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

BEFORE SHRI N V VASUDEVAN, VICE PRESIDENT
AND SHRI G MANJUNATHA, ACCOUNTANT MEMBER

IT(TP)A No.843/Bang/2018
Assessment year: 2013-14

M/s Outsourcepartners International Pvt Ltd., Tower 2D, Phase I, Vikas Telecom Limited, Vrindavan Tech Village, Outer Ring Road, Devarbeesanahalli, Bengaluru – 560 087. **PAN: AAACO 5734C**	Vs.	The Deputy Commissioner of Income Tax, Circle-5(1)(2), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri K R Vasudevan, Advocate
Respondent by	:	Shri Muzaffar Hussain, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	18.08.2020
Date of Pronouncement	:	21.08.2020

O R D E R

Per N.V. Vasudevan, Vice President

This appeal by the assessee is against the final order of assessment dated 31.10.2017 passed u/s. 143(3) r.w.s. 144C of the Income-tax Act, 1961 [the Act] by the DCIT, Circle 5(1)(2), Bangalore relating to assessment year 2013-14.

2. The grounds of appeal raised by the assessee reads as follows:-

"1. That on the facts and in the circumstances of the case and in law, the order passed by the Learned Assessing Officer ("Ld. AO") is bad in law.

2. That the Learned Dispute Resolution Panel ("Ld. DRP")/ Ld. AO erred in law and on the facts and in the circumstances of the case in reducing the deduction allowable under section 10AA of the Income-tax Act, 1961 ("the Act") by Rs. 2,473,721 on account of adjustment of expenditure incurred on telecommunication expenses from the export turnover.

2.1. That the Ld. DRP/Ld. AO ought to have appreciated that the telecommunication expenses can be reduced only to the extent they are attributable to delivery of article/ thing outside India and not for rendering of services outside India. In the present facts of the appellant, telecommunication expenses have been incurred by the appellant for providing services outside India.

2.2. That the Ld. DRP/ Ld. AO has erred in concluding that expenditure incurred on telecommunication is deemed to have been incurred for providing services outside India. The Ld. DRP/ Ld. AO has ignored the submission of the appellant that the said expenditure incurred cannot be attributed to providing services outside India since the appellant company works on an offshore model.

2.3. That the Ld. DRP/ Ld. AO ought to have appreciated that the intention of provisions of Section 10AA of the Act is to ensure that export profits are not taxed. However, by making the above mentioned reduction, the profits on exports are being taxed in the hands of the appellant, thereby defeating the purpose of Section 10AA of the Act.

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.518,427 per provisions of section 14A of the Act read with rule 8D of the Income-tax Rules, 1962 ("the 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 518,427 pertains to the SEZ unit of the Assessee and addition made to the income of the Assessee of Rs 518,427 should be entitled for enhanced deduction under section 10AA of the Act.

4. That the Ld. AO has grossly erred on facts and in law by initiating penalty proceedings under section 271(1)(c) of the Act mechanically and without recording any satisfaction for its initiation.

The above grounds of appeal are mutually exclusive and without prejudice to each other.

The Appellant craves leave to add, alter, amend or vary any of the above grounds either before or at the time of hearing as we may be advised."

3. The assessee filed additional grounds of appeal and prayed for admission of the same, which read as follows:-

"2.4. Notwithstanding and without prejudice to the grounds 2 to 2.3, should the telecommunication expenses be reduced from the export turnover. the Ld. DRP/ Ld. AO ought to have reduced the above expenses from the Total Turnover also. The Ld. DRP/ Ld. AO ought to have appreciated that in the absence of a definition of total turnover under Section 10AA of the Act. the definition of the term 'total turnover' as contained in a similar provision of the Act i.e. 80HHE should be applied.

> 2.5 That the Ld. DRP/ Ld. AO has erred in law and on the facts and in circumstances of the case in not relying upon the decision of the Jurisdictional High Court of Karnataka in the case of CIT vs. M/s Tata Elxsi Ltd and Others (ITA 70 of 2009) which has now been affirmed by the Hon'ble Supreme Court in the case of HCL Technologies Ltd.: 93 taxmann.com 33 (SC), wherein it has been held that if export turnover is arrived at after excluding certain expenses, said expenses should also be excluded from total turnover."

