

IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES “ A ” BENCH: BANGALORE  
**BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER  
AND  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.565/Bang/2016  
(Assessment Year: 2011-12)

Harman Connected Services Corporation India P. Ltd.,  
(Erstwhile Symphony Infospace (India) P. Ltd.)  
Plot No.3 & 3A, EOIZ Indl. Area, Krishnarajapuram Hobli,  
Bangalore-560066  
PAN AALCS 9142F

....Appellant

Vs.

Income Tax Officer,  
Ward 6(1)(4), Bangalore.

.....Respondent.

Assessee By:	Shri Sharath Rao, CA
Revenue By:	Shri C H Sundar Rao, CIT (D.R)

Date of Hearing :	26.11.2019
Date of Pronouncement :	06.12.2019

**ORDER**

**PER SHRI PAVAN KUMAR GADALE, JM :**

The assessee ha filed Misc. Petition No.69/Bang/2019 in the present appeal of IT(TP)A No.565/Bang/2016 was heard with observations at paras 3 & 4 which are read as under :

3. “ We have considered the rival submissions. First of all, we reproduce para no. 2 of the impugned Tribunal order which is as under.

*“02. The assessee has raised as many as 18 grounds under various heads, but the assessee at the time of hearing has pressed only ground nos. 2, 3 and 4 which go to the root of the matter.”*

4. From the above para reproduced from the Tribunal order, it comes out that the Tribunal has also noted in this order that the assessee has raised 18 grounds of appeal but the Tribunal held in this para that at the time of hearing, the assessee has pressed only ground nos. 2, 3 and 4 which go to the root of the matter. Now the question is whether the ground nos. 2, 3 and 4 which are raised in respect of TP issue go to the root of the matter in respect of non-TP issues being corporate tax issues raised by the assessee in ground nos. 8 to 18 regarding disallowance u/s. 40(a)(ia), re-computation of deduction u/s. 10AA of the IT Act and interest u/s. 234D and 234B of the IT Act. In our considered opinion, this cannot be said that grounds raised on TP issues can go to the root of the matter in respect of non-TP issues being corporate tax issues and hence, there is apparent mistake in the Tribunal order and therefore, we recall this Tribunal order for limited purpose for deciding ground nos. 8 to 18. The Registry is directed to fix this appeal for hearing on 26.11.2019 and since, the date of hearing is pronounced in the open court, no separate notice of hearing is required to be issued.”

2. The learned Authorised Representative of the assessee has submitted that the Tribunal while passing the order dt.16.01.2019 has not adjudicated the Ground of appeal Nos.8 to 18 which are read as under :

## **II. Corporate Tax**

### **A. Re-characterisation of disallowance under section 40(a)(ia) of the Income-tax Act, 1961 (“Act”)**

8. The Hon’ble DRP has erred in upholding the action of the learned AO in disallowing the provision for expense amounting to Rs. 1,772,003 under section 37 of the Act by holding that the expenditure claims were provisional in nature and were not crystallized;
9. The Hon’ble DRP has erred in not applying the judicial precedents wherein it has been held that a liability can be allowed as deduction even though it is quantified and discharged at a future date;
10. The learned AO and the Hon’ble DRP erred in not appreciating the fact that the Appellant has suo-moto disallowed the expenditure under consideration under section 40(a)(ia) of the Act for non-deduction of taxes at source;

11. The learned AO and the Hon'ble DRP erred in disallowing the said amount under section 37 of the Act without appreciating that the tax auditor had reported the said expense as amount on which tax is deductible and not deducted and not as a contingent liability;
12. Notwithstanding and without prejudice to the above, the Hon'ble DRP erred in not directing the learned AO to allow as a deduction in the subsequent year, the amount of current year disallowance which is reversed in the subsequent year;

**B. Re-computation of deduction under Section 10AA of the Act**

**B.1. Reduction of travelling expenditure incurred in foreign currency, communication expenses and foreign exchange loss from export turnover only**

13. The learned AO and the Hon'ble DRP erred in excluding the travelling expenses incurred in foreign currency, communication expenses and foreign exchange loss, from the export turnover for the purposes of computing deduction under section 10AA of the Act holding the same to be attributable to the delivery of computer software outside India;
14. Notwithstanding and without prejudice to the above, the learned AO erred in considering an amount of Rs. 8,285,180 as travelling expenses paid during the year as against the actual expenditure incurred during the year amounting to Rs. 6,484,243.

