

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH : BANGALORE**

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND  
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

IT(TP)A No.535/Bang/2017
Assessment year : 2012-13

M/s. Outsourcepartners International Pvt. Ltd., Tower 2D, Phase I, Vikas Telecom Ltd., Vrindavan Tech Village, Outer Ring Road, Devarabeesanahalli, Bangalore- 560087. <b>PAN: AAACO 5734 C</b>	Vs.	The Assistant Commissioner of Income Tax, Circle - 5(1)(2), Bengaluru.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri. K. R. Vasudevan, Advocate
Revenue by	:	Shri. Pradeep Kumar, CIT

Date of hearing	:	08.05.2019
Date of Pronouncement	:	03.07.2019

**ORDER**

***Per Jason P. Boaz, Accountant Member:***

The Co-ordinate Bench of this Tribunal vide its order in M.P. No.123/Bang/2018 (in IT(TP)A No.535/Bang/2017) dated 14.09.2018 had restored the earlier order of the Tribunal of even number dated 31.10.2017 for Assessment Year 2012-13 for adjudication of a particular ground No.3.3 raised in the assessee's appeal.

2. Briefly stated, the facts, relevant for disposal of this appeal are as under:-

2.1 In the appeal filed by the assessee in IT(TP)A No.535/Bang/2017 for Assessment Year 2012-13, the assessee has raised the following grounds of appeal in respect of the disallowance under section 14A of the Income Tax Act, 1961 (in short 'the Act') r.w.Rule 8D of the Income Tax Rules, 1962, (in short 'the Rules'), which was at ground No.3.

3. *That the Ld. DRP/ Ld. AO erred in law and on the facts and in the circumstances of the case by making notional addition of Rs.218,382 per provisions of section 14A of the Act read with rule 8D of the Income-tax Rules, 1962 ("Rules").*

3.1. *That the Ld. DRP/ Ld. AO erred in law and on the facts and in the circumstances of the case while mentioning that the infrastructural expenses and man-power expenses cannot be ruled out and ignoring the fact that the exempt dividend income earned by assessee is automatically reinvested as per the scheme and no such expenses have been incurred by the assessee for earning the exempt income.*

3.2. *That the Ld. DRP/ Ld. AO erred in law and on the facts and circumstances of the case by not taking cognizance of the detailed submission filed by the appellant.*

3.3. *Without prejudice to above Grounds, the Ld. DRP/ Ld. AO has erred in disregarding the fact that the disallowance of Rs. 218,382 pertains to the SEZ unit of the Assessee and addition made to the income of the Assessee of Rs 218,382 should be entitled for enhanced deduction under section 10AA of the Act.*

2.2 In the order of the Co-ordinate Bench of even number dated 31.10.2017, the Bench decided the grounds 3 (3.1 and 3.2) against the assessee and upheld the disallowance made by the AO under section 14A of the Act. However, the alternate ground raised by the assessee in ground 3.3 (supra) was not adjudicated.

### **3. Ground No.3.3 – Claim for Deduction under section 10AA of the Act**

3.1 In the present proceedings before us, the learned AR of the assessee submitted that the assessee is entitled for enhanced deduction under section 10AA of the Act

on the income so increased by the disallowance under section 14A of the Act. According to the learned AR, it is settled principle, upheld in several judicial pronouncements, that the deduction under section 10A/10AA of the Act shall be allowed on the assessed income; after disallowances / additions made; which result in enhancement of business income. In this regard, the learned AR for the assessee relied on the decision of the Co-ordinate Bench of this Tribunal in the case of Infosys Ltd., Vs. DCIT in IT(TP)A Nos. 102 & 233/Bang/2013 which was directly on the issue of allowing deduction under section 10A of the Act on the enhanced business income arising on account of disallowance under section 14A of the Act.

3.2 Per contra, the learned DR for Revenue supported the orders of the authorities below.

3.3.1 We have considered the rival contentions / submissions and carefully perused the material on record. We find that the issue of allowing deduction under section 10A / 10AA of the Act on enhanced income (i.e., assessed income) arising due to additions / disallowances made in the order of assessment is squarely covered by the decision of the Co-ordinate Bench of this Tribunal in the case of Infosys Ltd., in IT(TP)A Nos. 102 & 233/Bang/2013 dated 10.11.2017, wherein the Co-ordinate Bench at para 16 to 16.2 thereof has held as under:-

*“16. Ground Nos. 9.1 to 9.3 - Disallowance u/s. 14A of the Act.*

*16.1 In these grounds, the assessee ;challenges the disallowance of Rs.35,20,566 u/s. 14A of the Act bythe Assessing Officer. We have heard both parties in the matter and carefully considered material an record and judicial pronouncements cited. In the course of assessment proceedings the assessee worked out the disallowance u/s. 14A of the Act at Rs.9,22,131; comprising 50% of salary of employee plus 5% of salary of Senior Vice President. The Assessing Officer, however, computed the disallowance under Section 14A of the Act at Rs.35,20,566; which comprised 50% of the salary of both the employee s and the Senior Vice President and added the same as 'Income from other sources'. Before us, the learned Authorised Representative of the IT(TP)A Nos.102 &*

*233/Bang/2013 Infosys Limited assessee submitted that while it had no grievance with respect to the disallowance under Section 14A of the Act computed by the Assessing Officer at Rs.35,20,566, it is aggrieved by the Assessing Officer's action of treating the same as 'Income from other sources' rather than in disallowing the same from assessee's business income.*

*16.2 In our considered view, the action of the Assessing Officer in making the disallowance under the head 'Income from other sources' is not correct since the facts show that the disallowance under Section 14A of the Act represents the business expenditure incurred by the assessee in relation to exempt income. Such disallowance would go to increase the assessee's business income and consequently the assessee would be entitled to proportionate deduction under Section 10A of the Act in respect of such increase in business income. In coming to this view, we draw support from the decision of the Hon'ble Bombay High Court in the case of Gemplus Jewellery India Ltd (supra), we direct the Assessing Officer to allow proportionate deduction under Section 10A of the Act on account of the disallowance of Rs.35,20,566 made under Section 14A of the Act. Consequently, Grounds 9.1 and 9.2 of assessee's appeal are dismissed and Ground No.9.3 is allowed.”*

3.3.2 Respectfully following the aforesaid decision of the Co-ordinate Bench in the case of Infosys Ltd., (supra), we direct the Assessing Officer (AO) to allow proportionate deduction under section 10AA of the Act on account of the disallowance of Rs.2,18,382/- made under section 14A of the Act r.w.r. 8D of the Rules. Consequently, ground No.3.3 of the assessee's appeal is allowed.

4. In the result, the assessee's appeal for Assessment Year 2012-13 is allowed as indicated above; only to the limited extent of ground No.3.3 (supra).

*Pronounced in the open court on this 3<sup>rd</sup> day of July, 2019.*

Sd/-  
**(N. V. VASUDEVAN)**  
Vice President

Sd/-  
**(JASON P BOAZ)**  
Accountant Member

Bangalore.

Dated: 3<sup>rd</sup> July, 2018.

/NS/\*

Copy to:

1. Appellants
2. Respondent
3. CIT
4. DR, ITAT, Bangalore.
5. Guard file

By order

Assistant Registrar,  
ITAT, Bangalore.