

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

**BEFORE SHRI JASON P BOAZ, ACCOUNTANT MEMBER
AND SHRI LALIET KUMAR JUDICIAL MEMBER**

ITA Nos.413 to 415/Bang/2017
(Asst. Years : 2009-10 to 2011-12)

The Dy. Commissioner of Income-tax,
Circle ó 6(1)(2),
Bengaluru.

.....Appellant

Vs.

M/s Societe Generale Global Solution
Centre Pvt. LTd.,
10th Floor, Voyager Building,
Ascendas ITPB SEZ, International Tech Park,
White Field, Bengaluru-560 066.

.....Respondent

C.O. No.87 to 89/Bang/2017
(In ITA Nos.413 to 415/Bang/2017)
(By Assessee)

Appellant by : Ms. Neera Malhotra, CIT (DR)
Respondent/C.O. by : Shri Rohit Jain, C.A

Date of Hearing : 22.03.2018.

Date of Pronouncement : 23.03.2018

ORDER

PER BENCH :

These appeals by Revenue are directed against the orders of the CIT(A)-6, Bangalore dated 25.10.2016 for Assessment Years 2009-10 to 2011-12. The assessee has also preferred Cross Objections in the matter.

2. Briefly stated, the facts of the case are as under:-

2.1 The assessee, a company engaged in the business of providing software development services, and IT enabled services (ITeS), filed its returns of income for Assessment Years 2009-10 to 2011-12 claiming deduction u/s. 10A / 10AA of the Income Tax Act, 1961 (in short the Act). The case was taken up for scrutiny and the assessments for these years was completed u/s. 143(3) of the Act, wherein the Assessing Officer, inter alia, disallowed the assessee's claim for deduction u/s. 10A/10AA of the Act to the extent of Rs.2,32,16,210 for A.Y. 2009-10 and Rs.4,08,36,933 for A.Y. 2010-11 and Rs.7,66,65,759 for A.Y. 2011-12. On appeal, the CIT(A)-6, Bangalore, in the impugned orders for A.Y. 2009-10 to 2011-12 partly allowed the assessee's appeal vide separate orders dated 25.10.2016 in respect of the assessee's claim for deduction u/s. 10A/10AA of the Act following the decision of the Hon'ble Karnataka High Court in the case of CIT v Tata Elxsi Ltd. (349 ITR 98) (Kar).

3.1 Aggrieved by the order of the CIT(A)-6, Bangalore dated 25.10.2016 for Assessment Years 2009-10 to 2011-12, Revenue has filed this appeal, raising the following identical grounds for all three assessment years :-

“1.The order of the CIT (Appeals) is opposed to law and the facts and circumstances of the case.

2. *On the facts and in circumstances of the case, the CIT(A) erred in citing the ratio laid down by the Hon'ble High Court in the case of CIT Vs Tata Elxsi Ltd. reported in 349 ITR 98 and directing the AO to reduce expenses incurred in foreign currency, both from Export Turnover as well as from Total Turnover for the purpose of computation of deduction u/s 10A, without appreciating the fact that the statute allows exclusion of such expenditure ONLY from Export Turnover by way of a specific definition for Export Turnover in the Act. On the other hand, there is no specific provision in Section 10A warranting exclusion of the above expenses from the Total Turnover also.*

3. *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) in so far as it relates to the above grounds may be reversed and that of the Assessing Officer be restored.*

4. *The appellant craves leave to add, alter, amend or delete any of the grounds that may be urged at the time of hearing of the appeal.*

3.2 The Id. DR was heard in support of the grounds raised.

3.3 We have heard the rival contentions and perused and carefully considered the material on record; including the judicial pronouncement cited. As regards the issue of reduction of the items of expenditure incurred in foreign currency such as communication expenses, etc. which are attributable to the delivery of software outside India, the jurisdictional High Court of Karnataka in the case of CIT v Tata Elxsi Ltd (349 ITR 98) (Kar) has held that when certain expenses are excluded from the export turnover for the purposes of computing deduction admissible under the Act; like u/s.10A of the Act, such expenses are also to be excluded from total turnover, as export turnover is a part of total turnover. The decision in the case of Tata Elxsi Ltd (supra) has also been followed by the Hon~~o~~ble Court in its order in the case of DCIT v Motor Industries Co. Ltd., (ITA No. 776/2006, 744/2007 and 1155/2006 dated 13.06.2014), holding that if any expenditure is sought to be removed from export turnover, then it should also be reduced from total turnover for the purposes of computing the eligible deduction u/s. 10A / 10A of the Act. In this legal and factual matrix of the case, as discussed above, we find no reason to interfere with or deviate from the finding rendered by the Id. CIT(A) on this issue, and therefore uphold the same. Consequently, the grounds S.Nos. 1 to 4 raised by revenue for A. Ys 2009-10 to 2011-12 are dismissed.

4.1 In its Cross Objections (C.O.), the assessee has raised the following ground for all three Asst. Years 2009-10 to 2011-12 :

“1. Adjustments made to the ‘export turnover’ while computing deduction under section 10A of Income Tax Act, 1961 (‘the Act’).

1.1 The ld. CIT(Appeals) erred in not holding that no expenditure should be reduced from the ‘export turnover’, while computing the deduction u/s.10A of the Act.”

4.2 As revenue's appeals for A.Ys 2009-10 to 2011-12 on the assessee's claim for deduction u/s.10A/10AA of the Act are dismissed and the assessee's C.Os. are only an alternate ground raised on the deduction u/s.10A/10AA of the Act, which has already been decided, there is no requirement for adjudication of the C.Os., which are accordingly dismissed.

5. In the result, Revenue's appeal for Assessment Years 2009-10 to 2011-12 and the assessee's Cross Objections are both dismissed.

Order pronounced in the open court on 23rd March, 2018.

Sd/-
(LALIET KUMAR)
JUDICIAL MEMBER

Sd/-
(JASON P BOAZ)
ACCOUNTANT MEMBER

Bangalore

Dated : 23.03.2018

* Reddy gp

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