**B.2 Corresponding reduction from Total turnover**

15. The learned AO has erred in not following the directions of the Hon'ble DRP to reduce travelling expenses incurred in foreign currency from the total turnover in arriving at the deduction under section of 10AA of the Act.

**C. Incorrect income considered by the learned AO**

16. The learned AO has erred in considering the total income before allowing deduction under section 10AA of the Act as Rs. 221,203,745 as against Rs. 219,480,193.

**D. Interest under section 234D of the Act**

17. The learned AO/ learned DRP has erred in levying interest under section 234D of the Act amounting to Rs. 818,414 for a period 49 months from the date of 143(1) intimation i.e. 28 January 2012, as against a period of 42 months i.e. from the date of receipt of refund being 21 August 2012.

**E. Interest under section 234B of the Act**

18. The learned AO has erred in levying interest under section 234B of the Act amounting to Rs. 19,816,512 which is consequential in nature.

The appellant craves leave to add, alter, rescind and modify the grounds herein above or produce further documents, facts and evidence before or at the time of hearing of this appeal.

For the above and any other grounds which may be raised at the time of hearing, it is prayed that necessary relief may be provided.

3. At the time of hearing, the learned Authorised Representative has not pressed the Grounds of appeal Nos.8 to 14 and made submissions on Ground of appeal No.15 in respect of deduction of travelling expenses incurred in foreign currency from the total turnover for arriving at deduction under Section 10AA of the Income Tax Act, 1961 ('the Act'). Whereas in respect of Ground of Appeal Nos.16 to 18, the learned Authorised Representative submitted that the assessee has filed Petition under Section 154 of the Act on 18.05.2016, where the Assessing Officer inadvertently considered for assessment the total income of Rs.221,203,745 instead of Rs.219,480,193 before allowing deduction under Section 10AA of the Act. Further the interest under Section 234D and interest under Section 234B are to be charged after giving effect to deduction and supported with details. Contra, the learned Departmental Representative supported the order of Transfer Pricing Officer (TPO) and Dispute Resolution Panel (DRP).

3. We heard the rival contentions and perused the material on record. On the first disputed issue on allowing of deduction of travelling expenses incurred in foreign currency from the total turnover, we found the DRP has given an observation at para 3.1 that the assessee has objected before the Assessing Officer

reducing the communication and other foreign expenses only from the export turnover but not from total turnover. The DRP relying on the decision of jurisdictional High Court in the case of Tata Elxsi Limited Vs. CIT reported in 349 ITR 98 directed the Assessing Officer to reduce the expenses from total turnover also. But on perusal of the final assessment order, the Assessing Officer has not considered this direction of DRP in reducing the travelling expenses incurred in foreign currency from the total turnover for arriving at deduction under Section 10AA of the Act. We found this issue was considered by the jurisdictional High Court in the case of Tata Elxsi Limited Vs. CIT (supra). We considering the submissions of the learned Authorised Representative and also on perusal of the assessment order found these facts were not discussed in the assessment proceedings by the assessee and hence the learned Authorised Representative prayed substantiating with Bills and evidences of claim. Accordingly, we following the jurisdictional High Court decision in the case of Tata Elxsi Ltd. Vs. CIT (supra), direct the Assessing Officer to reduce the travelling expenses incurred in foreign currency from the total turnover and recalculate the claim of deduction under Section 10AA of the Act and allow this ground of appeal of the assessee.

4. Similarly, in respect of considering the total income for allowing deduction under Section 10AA of the Act, the assessee has filed Rectification Petition and is pending before the CIT(Appeals). Since the application is pending and the remedy lies with the Department, the assessee shall pursue with the authority and in respect of interest chargeable under Section 234D and 234B which is consequential in nature and order accordingly.

5. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 6th Dec., 2019.

Sd/-

**(A.K. GARODIA)**  
**ACCOUNTANT MEMBER**

Sd/-

**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

Dated: 06.12.2019.

\*Reddy GP

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar  
Income-tax Appellate Tribunal  
Bangalore