

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

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

ITA No.1170/Bang/2018
Assessment year : 2009-10

M/s Sasken technologies Ltd., (Formerly known as Sasken Communication Technologies Ltd., No.139/25, Amarjyothi Layout, Ring Road, Domlur, Bengaluru-560 071. PAN – AAECs 6424 R.	Vs.	The Dy. Commissioner of Income-tax, Circle-6(1)(1), Bengaluru.
APPELLANT		RESPONDENT

ITA No.1731/Bang/2018
Assessment year : 2009-10

The Dy. Commissioner of Income-tax, Circle-6(1)(1), Bengaluru.	Vs.	M/s Sasken technologies Ltd., (Formerly known as Sasken Communication Technologies Ltd., No.139/25, Amarjyothi Layout, Ring Road, Domlur, Bengaluru-560 071. PAN – AAECs 6424 R.
APPELLANT		RESPONDENT

Assessee by	:	Shri Padam Chand Khincha, C.A
Revenue by	:	Shri P.V Pradeep Kumar, CIT (DR)

Date of hearing	:	10.10.2019
Date of Pronouncement	:	16.10.2019

ORDER

Per B.R Baskaran, Accountant Member

These cross appeals are directed against the order dated 15-12-2017 passed by Ld CIT(A)-6, Bengaluru and they relate to the assessment year 2009-10.

2. In the appeal of the assessee, the only issue urged relates to the computation of deduction u/s 10A, i.e., whether telecommunication charges etc., are to be reduced from both Export turnover and Total turnover or not?

3. In the appeal of the revenue, the only issue contested is whether Ld CIT(A) was justified in holding Royalty income as part of assessee's export business income?

4. We heard the parties and perused the record. The assessee is engaged in the business of development and export of software. It is registered as STP and SEZ scheme. The assessee claimed deduction u/s 10A of the Act. The AO noticed that the assessee has received royalty income to the tune of Rs.1861.68 lakhs and declared the same as part of its business income. Accordingly deduction u/s 10A was also claimed thereon. The AO treated royalty income as income from other sources and accordingly rejected deduction claimed u/s 10A of the Act on royalty income. While computing deduction u/s 10A of the Act, the AO reduced expenses incurred in foreign currency only from Export turnover and not from Total turnover. Accordingly the AO held that the assessee has claimed deduction u/s 10A of the Act in excess to the tune of Rs.1479.04 lakhs and accordingly disallowed the same.

5. In the appellate proceedings, the Ld CIT(A) noticed that the question as to whether royalty income was part of business income from exports or not was examined by the ITAT in the assessee's own case relating to AY 2010-11 in the order passed in IT(TP)A No.397/B/2015 dated 21-10-2016 and the matter was restored to the file of the AO to examine the issue afresh following the decision rendered by the jurisdictional Hon'ble Karnataka High Court in the case of CIT vs. Wipro Ltd (ITA No.503 & 507 of 2002). Accordingly, the Ld CIT(A) directed the AO to follow the above said decision of Tribunal in AY 2009-10 also. The revenue is aggrieved by this decision.

6. With regard to the exclusion of expenses incurred in foreign currency from Export turnover and not from Total turnover, the Ld CIT(A) noticed that an identical issue was considered by the ITAT in the assessee's own case relating to AY 2010-11 (referred supra). Accordingly he directed the AO to follow the order of the Tribunal passed in AY 2010-11 in the hands of the assessee.

7. The assessee has filed appeal on the apprehension that the Ld CIT(A) has failed to adjudicate the issue of reducing telecommunication charges etc., both from export turnover and total turnover.

8. At the time of hearing, the Ld A.R furnished a copy of order 21-05-2018 passed by the assessing officer in order to give effect to the order passed by Ld CIT(A) for the year under consideration. He

submitted that the AO, while passing consequential order, has excluded the telecommunication charges etc., both from Export turnover and Total turnover. Accordingly he submitted that the assessee's grievance has been addressed by the AO and hence the appeal filed by the assessee shall become infructuous.

9. In view of the above said submissions made by Ld A.R, we dismiss the appeal of the assessee as infructuous.

10. In the appeal of the revenue, the only issue urged is whether the Royalty income can be treated as part of business income from exports. The Ld D.R supported the order passed by the AO. The Ld A.R submitted that the Tribunal had considered an identical issue in the assessee's own case in AY 2010-11 (referred supra) and the matter was restored to the file of the AO to examine the issue afresh by following the decision rendered by Hon'ble Karnataka High Court in the case of Wipro Ltd (supra). The Ld A.R submitted that the assessing officer has since examined the same afresh and has accepted the submission of the assessee and allowed deduction u/s 10A of the Act in AY 2010-11. Accordingly the Ld A.R submitted that the order passed by Ld CIT(A) does not call for interference.

11. We heard the parties on this issue. We notice that the Ld CIT(A) has directed the AO to follow the order passed by ITAT in AY 2009-10. Hence we do not find any infirmity in the order passed by the Ld CIT(A) on this issue.

12. In the result, appeals of revenue and assessee are dismissed.

Order pronounced in the Open Court on **16th October, 2019.**

Sd/-
(N.V Vasudevan)
Vice President

Sd/-
(B.R Baskaran)
Accountant Member

Bangalore,
Dated, 16th October, 2019.

/ vms /

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.