

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

**BEFORE SHRI GEORGE GEORGE, K, JUDICIAL MEMBER  
AND  
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

**ITA No.1571(B)/2014  
(Assessment year : 2010-11)**

The Deputy Commissioner of Income-tax,  
Circle-6(1)(2),  
Rashthrohana Bhavan, Nrupathunga Road,  
Bangalore

Appellant

**Vs**

M/s Sobha Renaissance Information Technology Pvt.Ltd,  
SRIT House, NO.113/1B, ITPL Main Road,  
Kundalahalli,  
Bangalore-560 037

**PAN No.AAEC6273N**

Respondent

**Revenue by : Dr. P.K.Srihari, Addl.CIT  
Assessee by : Shri K.R.Vasudevan, Advocate**

**Date of hearing : 13-08-2015  
Date of pronouncement : 14-08-2015**

**ORDER**

**PER SHRI GEORGE GEORGE, K JM:**

This appeal at the instance of revenue, is directed against the CIT(A)'s order dated 26-09-2014. The relevant assessment year is 2010-11.

2. The revenue in its appeal has raised eight grounds. Out of the eight grounds, ground no.1,7 & 8 are general in nature and no specific adjudication is called for and hence the same are dismissed.

3. Ground no.2 & 3 is with regard to re-computation of deduction u/s 10A of the IT Act, 1961. Ground no.4 to 6 is with reference to amounts added back being employees contribution towards PF and ESI, the remittance of which was beyond the due date.

4. We shall dispose of the grounds issue wise as under;

5. Ground no.2 & 3 (re-computation of deduction u/s 10A of the IT Act)

5.1 Brief facts of the above case are as follows;

The AO re-computed the deduction u/s 10A of the Act, by reducing certain amounts incurred in foreign currency from the export turnover on the ground that the said expenses have been incurred in connection with rendering technical services outside India.

5.2. On appeal before the CIT(A), it was contended that if the expenses are reduced from the export turnover necessarily the same ought to be reduced also from the total turnover while computing the deduction u/s 10A of the IT Act, 1961. For the above proposition, the assessee relied on the judgment of the Hon'ble jurisdictional High Court in the case of M/s Tata Elxsi Ltd reported in 349 ITR 98. The CIT(A) following the judgment of the Hon'ble jurisdictional High Court allowed the appeal of the assessee.

5.3. The revenue being aggrieved is in appeal before us.

5.4. We have heard the rival submissions and perused the material on record. The issue raised by the revenue is no longer *res integra* and has now been decided by the Hon'ble High Court of Karnataka in the case of in the case of Tata Elxsi Ltd. in 349 ITR 98(Kar.) wherein it has been held that whatever is excluded from export turnover should also be excluded from the total turnover. The fact that the revenue has not accepted the decision of the Hon'ble Supreme Court cannot be the basis not to follow the decision of the Hon'ble Karnataka High Court. In view of the above reasoning, we see no reason to interfere with the order of the learned CIT(A) and we confirm the same. It is ordered accordingly.

6. Ground no.4 to 6 (adding back of Rs.18,31,008/- being employees contribution of PF and ESI on account of its remission beyond the due date).

6.1. Brief facts in relation to the above grounds are as follows;

The AO disallowed a sum of Rs.18,31,008/- (Rs.18,24,647/- towards employees contribution to PF and Rs.6,361 towards employees contribution to ESI) on account of delay in remittance of employees contribution of PF & ESI.

6.2. Before the CIT(A) it was contended that the payments have been made before the due date of filing of the return and the same has to be

allowed as deduction. The assessee for the above proposition relied on the following judgment/orders.

- a. *CIT & Others Vs Sabari Enterprises & Others (2007)298 ITR 141(Kar.)*
- b. *Asia Power Projects (P)Ltd Vs DCIT (2007)(Bangalore ITAT).*
- c. *Kuber Hinges(P)Ltd Vs ITO(2008) 120 TTJ 284(Delhi ITAT)*
- d. *Sunil Goel Vs ACIT(2008) 118 TTJ 415 (Delhi ITAT)*
- e. *DCIT Vs Seagram Distilleries Ltd (2009) ITA/2532/Del/2006(Delhi ITAT)*

6.3. The CIT(A) following the judgment of the Hon'ble jurisdictional High Court in the case of M/s Sabari Enterprises & Others (Supra) decided the issue in favour of assessee.

6.4 We have heard the rival submissions and perused the material on record. The Hon'ble jurisdictional High Court in the case of M/s Sabari Enterprises (Supra) held as follows;

*“ The explanation clause(va) of Section 36 of the IT Act, further makes it very clear that the amount actually paid by the assessee on or before the due date applicable in this case at the time of submitting returns of income under section 139 of the Act to the revenue in respect of the previous year can be claimed by the assesseees for deduction out of their gross income. The above said statutory provisions of the IT Act abundantly make it clear that the contention urged on behalf of the revenue that deducted from out of gross income for payment of tax at the*

*time of submission of returns under section 139 is permissible only if statutory liability of payment of PF or other contribution funds referred to in clause(b) are paid within the due date under the respective statutory enactments by the assesseees as contended by the learned counsel for the revenue is not tenable in law and therefore, the same cannot be accepted by us (para 7)".*

6.5. In view of the above reasoning of the Hon'ble jurisdictional High Court, the CIT(A) was justified in allowing the appeal of the assessee and we see no reason to interfere with the same. It is ordered accordingly.

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

Order pronounced in the open Court on the 14<sup>th</sup> August, 2015.

**Sd/-**  
**(JASON P BOAZ)**  
**ACCOUNTANT MEMBER**

D a t e d : 14-08-2015

Place: Bangalore

**am\***

**Copy to :**

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

**Sd/-**  
**(GEORGE GEORGE,K)**  
**JUDICIAL MEMBER**

By order  
AR, ITAT, Bangalore