

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

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

I.T. (T.P)A. No.1239/Bang/2013
(Assessment Year : 2004-05)

Dy. Commissioner of Income Tax,
Circle 11(4), Bangalore.

.... Appellant.

Vs.

M/s. JDA Software Private Limited,
(formerly i2 Technologies India Private Limited)
Tower A, Mantri Comercio,
ORR, Bellandur, Bangalore-560 103.
PAN AAAC17334Q

..... Respondent.

Appellant By : Shri C. Sundar Rao, CIT (D.R)
Respondent By : S/Shri Ved Jain & Darpan Kirpalan.

Date of Hearing : 10.09.2018.
Date of Pronouncement : 28.09.2018.

O R D E R

Per Shri Jason P Boaz, A.M. :

This appeal by the assessee is directed against the order of
Commissioner of Income Tax (Appeals)-IV, Bangalore dt.3.5.2013 for the
Assessment Year 2004-05.

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

2.1 The assessee company, engaged in providing software development and related services to its Associated Enterprises (AE) , has a 100% EOU at SEEPZ, Mumbai and a STPI Unit in Bangalore. For Assessment Year 2004-05, the assessee filed its return of income on 22.7.2005 declaring income of Rs.1,12,94,640. Subsequent to its amalgamation, the assessee filed a revised return of income for Assessment Year 2004-05 dt.27.6.2006 declaring total income of Rs.9,78,94,096. The case was taken up for scrutiny and thereafter the Assessing Officer made reference to the Transfer Pricing Officer (TPO) under Section 92CA of the Income Tax Act, 1961 (in short 'the Act') for determination of the Arm' s Length Price (ALP) of the international transactions entered into by the assessee with its Associated Enterprises (AE) in the year under consideration. The TPO passed this order under Section 92CA of the Act on 20.12.2006 and proposed Transfer Pricing Adjustment to the tune of Rs.4,01,23,850 comprising :-

(i) Back Office services (ITES) : Rs.3,07,92,748.

(ii) Software development services : Rs.10,93,31,102.

The assessment was completed under Section 143(3) of the Act vide order dt.29.12.2006, wherein the assessee's income was determined at Rs.29,55,49,371 in view of the Transfer Pricing Adjustment of Rs.4,01,23,850 and disallowance of the assessee's claim for deduction under Section 10A of the Act.

2.2 Aggrieved by the order of assessment dt.29.12.2006 for Assessment Year 2004-05, the assessee preferred an appeal before the CIT(Appeals) –IV, Bangalore. The learned CIT(Appeals) disposed off the appeal vide the impugned order dt.3.5.2013, allowing the assessee partial relief.

3. Revenue, being aggrieved by the order of the CIT(Appeals) – IV, Bangalore dt.3.5.2013 for Assessment Year 2004-05, has preferred this appeal wherein it has raised the following grounds :-

1. The order of the CIT (A) is opposed to law and facts and circumstances of the case.
 2. The CIT (A) erred in directing the AO to compute the deduction under section 10A as per the decision of the High Court in the caes of Yokogawa India Ltd. 341 ITR 385 without appreciating the fact that the decision of the High Court has not reached a finality as a SLP has been preferred against the set decision.
 3. The CIT(A) erred in relying on the decision of Yokogawa India Ltd. and allowing deduction under section 10A by requiring the AO to compute the deduction under section 10A for each profit making STPI unit separately and not for the company as a whole.
 4. The CIT(A) erred in directing the TPO to adopt the operating margin of Goldstone Technologies Ltd. at 7.33% in respect of the Software Services Segment after satisfying herself about the correctness without appreciating the fact that bad debts written off are not operating in nature and the TPO has correctly worked out the margin.
 5. The CIT(A) erred in directing the TPO to exclude Allsec Technologies Ltd. from the list of comparables in the ITE segment on the ground that a loss making company cannot be considered for comparison without appreciating the fact that connectivity and data base expenses are extraordinary in nature.
 6. The CIT(A) erred in deciding that connectivity and data base expenses are not extraordinary in nature without giving any reason for the same and without appreciating that the assessee had submitted that these expenses were incurred during the course of expansion of business and as such these expenses were extraordinary in nature.
 7. 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.
 8. 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.
4. **Ground Nos.1, 7 and 8** (supra) being general in nature, no adjudication is called for thereon.

5. **Ground Nos.2 & 3 – Deduction U/s. 10A of the Act.**

5.1 In these grounds (supra), Revenue assails the action of the learned CIT(Appeals) in directing the Assessing Officer to compute the deduction under Section 10A of the Act in accordance with the decision of the Hon'ble Karnataka High Court in the case of Yokogawa Ltd. (341 ITR 385); by allowing deduction there under for each profit making STPI Unit separately and not for the company as a whole; without appreciating the fact that the Department has not accepted the said decision and has preferred an SLP before the Hon'ble Apex Court in this regard.

5.2 The Id. Departmental Representative for Revenue was heard in support of the grounds raised (supra) and placed strong reliance on the findings rendered by the Assessing Officer on this issue.

