

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "C", BANGALORE**

Before Shri B.R.Baskaran, AM & Shri Pavan Kumar Gadale, JM

ITA No.2175/Bang/2018
Asst. Year : 2012-2013

M/s.SLK Software Services Private Limited SLK Green Park, Tower-A 7 th Floor, Amin Properties LLP SEZ Survey No.19,20,21/1, Pujanhalli Village, Devanhalli Taluk Bangalore – 562 110. PAN :AAECS7548E.	Vs.	The Asst.Commissioner of Income-tax, Circle 6(1)(1) Bangalore.
(Appellant)		(Respondent)

Appellant by :Sri.Ankur Pai, Advocate
Respondent by :Sri.Vilas S.Shinde, CIT-DR

Date of Hearing :04.02.2020	Date of Pronouncement : 06.02.2020
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ORDER

Per B.R.Baskaran, AM :

This appeal filed by the assessee is directed against the order dated 09.02.2018 passed by the learned CIT(A)-6, Bangalore and it relates to assessment year 2012-2013. The grounds urged by the assessee relate to the following issues:-

- (a) Disallowance of deduction u/s 80JJA of the Act.
- (b) Disallowance made u/s 14A of the Act.
- (c) Disallowance of provision for mark to market loss on derivatives.

2. The assessee herein has expertise in consulting, architecture, package implementation, application engineering,

testing, infrastructure management, IT process optimization and audit. The assessee has established a unit in Special Economic Zone and the same is engaged in development of software, provision of geographical information and export of these services. The assessee has claimed deduction u/s 10JA of the Act. The assessee has also claimed deduction u/s 80JJAA of the Act.

3. The first issue relates to disallowance of deduction claimed u/s 80JJA of the Act. The Assessing Officer disallowed the claim by holding that –

(a) the employees working in software unit cannot be treated as workmen as envisaged under the Act, and

(b) deduction u/s 80JJAA cannot be allowed in respect of additional wages paid to be employees who are working in 10A units, by virtue of provisions of section 80A(iv).

The learned CIT(A) also confirmed the same.

4. Before us, the learned AR submitted that the assessee is having two units, out of which it is claiming deduction u/s 10AA of the Act in respect of only one unit. He submitted that the deduction u/s 80JJAA of the Act was claimed in respect of other unit (non-10AA unit), which is not claiming deduction u/s 10AA of the Act. The learned AR submitted that the Tax Authorities have misunderstood this factual aspect and hence the second reason mentioned by the A.O. above will not survive. The learned AR further submitted that the assessee has furnished details of employees against whom deduction u/s

80JJAA of the Act was claimed by way of additional evidences in order to show that the deduction was claimed in respect of non-10AA unit.

5. With regard to the view taken by the Assessing Officer that the employees working in software unit cannot be treated as workmen as envisaged under the Act, the learned AR placed reliance on the decision rendered by the co-ordinate Bench in the case of *Manhattan Associates (India) Development Centre (P.) Ltd. v. DCIT [(2019) 112 taxmann.com 200 (Bangalore-Trib.)]*, wherein the Tribunal has taken the view that the software professional could be considered as workmen as per the provisions of section 80JJAA of the Act. The learned AR further submitted that the provisions of section 80JJAA of the Act has been amended by substituting the words “industrial undertaking” by the word “factory” subsequent to assessment year 2012-2013. The learned AR submitted that the co-ordinate Bench in the case of *Manhattan Associates (India) Development Centre (P.) Ltd. (supra)*, has examined the eligibility of salary paid to Software Engineers for deduction u/s 80JJAA of the Act for the assessment year 2012-2013 and has held that the salary so paid is eligible for deduction u/s 80JJAA of the Act. In view of the decision rendered by the co-ordinate Bench in the above said case, the Ld A.R submitted that first reason given by the Assessing Officer would fail.

6. We heard the learned Departmental Representative on this issue. As per the decision rendered by the co-ordinate

bench in the case of *Manhattan Associates (India) Development Centre (P.) Ltd (supra)*, salary paid to software engineers are eligible for deduction u/s 80JJAA of the Act. Hence the first reasoning given by the AO shall fail. With regard to the second reasoning, as per the submission made by the learned AR, there appears to be some confusion with regard to facts relating to the deduction u/s 80JJAA of the Act claimed by the assessee. The assessee has also furnished certain additional evidences to substantiate its claim. Under the set of facts, we are of the view that this issue requires fresh examination at the end of the Assessing Officer. Accordingly, we set aside the order passed by the learned CIT(A) on this issue and restore the same to the file of the Assessing Officer for examining it afresh.

7. The next issue relates to disallowance made u/s 14A of the Act. The learned AR submitted that the assessee has earned dividend income of Rs.52,564 and has disallowed a sum of Rs.5,094 u/s 14A of the Act. The Assessing Officer, however, computed the disallowance as per Rule 8D(2)(iii) of I.T.Rules and computed the disallowance at Rs.4,45,618. The learned CIT(A) also confirmed the same.

8. The learned AR submitted that the investment made by the assessee included investments made in foreign subsidiary companies also. The dividend income earned from the foreign subsidiary companies is not exempt u/s 10(38) of the Act. Accordingly, he submitted that while calculating average value

of investments, the investments made in foreign subsidiary should be excluded.

9. We heard the learned DR and perused the record. We find force in the submission made by the learned AR. As per the decision rendered by Delhi Special Bench of the Tribunal in the case of Vireet Investments Ltd, only those investments which have yielded exempt income should be considered for computing the average value of investment. In view of the above, we direct the A.O. to re-compute the disallowance u/s 14A of the Act by excluding the investments made in foreign subsidiaries while computing average value of investments.

10. The last issue relates to disallowance of Provision made by valuing derivatives at the year end, i.e, marked to market rate of valuation of derivatives. The Assessing Officer by following the CBDT Circular No.3/2010 dated 23.03.2010, disallowed the claim of the assessee by holding that the loss arising on account of revaluation of foreign exchange derivatives on marked to market basis is a notional loss. The learned CIT(A) also confirmed the same.

11. Before us the learned AR placed reliance on the decision rendered by the co-ordinate Bench in the case of *Quality Engineering & Software Technologies (P.) Ltd. v. DCIT [(2014) 52 taxmann.com 515 (Bangalore – Trib.)]* that the provisions for losses incurred on derivatives contracts was an eligible expenditure.

12. We heard the learned DR on this issue and perused the record. When a specific query was put to the learned AR as to whether the assessee has revalued all foreign exchange derivatives, trade receivables and trade payables in respect of import and export activities, the learned AR submitted that the matter may be restored to the file of the Assessing Officer for examining the claim of the assessee afresh. It is pertinent to mention here that the assessee should have valued all trade payables and trade receivables and foreign exchange forward contract entered in foreign currencies, which are outstanding as at the year end, in order to avail the claim of deduction of net amount of loss, in any, arising on account of marked to market valuation of those items at the year end. Since this aspect has not been examined by the Assessing Officer, we deem it appropriate to restore the same to the file of the Assessing Officer for examining it afresh. The order of Ld CIT(A) passed on this issue is accordingly set aside.

13. Needless to mention, the assessee should be provided with adequate opportunity of being heard.

14. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced on this day of 06th February, 2020.

Sd/-
(Pavan Kumar Gadale)
JUDICIAL MEMBER

Sd/-
(B.R.Baskaran)
ACCOUNTANT MEMBER

Bangalore; Dated : 06th February, 2020.

Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-6, Bengaluru.
4. The Pr.CIT-6, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore