

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

BEFORE SHRI N.V VASUDEVAN, VICE PRESIDNET AND
SHRI B.R BASKARAN, ACCOUNTANT MEMBER

ITA No.1756/Bang/2017
Assessment year : 2009-10

M/s Digital Juice Animations Pvt. Ltd., #18, Saleh Center, Unit No.201, 2 nd Floor, Cunningham Road, Bangalore-560 052. PAN – AABCD 9298H.	Vs.	The Dy. Commissioner of Income-tax, Circle-2(1)(2), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Suresh Muthukrishnan, C.A
Respondent by	:	Dr. Shankar Prasad, Addl. CIT

Date of hearing	:	13.06.2019
Date of Pronouncement	:	.06.2019

ORDER

Per B.R Baskaran, Accountant Member

The assessee has filed this appeal challenging the order passed by Ld CIT(A)-2, Bengaluru for assessment year 2009-10. The assessee is aggrieved by the decision of Ld CIT(A) in rejecting the claim for enhancement of deduction claimed u/s 10A of the Act.

2. The appeal is barred by limitation by 89 days. The assessee has moved an application requesting the bench to condone the delay along with affidavits of director and staff. Having regard to

the submissions made therein, we condone the delay and admit the appeal for hearing.

3. This is second round of proceeding. The order in the first round was passed by the co-ordinate bench on 05-09-2015 in IT(TP)A No.138 (Bang) 2014, wherein it restored the matter of determination of Arms Length Price (ALP) of International transaction to the file of AO/TPO with the following observations:-

“11. We are therefore, of the opinion that the directions of the DRP has not been properly considered by the lower authorities. If the assessee's claim for revised segmental results are found to be acceptable, there is every possibility that pricing of its international transactions would come within +/- 5% of the PLI worked out by the TPO himself. Then the issue regarding exclusion and/or inclusion of comparables may not arise at all. We therefore, set aside the orders of the authorities below and remit the issue back to the file of the AO/TPO for consideration afresh in accordance with law. Right of assessee to challenge all other aspects of the assessment and conditions are kept open.”

4. Consequent to the order passed by the ITAT, the assessing officer passed the impugned assessment order. In the set aside proceedings, the assessee claimed that the deduction allowed u/s 10A of the Act in the first round should be enhanced by re-computing the deduction. The AO rejected the said claim of the assessee by observing that the Hon'ble ITAT has not issued any specific directions on this issue. Aggrieved, the assessee filed

appeal before Ld CIT(A) seeking enhanced deduction u/s 10A of the Act. The first appellate authority also rejected the same and hence the assessee has filed this appeal.

5. The Ld A.R invited our attention to the last line of the order of ITAT extracted above and submitted that the Tribunal has observed that the “Right of assessee to challenge all other aspects of the assessment and conditions are kept open.” He submitted that the assessee has claimed for modification of eligible deduction u/s 10A on the strength of the above said observation of the Tribunal. Accordingly he submitted that the Ld CIT(A) was not justified in rejecting the claim of the assessee.

6. On the contrary, the Ld D.R submitted that the Tribunal has restored the issue of determination of ALP of international transactions only, to the file of the AO and the observations made by the Tribunal in the first round regarding rights of the assessee were related to the above said issue only. He submitted that the scope of the set aside proceedings is limited to the matters restored to the file of the AO and hence neither the assessee nor the AO is entitled to expand the said scope.

7. We heard the parties on this issue and perused the record. We notice that the co-ordinate bench has restored the issue of determination of ALP of the international transactions only to the file of the AO. This fact is made clear if we go through the order dated 05-09-2014 passed by the co-ordinate bench in the first round of proceedings. We notice that the only issue urged before

the Tribunal in the first round was determination of ALP of international transactions only. The entire order passed by the Tribunal deals with the said issue only. The question of deduction u/s 10A of the Act was not raised at all before the Tribunal in the first round of proceedings. Hence the observations made by the coordinate bench on the right of the assessee should refer only to the determination of ALP of international transactions only.

8. It is well settled proposition that the scope of set aside proceedings is restricted to the matters restored to the file of the AO. Since the issue relating to deduction u/s 10A of the Act was not restored to the file of the AO, we are of the view that the assessing officer has rightly rejected the new claim raised before him in the set aside proceedings by observing that the same is outside scope of directions given by the ITAT. Accordingly we are of the view that the Ld CIT(A) was justified in dismissing the appeal of the assessee. Accordingly we uphold his order.

9. In the result, the appeal of the assessee is dismissed.

Order pronounced in the Open Court on **26th June, 2019.**

Sd/-
(N.V Vasudevan)
Vice President
Bangalore,
Dated, 26th June, 2019.
/ vms /

Sd/-
(B.R Baskaran)
Accountant Member

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation
2. Date on which the typed draft is placed before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
4. Date on which the fair order is placed before the dictating Member
5. Date on which the fair order comes back to the Sr. P.S.
6. Date of uploading the order on website.....
7. If not uploaded, furnish the reason for doing so
8. Date on which the file goes to the Bench Clerk
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10. Date on which the file goes to the Head Clerk
11. The date on which the file goes to the Assistant Registrar for signature on the order
12. The date on which the file goes to dispatch section for dispatch of the Tribunal Order
13. Date of Despatch of Order.