore unit based on the Accountant's Report in Form 56F furnished by the Appellant.

**Other adjustments**

8. On the facts and in the circumstances of the case and in law, the learned AO has erred in disallowing expenditure incurred of Rs. 52,655,104 in raising the convertible bonds by considering the same as capital in nature.

**Levy of interest under Sections 234B and 234D**

9. The learned AO has erred in consequently levying interest of Rs. 4,772,899 and Rs. 67,140 under Sections 234B and 234D of the Act respectively.

03. The assessee also filed a petition under Rule 11 of the ITAT Rules and later on it revised certain ground as under, pleading that it believed bonafide that it has raised all grounds required to challenge the impugned order, it has now been advised to raise an additional ground in order to specifically challenge certain issue that the impugned order gives rise to. Accordingly, it raised the additional ground and prays that this Tribunal be pleased to admit and adjudicate on the same:

Additional Ground No. 1:

"Without prejudice to any of our grounds in appeal. the learned AO has erred in law and on facts by not allowing deduction under Section 10A of the Income-tax Act, 1961 on the increased eligible profits of eligible units on account of disallowance of expenditure incurred in connection with issue of compulsorily convertible bonds."

**Old Ground 5:** The learned AO has erred in not holding that the provisions of Section 10A of the Act are undertaking specific and consequently erred in setting off losses of other units from the profits of the eligible unit before allowing the deduction under Section 10A of the Act.

**Revised Ground 5:** The learned AO has failed to appreciate that the provisions of Section 10A of the Act are undertaking specific and thereby has erred in law in stating that the deduction under Section 10A can be allowed to the extent of the assessee's total income computed after aggregation of profits/losses of the different units by following his order for AY 2005-06.

04. It submitted that the additional ground is being raised by way of abundant caution, it is fundamental to the appeal and the non-admission and non-adjudication of it would result in an incomplete appreciation and adjudication of the matter. The issues raised in the additional grounds are legal issues and arise out of the order of the lower authorities. Reliance is based on the decisions of the Hon'ble Supreme Court in the case of Jute Corporation of India vs. C.I.T. (187 ITR 688) and National Thermal Power Corporation vs. C.I.T. (229 ITR 383) as well as the full Bench of the Bombay High Court in the case of Ahmedabad Electricity Co. Ltd. (199 ITR 351). The failure to raise the ground at an earlier stage is neither willful nor wanton but due to the reasons stated above. No prejudice would be caused to the Respondent by reason of the above additional ground being admitted and adjudicated and accordingly the balance of convenience is in

favour of such an order being passed by this Tribunal. We have heard the rival contentions, find merit in the submissions and hence admit the additional evidence/ revised grounds.

05. The assessee did not press ground 1, being general and ground no3. On grounds no 2 & 4, it sought relief on the basis of the Jurisdictional High Court decision in CIT v Tata Elxsi 349 ITR 98. We heard rival contentions. The decision of the jurisdictional High Court, supra, clearly lays down the principle that while computing deduction u/s 10A, if the export turnover is calculated after excluding certain expenses, such expenses should also be excluded in computing the total turnover. Since the assessee's submissions are in accordance with the ratio of the jurisdictional High Court, supra, we allow them. Therefore, the corresponding appeal grounds are allowed .

06. On ground nos 5, 6 & 7 and the revised ground no 5, supra, the AR submitted that

1. Provisions of Section 10A of the Act are undertaking specific.
2. Deduction under Section 10 of the Act be computed on a standalone basis without adjusting losses from other units (both 10A unit as well as non-10A units)
3. Deduction under Section 10A not to be restricted to total income

Relied on the Hon'ble Karnataka HC decisions in the case of  
1 Yokogawa India (2012) [341 ITR 385] and

2 Intel Technology India Private Limited (ITA NO. 112 of 2012)

and the following other decisions also :

a. Hon'ble Delhi High Court in the case of CIT vs. TEI Technologies Pvt. Limited (2012) [25 [taxmann.com](http://taxmann.com) 5]

b. Hon'ble jurisdictional Tribunal decision in the case of Synova innovative Technologies Private Limited [ITA No. 381/Bang/07 dated May 2, 2008]

c. Hon'ble Bombay HC in the case of Hindustan Unilever Ltd vs. Deputy Commissioner of Income-tax and Others (2010) [325 ITR 102] and

d. Hon'ble Madras High Court in the case of Madras Machinery Tools Maintenance Ltd vs. CIT (1975) [98ITR 119].

07. We have considered the rival submissions. At the outset, we note that the Jurisdictional High Court in the case of Yokogawa India (2012) [341 ITR 385] held as under :

"31. After making all such computations the assessee would be entitled to the benefit of set off or carry forward of loss as provided under section 72 of the Act. That is the benefit which is given to the assessee under the Act irrespective of the nature of business which he is carrying on. The said benefit is available even to undertakings under section 10B of the Act. The expression "deduction of such profits and gains as derived by an undertaking shall be allowed from the total income of the assessee", has to be understood in the context with which the said provision is inserted in Chapter III of the Act. Sub-section (4) of section 10A clarifies this position. It provides that the profits derived from export of articles or things from computer software shall be the amount which bears to the profits of the business of the undertaking, the same proportion as the export turnover in respect of such articles or things or computer software bears to the total turnover of the business carried on by the undertaking. Therefore, it is clear that though the assessee may be having more than one undertaking for the purpose of section 10A it is the profit derived from export of articles or things or computer software from the business of the undertaking alone that has to be taken into consideration and such profit is not to be included in the total income of the assessee. It is only after the deduction of the said profits and gains, the income of the assessee has to be computed."

