

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

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

ITA No.2493/Bang/2017
(Asst. Year 2011-12)

The Dy. Commissioner of Income-tax,
Circle-7(1)(2),
Bangalore.

. Appellant

Vs.

M/s Yahoo Software Development Pvt. Ltd.,
Torrey Pines, Embassy Golf Links,
Business Park, Off Indiranagar,
Koramangal Intermediate Ring Road,
Bangalore.

. Respondent

Appellant by : Ms. Neera Malhotra, CIT

Respondent by : Shri Umashankar Gautam, Advocate

Date of Hearing : 19-3-2018

Date of Pronouncement : 21-3-2018

ORDER

PER SHRI JASON P BOAZ, ACCOUNTANT MEMBER :

This appeal by Revenue is directed against the order of the
CIT(A)-7, Bangalore dated 1.9.2017 for Assessment Year 2011-12.

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

2.1 The assessee, a company engaged in the business of software development and providing software solutions to its clients, filed its return of income for Assessment Year 2011-12 on 29.11.2011 declaring total income of Rs.1,44,00,490/- after, inter alia, claiming deduction u/s. 10A of the Income Tax Act, 1961 (in short 'the Act'). Book profits u/s 115JB of the Act were computed at Rs.1,30,61,04,398/-. The return was processed u/s. 143(1) of the Act and the case was subsequently taken up for scrutiny. The assessment was completed u/s. 143(3) of the Act vide order dated 20.03.2015 wherein the assessee's income was determined at Rs.6,59,61,950/- in view of, inter alia, the restriction of the assessee's claim for deduction u/s. 10A of the Act. On appeal, the CIT(A)-3, Bangalore partly allowed the assessee's appeal vide order dated 1.9.2017. In doing so, the Id. CIT(A) allowed the assessee's claim for deduction u/s. 10A 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)-7, Bangalore dated 1.9.2017 for Assessment Year 2010-11, Revenue has filed this appeal, raising the following grounds:-

"1. The order of the learned IT(A) is opposed to law and facts of the case.

2. "Whether on the facts and circumstances of the case, the CITA) was justified in law in holding that the expenditure incurred towards data link charges/ telecommunication charges and foreign travel expenses attributable to delivery of computer software for providing technical services outside India to be excluded both from export turnover and total turnover for the purpose of computation of deduction u/s IOA of the Act, whereas such exclusion is permitted to arrive at the export turnover only as per the definitions given in sec. 1 OA of the Act and total turnover has not been defined in the section?"

3. "Whether the CIT(A) is correct in law in following the judgments of jurisdictional High Court in the case of CH' vs. Tata Elxsi Ltd., which has not become final since the same has not been accepted by the Department and SLPs are pending before the Hon'ble Apex Court"?

4. 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.

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

The ld. DR was heard in support of the grounds raised.

3.2 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 data link telecommunication charges, and foreign 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'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 also for the purposes of computing the eligible deduction u/s. 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 5 raised by revenue are dismissed.

4. In the result, Revenue's appeal for Assessment Year 2011-12 is dismissed.

Order pronounced in the open court on **21st March, 2018.**

Sd/-
(LALIET KUMAR)
JUDICIAL MEMBER

Sd/-
(JASON P BOAZ)
ACCOUNTANT MEMBER

Bangalore
Dated : 21/3/2018
Vms

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