

IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" BENCH : BANGALORE

BEFORESHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER AND  
SHRI GEORGE GEORGE K, JUDICIAL MEMBER

IT(TP)A No.830/Bang/2016  
Assessment Year :2007-08

The Assistant Commissioner of Income Tax, Circle – 1(1)(1), Bangalore.	Vs.	M/s. ANZ Operations & Technology Pvt. Ltd., # SEZ Unit RMZ Ecoworld, Campus SA, Ground Floor and Levels 4 to 9, SarjapurMarthahalli Outer Ring Road, Devarabesanahalli Village, VarthurGobli, Bangalore East Taluk, Bangalore-560 103.  <b>PAN: AABCA 9002G</b>
APPELLANT		RESPONDENT

C.O. No. 31/Bang/2017  
(in IT(TP)A No. 830/Bang/2016)  
Assessment Year : 2007-08

M/s. ANZ Operations & Technology Pvt. Ltd., # SEZ Unit RMZ Ecoworld, Campus SA, Ground Floor and Levels 4 to 9, SarjapurMarthahalli Outer Ring Road, Devarabesanahalli Village, VarthurGobli, Bangalore East Taluk, Bangalore-560 103.  <b>PAN: AABCA 9002G</b>	Vs.	The Assistant Commissioner of Income Tax, Circle – 1(1)(1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri P.K. Prasad, Advocate & Shri Umashankar Gautam, Advocate
Revenue by	:	Shri Rajashekar Reddy L., CIT (DR)

Date of hearing	:	30.10.2017
Date of Pronouncement	:	31.10.2017

**ORDER**

*Per Shri A.K. Garodia, Accountant Member*

This appeal is filed by the revenue and CO is filed by the assessee and these are directed against the order of CIT(A) -I, Bangalore dated 29.01.2016 for Assessment Year 2007-08.

2. The grounds raised by the revenue in its appeal are as under.

*“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 CIT(A) erred in directing the AO to recompute the deduction u/s.10A after reducing travel expenses to the tune of Rs.11,44,86,655/- from the export turnover as well as the total turnover while calculating deduction u/s.10A following the ratio laid down by the Hon'ble High Court in the case of Tata Elxsi Limited in 349 ITR 98 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 to Section 10A provides that such expenses are to be reduced only from the export turnover.*

*3. The CIT(A) erred in not appreciating the fact that the jurisdictional High Court's decision in the case of Tata Elxsi Limited 349 ITR 98 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. The grounds raised by the assessee in its CO are as under.

*“1. That the learned Commissioner of Income-tax (Appeals) - I, Bangalore ("learned CIT(A)") erred in not adjudicating on ground nos. 1, 2 and 3 in the grounds of appeal raised by the assessee challenging the validity of the reassessment proceedings under section 147 of the Income-tax Act, 1961 ("the Act").*

*2. That the learned CIT(A) erred in not quashing the assessment order dated June 27, 2014 purportedly passed under section 143(3) read with section 147 of the Act as being bad in law.*

*3. That the learned CIT(A) erred in not holding that the proceedings under section 147 was initiated after four years from the end of assessment year in appeal was in excess of jurisdiction without any failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment.*

*4. That the Respondent craves leave to add to and/ or to alter, amend, rescind, modify the grounds herein above or produce further documents before or at the time of hearing of this Appeal.*

*Each of the above objection is independent and without prejudice to the other grounds of objection preferred by the Respondent.”*

4. It was submitted by Id. AR of assessee that the grounds regarding validity of reopening was raised before CIT(A) and in this regard, he drawn our attention to para no. 3 of the order of CIT(A) where he has reproduced grounds raised by the assessee before him and as per the same, the ground nos. 1 to 3 are regarding validity of the reassessment proceedings. He further submitted that the submissions of the assessee before the CIT(A) on this issue are also reproduced by CIT(A) on pages 5 to 7 of his order and thereafter, he has reproduced the assessee's submissions on merit as per ground nos. 4 to 8 raised before the CIT(A) and after that as per a small Para on last page of his order, he decided the issue on merit and there is no decision on this aspect i.e. the validity of reassessment proceedings. At this juncture, it was observed by the bench as to whether the issue regarding validity of reassessment proceedings has not become academic in the present appeal because the issue on merit is decided by CIT(A) in favour of the assessee by following the various tribunal orders and high court judgments as per Para no. 4 of the order of CIT(A). In reply, it was submitted by Id. AR of assessee that although relief is allowed by CIT(A) on merit but the assessee wants to pursue this ground of technical objection also because the decision on merit may get reversed if the judgment of Hon'ble Karnataka High Court rendered in the case of CIT Vs. Tata Elxsi Ltd. as reported in 349 ITR 98 is reversed in future by Hon'ble Supreme Court. The Id. DR of revenue had nothing to say except this that in case, the issue regarding validity of reassessment proceedings is to be decided then the entire issue should go back to the file of CIT(A) for fresh decision because the issues on technical aspect should be decided first before decision on merit.
5. We have considered the rival submissions. In our considered opinion, if technical objection has been raised by assessee in the form of raising objection regarding validity of reassessment proceedings and the assessee is pressing this ground then this issue should be decided first before any decision on merit. As per the impugned order, the CIT(A) has not decided this issue on technical aspect and he has decided the issue only on merit. Hence, we set aside the order of CIT(A) and restore the entire matter back to the file of CIT(A) for fresh decision with the direction that he should decide the issue regarding the validity

of reassessment proceedings first and thereafter, he should decide the issue on merit afresh.

6. In the result, the appeal of the revenue and the Cross Objection of the assessee are allowed for statistical purposes.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-  
(GEORGE GEORGE K)  
Judicial Member

Sd/-  
(ARUN KUMAR GARODIA)  
Accountant Member

Bangalore,  
Dated, the 31<sup>st</sup> October, 2017.  
/MS/

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

By order

Senior Private Secretary,  
Income Tax Appellate Tribunal,  
Bangalore.