Following the above decision, AO is directed to allow the claim to that extent.

08. On grounds no 9, the AR submitted that the AO has erred in disallowing expenditure of Rs 5,26,55,104 incurred in raising the convertible bonds by considering it as capital in nature. Compulsorily convertible bonds represent loan funds and thus represent a debt. The issue of bonds gives rise to a 'debt loan' and not 'share capital' and in the absence of enduring benefit, the expenditure incurred towards bonds should be considered as revenue in nature and relied on the following case laws

1 Hon'ble High Court of Rajasthan in the case of CIT v. Secure Meters Ltd [(2008)[321 ITR 611]

2. Hon'ble SC decision in the case of Secure Meters Limited (reference CC 10548/2009) under order dated 11 August 2011

3. Hon'ble jurisdictional HC decision in the case of CIT vs. ITC -otels Limited (2011) [334 ITR 109]

Other decisions relied upon:

a. Hon'ble Madras HC in the case of South India Corporation (Agencies) Ltd v CIT (2006) [209 CTR 233]

b. Hon'ble Calcutta HC decision in the case of CIT vs. East India Hotels Limited (2001) [252 ITR 860]

c. Hon'ble Jaipur Tribunal decision in the case of Modem Syntex (India) Ltd vs. Dy CIT (2005) [95 TTJ 161]

d. Hon'ble Mumbai Tribunal decision in the case of J.M. Shares and Stock Brokers Ltd vs. DCIT (2003) [83 TTJ 1052] and

e Hon'ble Mumbai Tribunal decision in the case of Voltas Ltd vs. CCIT (1998) [61 TTJ 543]

In this regard, the DRP held as under :

"The assessee had claimed deduction of Rs.5,26,55,104/- as arrangement fees

for obtaining funding by way of convertible bonds to the extent of Rs.133,65,00,000/- from a business associate. The assessee claimed the expenditure so incurred to be in the nature of revenue expenditure. The rationale for the same is that raising of funds by means of fully convertible debentures / bonds is a well known commercial and business practice. Debentures, as noted above, creates or recognizes the existence of a debt which remains to be so till it is repaid or discharged. The mode of discharging the debt created by bonds is by issuing equity shares in lieu of payment in cash. It does not detract in any way the legal character as debt. Therefore, according to the assessee, the decision of the Hon'ble Supreme Court in the case of India Cements Ltd Vs CIT, 60 ITR 52, which has been followed by the ITAT, Jaipur in Moden Syntex (India) Vs DCJT, 95 TTJ 161 and a host of other decisions apply.

The AO has relied on the decision of the ITAT, Ahmadabad Bench in Ashima Syntex Ltd Vs ACIT, 100 ITD 247, wherein it has been held that expenditure incurred by the assessee on issuance of wholly convertible debentures is not allowable as revenue expenditure."

We have considered the rival submissions. The Jurisdictional High Court in CIT v ITC Hotels Ltd 334 ITR 109 , after considering the decision of the Hon'ble High Court of Rajasthan in the case of CIT v. Secure Meters Ltd [(2008)[321 ITR 611] held that even if the debenture has to be converted into a share at a later date, the expenditure so incurred for collection of debentures has to be treated as revenue expenditure. Hence, the assessee's appeal is allowed.

**09.** On the additional ground , the AR submitted that without prejudice to his submission that the professional fees incurred in connection with issuance of compulsorily convertible debentures is an allowable expenditure, the same should be considered as an increment to the eligible profits of Bangalore 10A unit the purpose of computing eligible deduction" under Section 10A of the Act, in case the disallowance made by the Learned AO in this regard is upheld. Placed reliance in the decision of the Hon'ble Bombay

in the case of CIT vs Gem Plus Jewellery India Ltd (194 Taxman 192) and the following other decisions :

a. Hon'ble Mumbai Tribunal in the case of International Gold Co Ltd vs ITO (ITA No 597/MUM/2010/2006-07)

b. Hon'ble Delhi Tribunal in the case of ITO vs Sahasra Electronics Pvt Ltd (ITA No. 1951/Del/2009)

c. Hon'ble Hyderabad Tribunal in the case of Zavata India (P) Ltd (ITA No. 1100/Hyd/2009) and

d. Hon'ble Hyderabad Tribunal in the case of Planet Online (P) Ltd (ITA No.1016/Hyd/2007).

We have considered the rival submissions. Since, the assessee's plea is allowed, supra, this ground is treated as academic.

**Ground no.9 :** Consequential in nature.

In the result, the assessee's appeal is allowed.

Order pronounced in the open court on 6<sup>th</sup> day of February, 2017.

Sd/-  
(VIJAY PAL RAO)  
JUDICIAL MEMBER

Sd/-  
(S. JAYARAMAN)  
ACCOUNTANT MEMBER

MCN\*

Copy to:

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

By Order

Assistant Registrar