

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

**BEFORE SHRI N.V VASUDEVAN, JUDICIAL MEMBER
AND
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

ITA Nos.429 & 430/Bang/2017
(Asst. Year – 2007-08 & 2010-11)

The Dy. Commissioner of Income-tax,
Circle – 2(1)(1),
Bengaluru.

. Appellant

Vs.

M/s Crossdomain Solutions Pvt. Ltd.,
CENEX, 94, 2nd Main, Industrial
Suburb II Stage, Yeshwanthpur,
Bengaluru.
PAN – AACCC1271G

. Respondent

Appellant by : Shri L.V Bhaskar Reddy, Addl. CIT
Respondent by : Shri Ashwin Rao, C.A

Date of Hearing : 5-10-2017
Date of Pronouncement : 6-10-2017

ORDER

PER SHRI JASON P BOAZ, ACCOUNTANT MEMBER :

These appeals by the Revenue are directed against the common order of Commissioner of Income-tax (Appeals) -2, Bangalore dated 24/7/2015 for asst. years 2007-08 and 2010-11. Since common issues

are involved these appeals were heard together and are being disposed off by way of this common order.

**ORDER ON CONDONATION OF DELAY IN FILING THE
APPEALS FOR ASST. YEARS 2007-08 TO 2010-11**

2.1 The impugned order of the CIT(A)-2, Bangalore dated 24/7/2015 was admittedly served on Revenue on 19/8/2015, but these appeals for asst. years 2007-08 and 2010-11 were filed only on 22/2/2017, thereby leading to a delay of 494 days in filing these appeals.

2.2 According to the Id DR for Revenue, the delay in filing the appeals was on account of, inter alia, change in jurisdiction in the Department of the AO's. The AO's who passed the orders of assessment were ITO, Ward – 11(1) Bangalore for asst. year 2007-08 and DCIT, Circle-11(2) Bangalore for asst. year 2010-11 respectively. However, during appellate proceedings before CIT(A), there was a re-organization of the Department whereby the present AO having jurisdiction in DCIT, Circle - 2(1)(1), Bangalore. This has led to some confusion in linking up the impugned orders of the Id CIT(A) with the records of assessment with the new AO i.e DCIT, Circle-2(1)(1), Bangalore having jurisdiction of the case; thereby leading to the aforesaid delay in filing the appeals for both asst. years 2007-08 and 2010-11. It is submitted that the delay in filing these appeals was neither deliberate nor with malafide intentional and there was

reasonable cause for filing the appeal belatedly. It was prayed that a lenient view be taken in the matter and these appeals be admitted for hearing and adjudications in accordance with the decision of the Hon'ble Apex Court in the case of MST Katiji & Others (1987) 167 ITR 471 (SC).

2.3 The Id AR for the assessee was heard in the matter and did not object to the delay in filing the appeals for asst. years 2007-08 & 2010-11 being condoned by the Bench and for hearing with the appeals on merits.

2.4 We have perused and carefully considered the material on record and taken into account the oral submissions of the Id DR for Revenue seeking condonation of the delay of 494 days in filing the appeals for both asst. years 2007-08 and 2010-11 and the fact that the Id AR for the assessee stating that there was no objection from the assessee's side for the Bench to condone the delay in filing these appeals, so that these appeals can be admitted for hearing and adjudication of issues on merits of the grounds raised. Taking into account the above submissions of both parties and respectfully following the principles laid down by the Hon'ble Apex Court in the case of MST Katiji & Others (Supra) for dealing with matters of condonation of delay i.e that substantial justice should prevail over technical considerations; we are of the view that Revenue's default in filing these appeals belatedly was neither deliberate nor intentional and accordingly in the interest of substantial justice see this is a fit case for condonation of delay and condone the delay of 494 days in

filing the appeals for asst. year 2007-08 and 2010-11 before the Tribunal. Consequently, the appeals for asst. years 2007-08 and 2010-11 are admitted for hearing and adjudication.

