

आयकर अपील अाधिकरण, अहमदाबाद ँयायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
" D " BENCH, AHMEDABAD

BEFORE SHRI RAJPAL YADAV JUDICIAL MEMBER

And

SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos. 939 & 1255/AHD/2015

अाधरण वष/Asstt. Years: 2009-2010 & 2010-2011

The D.C.I.T, Circle-1(1)(1), Vadodara	Vs.	M/s Doshi Accounting Services Pvt. Ltd. 5 th Floor, BBC Tower, Sayajigunj, Vadodara-390 005 PAN : AABCD2974J
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(Applicant)		(Respondent)
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Revenue by :	Shri Apoorva Bharadwaj, Sr. DR
Assessee by :	Shri K.P. Singh, A.R.

सुनवाई क तारख/Date of Hearing : 08/01/2019

घोषणा क तारख /Date of Pronouncement: 01/02/2019

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeals have been filed at the instance of the Revenue against the two separate order of the Commissioner of Income Tax (Appeals)-1, Vadodara, dated 18/03/2015 & 26/02/2015 arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to Assessment Years 2009-2010 & 2010-11 respectively.

2. First, we take up the Revenue appeal in ITA/939/2015 for the assessment year 2009- 10. The Revenue has raised the following grounds of appeal:

A. Grounds of appeal against Ld. CIT(A)'s order No. CAB-I/76/2014-15 dated 23.01.2015

1. *On the facts and in the circumstances of the case and in law, the Ld.CIT(Appeals) erred by rejecting turnover filter from 5 crore to 200 crore and accepting a turnover filter from 1 crore to 50 crore.*

l.(a) The Ld. CIT(A) has erred in law and on facts by rejecting Accentia Technologies Ltd. as comparable by not following his own order for A.Y. 2008-09.

l.(b) The Ld. CIT(A) has erred in law and on facts by rejecting Coral Hubs Ltd. as comparable without appreciating the fact that this company was upheld as comparable by the Ld. CIT(A) himself for A.Y.2008-09 and the same was accepted by the assessee itself.

l.(c) The Ld. CIT(A) has erred in law and on facts by rejecting Eclerx Services Ltd. as comparable after incorrectly relying on the special bench judgment in case of Maersk Global Centres (India) Pvt. Ltd.

B. Grounds of appeal against Ld. CIT(A)'s Order u/s 154 dated 18.03.2015

2. *On the facts and in the circumstances of the case and in law, the Id. CIT(Appeals) erred in allowing the assessee's claim and thereby deleting the addition of Rs. 40 Lacs without appreciating the fact that the assessee had earlier claimed bogus/personal expenses amounting to 40 lacs and the withdrawal of the same is assessee's income over and above business income.*

2(a). *On the facts and in the circumstances of the case and in law, the CIT(A) erred in allowing the deduction u/s 10A of the Act to the assessee without appreciating the decision of the Hon'ble ITAT- Ahmedabad, in the case of **DCIT vs Rameshbhai***

C. Prajapati 140 ITD 486 wherein it is held that only profit derived from export activity of the eligible undertaking is entitled for deduction u/s 10A.

2(b). *On the facts and in the circumstances of the case and in law, the Ld.CIT(Appeals) erred in deleting the addition on account of withdrawal of expenses without appreciating the fact that assessee had not claimed additional deduction u/s 10A in the Form No. 56F filed alongwith its return of income as per the condition mentioned vide sec. 10A(5) of the Act*

3. *The appellant craves leave to add to, amend or alter the above grounds as may be deemed necessary.*

Relief claimed in appeal

It is prayed that the order of the CIT (Appeals) be set aside and that of the Assessing Officer be restored.’’

3. The First interconnected issue raised by the Revenue is that the Ld.CIT (A) erred in rejecting the turnover filter applied by the TPO from 5 crores to 200 crores and directed to apply the turnover filter from Rs. 1 Crore to 50 crores.

4. The facts of the case are that the assessee in the present case is a private Limited company and engaged in the business of providing accounting services. The assessee is 99.9% subsidiary of a company located in UK namely Doshi and Company. The assessee during the year has provided services to its associate enterprises amounting to Rs. 7,81,66,020/- only. The assessee to determine the arm length price (for short ALP) of its international transaction with its AE has used comparable uncontrolled price (CUP) method.

4.1 However the TPO was not satisfied with the method used by the assessee. Therefore, the TPO adopted the Transactional Net Margin Method (for short TNMM) for determining the ALP of assessee's international transaction with its AE.

4.2 Accordingly, the TPO among other things selected the comparable companies applying the turnover filter of Rs. 5 crores Rs. 200 crores. As such the TPO determined the ALP of Rs. 8,64,13,415/-only. Thus the difference of

Rs. 82,47,395/- (8,64,13,415- 7,81,66,020) was worked out and added to the total income of the assessee.

5. The assessee carried the matter to the Ld. CIT (A) who directed the TPO/AO to select the turnover filter of Rs. 1 crore to Rs. 50 crores. Accordingly, the Ld.CIT (A) directed the TPO to determine the ALP after taking the turnover filter of Rs. 1 crores to Rs. 50 crores.

