

IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER
AND SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

ITA No.807/Bang/2012
Assessment year : 2010-11

The Deputy Commissioner of Income Tax, Circle 12(2), Bangalore.	Vs.	M/s Quality Engineering & Software Technologies P. Ltd., No.55, Quest Towers, Whitefield Main Road, Mahadevapura, Bangalore – 560 025. PAN : AAACQ 0369B
APPELLANT		RESPONDENT

Appellant by	:	Shri S. Nambirajan, Jt. CIT(DR)
Respondent by	:	Shri Ankur Pai, CA

Date of hearing	:	27.07.2015
Date of Pronouncement	:	30.07.2015

ORDER

Per N.V. Vasudevan, Judicial Member

This appeal by the revenue is against the order dated 02.03.2012 of the CIT(Appeals)-III, Bangalore relating to assessment year 2007-08.

2. The only issue that arises for consideration in this appeal is as to whether the CIT(Appeals) was justified in directing the AO to exclude the expenses towards telecommunication charges amounting to Rs.44,39,870 as attributable to delivery of software and expenditure incurred on foreign travel and conveyance, in foreign currency, of Rs.12,59,20,855 as expenditure incurred in providing services outside India, from the total turnover as well as export turnover, while computing deduction u/s. 10A of the Act.

3. According to the AO, as per the definition of export turnover given in clause (iv) to Explanation 2, the expenses incurred for freight expenses attributable to the delivery of the product or expenditure incurred in providing services outside India should be reduced from the export turnover. However, the provisions of section 10A do not provide for exclusion of such expenditure from total turnover. In the absence of a definition for total turnover in section 10A, the normal definition of total turnover has to be adopted and as such the expenses which are reduced from the export turnover in accordance with the specific definition cannot be reduced from the total turnover.

4. On appeal by the assessee, the CIT(Appeals) following the decision of the Hon'ble High Court of Karnataka in the case of *CIT v. Tata Elxsi Ltd.*, 349 ITR 98 (Karn), held that whatever is excluded from the export turnover, has also to be excluded from the total turnover.

5. Aggrieved by the order of the CIT(Appeals), the revenue is in appeal before the Tribunal.

6. The only grievance of the Revenue is that the decision of Hon'ble High Court of Karnataka in *Tata Elxsi (supra)* has not attained finality and a SLP by the department is pending before the Hon'ble Supreme Court. We are of the view that as of today, law declared by the Hon'ble High Court of Karnataka which is the jurisdictional High Court is binding on us. We therefore hold that the order of CIT(A) does not call for any interference and accordingly the same is confirmed.

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

Pronounced in the open court on this 30th day of July, 2015.

Sd/-

(ABRAHAM P. GEORGE)
Accountant Member

Sd/-

(N.V. VASUDEVAN)
Judicial Member

Bangalore,
Dated, the 30th July, 2015.

/D S/

Copy to:

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

By order

Assistant Registrar /
Senior Private Secretary
ITAT, Bangalore.