

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH ' C '**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

I.T. A. No.1356/Bang/2016
(Assessment Year : 2008-09)

Dy. Commissioner of Income Tax,
Circle 1(1)(1), Bangalore.

.... Appellant.

Vs.

M/s. Akamai Technologies India Pvt. Ltd.,
NO.77,Salarpuria Softzone, 2nd & 3rd Floors, A Wing,
No.80/1, Bellandur Village, ORR, Bangalore-560 037.

..... Respondent.

C.O. No.25/Bang/2017
(In I.T. A. No.1356/Bang/2016)
(Assessment Year : 2008-09)
(By Assessee)

Assessee By : Shri Sandeep H Huilgol, Advocate.

Respondent By : Shri S. Nambirajan, Addl. CIT (D.R)

Date of Hearing : 27.09.2017.

Date of Pronouncement : 27.09.2017.

O R D E R

Per Shri Vijay Pal Rao, J.M. :

This appeal by the revenue and Cross Objection by the assessee are directed against the order dt.30.06.2016 of Commissioner of Income Tax (Appeals)-14, Bangalore for the Assessment Year 2008-09.

2. The revenue has raised the following grounds :

1. The order of the Learned CIT (Appeals), 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 Ld. CIT(A) erred in directing the AO to follow parity between the denominator and numerator while computing eligible deduction u/s.10A after reducing telecommunication expenses of Rs.1,04,01,449/- and travelling expenses incurred in foreign currency of Rs.1,27,88,886/- attributable to the delivery of computer software outside India from 'export turnover' and 'total turnover' following the ratio laid down by the Hon'ble High Court of Karnataka in the case of *Tata Elxsi Limited* in (2012) 349 ITR 98 (Kar) without appreciating the fact that there is no provision in Section 10A that such expenses should be reduced from the 'total turnover' also, as clause (iv) of the *Explanation 2* to Section 10A provides that such expenses are to be reduced only from the 'export turnover'.
3. The Ld. CIT(A) erred in not appreciating the fact that the jurisdictional High Court's decision in the case of *Tata Elxsi Limited (2012) 349 ITR 98 (Kar)* has not been accepted by the department and an appeal has been filed before the Hon'ble Supreme Court, hence not reached finality.
4. For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the CIT(A) be reversed and that of the Assessing Officer be restored.
5. The appellant craves leave to add, to alter, to amend or delete any of the grounds that may be urged at the time of hearing of appeal.

3. Thus it is clear that the only issue raised by the revenue is regarding exclusion of telecommunication expenses and travelling expenses incurred in foreign currency from export turnover as well as total turnover for computation of deduction under Section 10A of the Income Tax Act, 1961 (in short 'the Act').

4. The assessee in the cross objection has supported the order of the CIT (Appeals).

5. We have heard the rival submissions and considered the relevant material on record. We find that the issue of expenditure incurred towards telecommunication charges and travelling expenses in foreign currency is reduced from export turnover an equal amount should also be reduced from total turnover while computing the deduction under section 10A of the Act, is covered in favour of the assessee by the decision of the Hon'ble Karnataka High Court in the case of **CIT Vs. Tata Elxsi Ltd.** 349 ITR 98 (Kar). The decision of Hon'ble jurisdictional High Court has been followed in a number of cases in co-ordinate benches of ITAT. Hence, this issue is decided against the revenue and in favour of assessee.

5. In the result, the revenue's appeal as well as C.O. of assessee are dismissed.

Order pronounced in the open court on 27th Sept., 2017.

Sd/-
(INTURI RAMA RAO)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Bangalore,
Dt.27.09.2017.

*Reddy gp