6. Being aggrieved by the order of the Ld.CIT (A) the Revenue is in appeal before us.

7. Both the parties before us relied on the order of authorities below as favorable to them.

8. We have heard the rival contentions and perused the materials available on record. At the outset, we note that the Ld.CIT (A) in the own case of the assessee in the earlier assessment Year, i.e. 2007-08 and 2008-09 has directed the TPO/AO to take the turnover filter of Rs.1 crores to Rs. 50 crores only. The Revenue did not challenge the order of Ld. CIT-A to the higher authority. Thus it is implied that the order of the Ld.CIT (A) pertaining to the assessment years 2007-08 and 2008-09 has attained the finality.

8.1 Thus it is clear that the Revenue has accepted the order of the Ld.CIT (A) in the earlier years but the year under consideration the Revenue being dissatisfied with the order of the Ld.CIT (A) has preferred an appeal before us. Thus we note that there is a contradictory stand of the Revenue in the case of the assessee in different years though there was no change in the facts and circumstances.

8.2 It is settled law that principles of consistency will be applied if there is no change in the facts and circumstances. The Ld. DR before us has not brought any iota of evidence suggesting any change in the facts and circumstances. Therefore, in the absence of any information from the Ld. DR about the change in facts and circumstances, we are inclined not to disturb the finding of the Ld.CIT (A) keeping in mind the rule of consistency.

8.3 In this regard, we find support and guidance from the judgment of Hon'ble Supreme Court in the case of **CIT vs. Excel Industries Ltd. reported in 358 ITR 295**, wherein it was held as under:

“28. Secondly, as noted by the Tribunal, a consistent view has been taken in favour of the assessee on the questions raised, starting with the assessment year 1992-93, that the benefits under the advance licences or under the duty entitlement pass book do not represent the real income of the assessee. Consequently, there is no reason for us to take a different view unless there are very convincing reasons, none of which have been pointed out by the learned counsel for the Revenue.”

8.4 Similarly, we are also of the view that principle of consistency should be applied in the given facts and circumstances as there were no change in comparison to the previous assessment year. In this connection, attention may please be invited to the decision given by the Hon'ble Supreme Court of India in the matter of *Radhasoami Satsang v Commissioner of Income Tax* reported in 193 ITR 321 (SC) wherein the Hon'ble Supreme Court has inter alia held as under:

"We are aware of the fact that, strictly speaking, res judi cata does not apply to income tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year. On these reasonings, in the absence of any material

change justifying the Revenue to take a different view of the matter - and, if there was no change, it was in support of the assessee - we do not think the question should have been reopened and contrary to what had been decided by the Commissioner of Income-tax in the earlier proceedings, a different and contradictory stand should have been taken.

"Parties are not permitted to begin fresh litigations because of new views they may entertain of the law of the case, or new versions which they present as to what should be proper apprehension by the Court of the legal result either of the construction of the documents or the weight of certain circumstances. If this were permitted litigation would have no end, except when legal ingenuity is exhausted. It is a principle of law that this cannot be permitted ..."

8.5 As we note that the order of the Ld.CIT (A) was accepted by the Revenue in the earlier years as discussed above, therefore we do not find any reason to interfere in the finding of the Ld.CIT (A) for the year under consideration. Hence the ground of appeal of the Revenue is dismissed.

9. The other issues raised by the Revenue in ground No. 1(a), 1(b) and 1(c) do not require separate adjudication as we have upheld the order of the Ld.CIT (A) on the criteria of the turnover filter. Therefore, we refrain ourselves from adjudging the same. Hence the ground of appeal of the Revenue is dismissed.

10. The 2nd issue raised by the Revenue is regarding the deduction under section 10A of the Act.

11. At the outset, we note that the above issue raised by the Revenue is arising from the order passed under section 154 of the Act. The scheme of the income tax Act requires the aggrieved party to file the separate appeal against the order passed by the Ld.CIT (A) under different sections of the Act. As the Revenue has clubbed its grievance related to the order passed under section 154 of the Act along with the order passed by the Ld.CIT (A) under section

250 of the Act, therefore, the ground of appeal raised against the order passed under section 154 of the Act becomes infructuous. Therefore we dismiss the same.

12. In the result, the appeal of the Revenue is dismissed.

13. Now coming to the ITA bearing no. 1255/Ahd/2015 for A.Y. 2010-11.

14. At the outset we note that the issue involved in this appeal is identical to the issue raised by the Revenue in ITA no 939/Ahd/2015 which has been adjudicated by us vide para number 7 of this order. As such we have dismissed the appeal of the Revenue. As the issue is identical, the same finding will be applied in the case on hand with the full force. Hence, we do not find any reason to interfere the finding of the Ld.CIT (A). Thus the ground of appeal of the Revenue is dismissed.

15. In the combined result both the appeals of the Revenue are dismissed.

Order pronounced in the Court on 01/02/2019 at Ahmedabad.

**-Sd-
(RAJPAL YADAV)
JUDICIAL MEMBER**

**-Sd-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

(True Copy)
Ahmedabad; Dated 01/02/2019
Manish

आदेश क० त०/ल० प्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT
5. व्रभागीय त०/ल०, आयकर अपीलार्थी अधीकरण / DR, ITAT,
6. गार्डफाईल / Guard file.

आदेशानुसार/BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलार्थी अधीकरण, अहमदाबाद / ITAT, Ahmedabad