5.3 Per contra, the Id. AR for the assessee submitted that the assessee's claim for being allowed the deduction claimed under Section 10A 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 learned CIT(Appeals), following the aforesaid decision, has rightly directed the Assessing Officer to

compute the deduction under Section 10A of the Act of each STPI Unit separately before setting off the current losses and brought forward business losses and depreciation, if any.

5.4.1 We have heard the rival contentions, perused and carefully considered the material on record. From a perusal of the details on record it is seen that the Assessing Officer was of the view that deduction under Section 10A of the Act was to be allowed only on the income computed after setting off current losses and brought forward losses etc. In this view of the matter, the Assessing Officer rejected the assessee's entire claim for deduction under Section 10A of the Act.

5.4.2 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. (supra). In its decision, the Hon'ble High Court had held that the income of section 10A unit has to be excluded at source itself before arriving at the gross total income / loss. As the deduction under Section 10A of the Act has to be computed from the total income of the assessee, the brought forward business loss and depreciation being set off against such profit and gains of the

undertaking as a whole would not arise. 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), which has since been approved by the Hon'ble Apex Court in CIT Vs Yokogawa India Ltd. (2017) 77 taxmann.com 41 (SC), we uphold the impugned orders of the learned CIT(Appeals) in directing the Assessing Officer to compute the deduction under Section 10B of the Act in the case on hand of each STPI Unit separately without setting off the current and brought forward business losses / depreciation from the assessee's income. We hold and direct accordingly. Consequently the grounds in 2 & 3 raised by Revenue are dismissed.

6. **Ground No.4 – Goldstone Technologies Limited.**

6.1 In this ground, Revenue contends that the learned CIT(Appeals) erred in directing the TPO to adopt the operating margin of this company at 7.33% in respect of the software development services segment without appreciating the fact that 'bad debts written off' are not operating in nature and that

the TPO has correctly worked out the margin. The Id. DR was heard in support of the grounds raised.

6.2 The Id. AR for the assessee supported the finding of the learned CIT(Appeals) on this issue in the impugned order. According to the learned Authorised Representative there is no error in the learned CIT(Appeals) in holding that bad debts are operating in nature. In support of this the Id. AR placed reliance on the decision of the ITAT, Delhi Bench in the case of Techbooks International Pvt. Ltd. Vs. DCIT reported in 2015 (7) TMI 473 – ITAT, Delhi dt.6.7.2015, at para 6.2 thereof. It is also submitted that the learned CIT(Appeals) adopted the margin at 7.33% on the basis of the figures in the Annual Report of Goldstone Technologies Ltd. It is prayed, that in view of the above, Revenue's grounds be dismissed.

6.2.1 We have heard the rival contentions, perused and carefully considered the material on record; including the judicial pronouncement cited (supra). As per the decision of the ITAT, Delhi Bench in the case of Techbooks International Pvt. Ltd. (supra) at para 6.2 thereof, the Tribunal has held that bad debts written off are in the realm of operations of the

assessee's business and directed the TPO to treat provision for bad debts / bad debts as an item of operating expense of the assessee; as also in the case of comparables as well. In these circumstances, we find no error in the impugned order of the learned CIT(Appeals) in directing the Assessing Officer that bad debts written off are to be treated as operating in nature. We also observe that except for raising the ground that the learned CIT(Appeals) has taken the operating margin wrongly at 7.33%, which as per the Annual Report of Goldstone Technologies Ltd., no material evidence was placed before us by the Id. DR to controvert this finding of the learned CIT(Appeals). In this factual / legal matrix of the case, we find no reason to interfere with the finding rendered by the learned CIT(Appeals) on this issue and consequently dismiss ground No.4 raised by Revenue.

7. Ground Nos.5 & 6 – Allsec Technologies Ltd.

7.1 In these grounds, Revenue has assailed the order of the learned CIT(Appeals) in directing the TPO to exclude Allsec Technologies Ltd. from the list of comparables in the ITES segment, inter alia, on the ground that it is a loss making company; without appreciating the fact

that connectivity and data base expenses are extraordinary in nature. Before us, the Id. AR for the assessee submitted that the assessee has no objection to the Revenue's prayer for inclusion of M/s. Allsec Technologies Ltd., in the list of comparables in the ITES segment. In these circumstances, we reverse the order of the learned CIT(Appeals) and direct the TPO to include M/s. Allsec Technologies Ltd., in the set of comparables in the ITES segment. Consequently, ground Nos. 5 & 6 of Revenue's appeal are allowed.

8. In the result, Revenue's appeal for Assessment Year 2004-05 is partly allowed.

Order pronounced in the open court on the 28th day of Sept.,2018.

Sd/-
(SUNIL KUMAR YADAV)
Judicial Member

Sd/-
(JASON P BOAZ)
Accountant Member

Bangalore,
Dt.28.09.2018

*Reddy gp

Copy to :

1	Appellant	4	CIT(A)
2	Respondent	5	DR. ITAT, Bangalore
3	CIT	6	Guard File

Senior Private Secretary
Income Tax Appellate Tribunal
Bangalore.