ORDER

3. Briefly stated, the facts of the case relevant for these appeals are as under:-

3.1 The assessee, a company rendering ITE enabled services, filed its return of income for asst. years 2007-08 on 30/10/2007 and 2010-11 on 8/10/2010 declaring NIL income and loss of Rs.76,43,561/- respectively after claiming deduction u/s 10B of the Income-tax Act, 1961 (in short 'the Act'). The returns were processed u/s 143(1) of the Act and the case was subsequently taken up for scrutiny. The assessment for these years were completed u/s 143(3) of the Act vide order dated 24/12/2009 for asst. year 2007-08 and order dated 22/2/2013 for asst. year 2010-11, denying the assessee's claims for deduction u/s 10B of the Act. On appeal, the CIT(A)-2, Bangalore allowed the assessee's appeals, inter alia, in respect of its claim for deduction u/s 10B of the Act following the judicial pronouncements rendered on this issue by the Hon'ble Karnataka High Court in the case of CIT Vs. Yokogawa India Ltd., (341 ITR 385) and Tata Elxsi Ltd., (349 ITR 98).

4.1 Aggrieved by the combined orders of the CIT-2, Bangalore dated 24/7/2015 for both asst. years 2007-08 and 2010-11, Revenue has filed these appeals raising the following identical grounds for both asst. years:-

“1) The order of the Ld. CIT(A) is contrary to the facts and circumstances of the case and hence not sustainable.

2) The CIT(A) has erred in relying on the decision of the Hon'ble High Court of Karnataka in CIT v. Yokogawa India Ltd. [341 FIR 385] and the decision of the Hon'ble FIAT, Bangalore 'B' Bench in ITA No.1074/Bang/2011 vide order dated 29.6.2012 for the A.Y.2006-07 in the assessee's own case, by directing the AO to calculate deduction u/s.10B of the Act before setting off the brought-forward losses/depreciated for the assessment years in question as the department has filed appeal u/s.260A before the Hon'ble High Court.

3) For these and other grounds that may be urged at the time of hearing, it is prayed that the order of the CIT(A) in so far as it relates to the above grounds may be reversed and that of the Assessing Officer may be restored.

4) The appellant craves leave to add, alter, amend and/or delete any of the grounds mentioned above.”

4.2 The Id DR for Revenue was heard in support of the grounds raised (Supra) and placed strong reliance on the finding in the orders of the AO on this issue.

4.3 Per contra, the Id AR for the assessee submitted that the assessee's claim for being allowed the deduction claimed u/s 10B of the Act is squarely covered in its favour by the decision of the Hon'ble Karnataka High Court in the case of CIT Vs. Yokogawa India Ltd. (341 ITR 385). It is submitted that the Id CIT(A), following the aforesaid decision, has rightly directed the AO to compute the deduction u/s 10B of the Act before setting off the brought forward business losses and depreciation for the asst. years in question.

4.4.1 We have heard the rival contentions and perused and carefully considered the material on record. From a perusal of the details on record it is seen that the AO was of the view that deduction u/s 10B of the Act was to be allowed only on the income computed after setting off the brought forward losses and depreciation. Accordingly, the assessee's income for both asst. years was determined at NIL by the AO by first setting off the brought forward losses/depreciation from the business income for calculating the deduction u/s 10B of the Act.

4.4.2 We find that the issue in dispute before us is squarely covered in favour of the assessee by the decision of the Hon'ble Karnataka High Court in the case of CIT Vs. Yokogawa India Ltd. (2012) 341

ITR 385 (Kar). In its decision the Hon'ble High Court had held that as the income of sec. 10A unit has to be excluded at source itself before arriving at the gross total income/loss. As the deduction u/s 10A of the Act has to be included from the total income of the assessee, and the brought forward business loss and depreciation being set off against such profit and gains of the undertaking and a whole could not arise. Section 10A of the Act being analogous with sec. 10B of the Act, the aforesaid decision of the Hon'ble High Court would equally apply to the case on hand. In this view of the matter and respectfully following the decision of the Hon'ble Karnataka High Court in Yokogawa India Ltd. (341 ITR 385). We uphold the impugned orders of the Id CIT(A) in directing the AO to compute the deduction u/s 10B of the Act in the case on hand without setting off the brought forward business losses and depreciation from the assessee's income. We hold and direct accordingly. Consequently, the grounds raised by Revenue are dismissed.

4. In the result, the Revenue's appeal for the asst. years 2007-08 and 2010-11 are dismissed.

Order pronounced in the open court on **6th October, 2017.**

Sd/-
(N.V VASUDEVAN)
JUDICIAL MEMBER
Bangalore
Dated : 6/10/2017
Vms

Sd/-
(JASON P BOAZ)
ACCOUNTANT MEMBER

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

By order

Sr. Private Secretary, ITAT, Bangalore