

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No. 340/PUN/2016
निर्धारण वर्ष / Assessment Year : 2011-12

Tieto India Private Limited,
(pursuant to change in name
from Tieto IT Services India
Private Limited),
Plot No.23, Wing 1, Cluster D,
EON Free Zone, MIDC,
Kharadi Knowledge Park,
Pune – 411 014
PAN : AAACF3424C

(Appellant)

Vs. DCIT, Circle-7,
Pune

(Respondent)

आयकर अपील सं. / ITA No.668/PUN/2016
निर्धारण वर्ष / Assessment Year : 2011-12

DCIT, Circle-7,
Pune

Vs.

Tieto India Private Limited,
(Formerly known as Tieto
Software Technologies Ltd.),
Wing 1, Cluster D,
EON Free Zone, MIDC,
Kharadi Knowledge Park,
Pune – 411 014
PAN : AAACF3424C

(Appellant)

(Respondent)

Assessee by
Revenue by

Shri Ali Asgar
Shri S.B. Prasad

Date of hearing

05-11-2019

Date of pronouncement

06-11-2019

आदेश / ORDERPER BENCH:

These two cross appeals emanate from the final assessment order dated 29-01-2016 passed by the Assessing Officer (AO) u/s. 143(3) r.w.s. 144C(13) of the Income-tax Act, 1961 (hereinafter called 'the Act') in relation to the assessment year 2011-12.

2. The Revenue's appeal is time-barred by 13 days. The Revenue has filed an affidavit explaining the reasons which led to the late filing of the appeal. We are satisfied with such reasons. The delay is condoned and the appeal is admitted for hearing on merits.

3. Shorn off unnecessary details, it is seen that the assessee filed its return declaring total income of Rs.56,99,014/-, *inter alia*, claiming deduction u/s.10B of the Act. Apart from the transfer pricing addition amounting to Rs.5.61 crore, the AO disallowed the claim of deduction u/s.10B amounting to Rs.7,91,16,965/-. The assessee approached the Dispute Resolution Panel (DRP) against the draft order. The DRP, vide its direction dated 15-12-2015, accepted the case of the assessee *qua* the transfer pricing addition and directed to delete the same. In so far as the denial of deduction

u/s 10B of the Act is concerned, the DRP found the action of the AO justified and held that there was no merit in the assessee's contention. It further entertained the alternate claim of the assessee for granting of deduction u/s.10A and vide para No.3.23 of its direction, required the AO to examine the alternate claim of the assessee for eligibility of deduction us/.10A.

4. The Revenue in its appeal is aggrieved by the direction given by the DRP for examining the claim of deduction u/s.10A. The assessee is aggrieved by denial of claim u/s.10A of the Act amounting to Rs.7,91,16,965/- by the AO in the final order passed pursuant to the direction given by the DRP.

5. We have heard the rival submissions and gone through the relevant material on record. It is seen that the DRP vide para 3.23 of its direction has observed: 'We direct the AO to examine the alternative claim of the assessee based on the material available on record and grant the eligible deduction u/s 10A, if the assessee is found to satisfy the conditions laid down under the said section'. The claim of the Revenue is that the DRP could not have given any such direction to the AO for examining the claim u/s.10A which is beyond its ambit.

6. It is relevant to look into the provisions of section 144C of the Act which deal with “Reference to Dispute Resolution Panel”. Sub-section (1) of section 144C states that: “The Assessing Officer shall, notwithstanding anything to the contrary contained in this Act, in the first instance, forward a draft of the proposed order of assessment (hereafter in this section referred to as the draft order) to the eligible assessee if he proposes to make, on or after the 1st day of October, 2009, any variation in the income or loss returned which is prejudicial to the interest of such assessee.’ Sub-section (2) of section 144C states that the assessee shall either file his acceptance to the AO on the variations proposed in the draft order or file his objections, if any, with the DRP. In case, the assessee accepts the variation in the draft order or no objections are received within 30 days, then sub-section (3) states that: ‘The Assessing Officer shall complete the assessment on the basis of the draft order’. In case, the assessee does not agree with the draft order, it can, *inter alia*, raise objections before the DRP, which shall issue directions under sub-section (5) of section 144C. Upon receipt of the directions from the DRP, the AO completes the assessment under sub-section (13) in conformity with the directions given by the DRP.

7. Scope of directions by the DRP has been set out in sub-section (8) which states that the DRP “may confirm, reduce or enhance the variations proposed in draft order so, however, that *it shall not set aside any proposed variation or issue any direction under sub-section (5) for further enquiry and passing of the assessment order.*’ It is manifest from the prescription of sub-section (8) that the DRP has been empowered to confirm, reduce or enhance the variations proposed in draft order. There is specific prohibition contained in the provision to the effect that the DRP cannot set-aside any proposed variation or issue any direction for further enquiry and passing of the assessment order.

8. Adverting to the facts of the instant case, it is seen that the DRP’s direction to the AO for carrying out a fresh examination of the claim of the assessee u/s.10A of the Act is in violation of the clear mandate of the provisions as discussed *supra* and hence cannot be countenanced. On our vacating such a direction, the position which would emerge is that the denial of the assessee’s claim for deduction u/s 10B would attain finality but the alternate claim for allowing deduction u/s.10A, despite the DRP finding some merit in the same, would get jeopardised at the threshold even without verification, thereby causing irreparable prejudice to

the assessee. It is pertinent to note that the ld. DRP itself found some merit in the contention of the assessee on the eligibility of claim u/s.10A, for which the relevant discussion has been made in Para Nos. 3.19 to 3.22. Albeit the DRP is not empowered to direct the AO to entertain and examine such a claim, but there are no fetters on its own powers to undertake such an exercise itself for ascertaining if the claim of the assessee is legally tenable. Under the given circumstances, we set-aside the impugned order and remit the matter to the DRP for adjudicating the issue itself without remitting the matter to the file of the AO.

9. In the result, both the appeals are allowed for statistical purposes.

Order pronounced in the Open Court on 06th November, 2019.

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 06th November, 2019
सतीश

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-13, Pune
4. The Pr.CIT-5, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे
“ए” / DR ‘A’, ITAT, Pune
6. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	05-11-2019	Sr.PS
2.	Draft placed before author	05-11-2019	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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