4. The additional ground is an alternative ground on the original ground No.2 raised by the assessee in the Memorandum of grounds filed alongwith the appeal and therefore the same is admitted for adjudication.

5. As far as grounds 2.4 & 2.5 are concerned, the issue is with regard to computation of deduction u/s. 10AA of the Act. The AO reduced the expenditure incurred on telecommunication expenses from the export turnover for the purpose of allowing deduction u/s. 10AA. The DRP confirmed the order action of the AO. The assessee's alternative plea was that if the telecommunication expenses are regarded as expenses to be excluded from the export turnover, the same should also be excluded from the total turnover while computing deduction u/.s 10AA. This was not accepted by the TPO/DRP.

6. At the time of hearing, the ld. counsel for the assessee prayed for adjudication of additional ground Nos. 2.4 & 2.5 alone. Grounds 2.1 to 2.3 were not pressed.

7. As far as additional grounds 2.4 & 2.5 are concerned, taking into consideration the decision rendered by the Hon'ble High Court of Karnataka in the case of CIT v. Tata Elxsi Ltd [2012] 349 ITR 98 (Karn), we are of the view that telecommunication charges should be excluded both from export turnover and total turnover. We are of the view that as of today, law declared by the Hon'ble High Court of Karnataka which is the

jurisdictional High Court is binding on us. Moreover, the order of the Hon'ble Karnataka High Court has been upheld by the Hon'ble Supreme Court in the case of CIT v. HCL Technologies Ltd. in Civil Appeal No.8489-98490 of 2013 & Ors. dated 24.04.2018. The aforesaid additional grounds by the assessee are therefore allowed.

8. The issue projected in ground No.3.3 is with regard to addition to the total income by the AO by applying provisions of section 14A of the Act. Though the assessee has challenged the disallowance, at the time of hearing the ld. counsel for the assessee submitted that disallowance u/s. 14A of the Act would go to increase profits of the business on which deduction u/s. 10AA will be allowed and prayed that AO should be directed to allow deduction u/s. 10AA on the profits of the business as enhanced by the disallowance u/s. 14A.

9. In support of the claim for such deduction, the ld. counsel for the assessee placed reliance on the decision of the ITAT Bangalore Bench in the case of *GE (India) Exports P. Ltd. v. DCIT [2018] 82 taxmann.com 464 [Bang. Trib.]* wherein it was held as follows:-

"11. The ground appeal of the assessee at 2.1 is as under:—

> "Without prejudice to the above, even assuming but not admitting that the above amount of Rs. 19,40,000/- is disallowance u/s 14A of the Act, the ld CIT(A) erred in upholding the order of the ld AO in not granting the relief u/s 10A of the Act on the enhanced income."

In this regard, the ld AR has submitted that in case this Tribunal disallows the ground 2.1 and held that the sec. 14A is applicable for instant case then in such eventuality, the expenditure should be added back to the income of the undertaking and deduction u/s 10A should be allowed on such enhanced income.

The CIT (A) in paragraph 173 of the order records the submission of the assessee in the following manner:—

> "Deduction u/s 10A was allowed on profits earned by the appellant form of the business of its undertaking. Any adjustment made during the computation of income under the head profits and gains of business or profession increased

the profit of the business of the undertaking which was then eligible for tax holiday benefits. The provisions of sec. 10A did not provide for any limitation the grant of tax holiday on any additions made. It was only the provisions of sec. 92C which provided for a limitation on grant of tax holiday u/s 10A on adjustments made to ALP determined by assesses, implying that all the other adjustments made were eligible for tax holiday deductions."

The ld AR for the assessee further relied upon the judgment of Pune Bench of the Tribunal in the case of *ITO* v. *Kalbhor Gawade Builders* [2013] 31 taxman.com 185/141 ITD 612, the decision of Hon'ble Bombay High Court held in the case of *CIT* v. *Gem Plus Jewellery India Ltd.* [2011] 330 ITR 175/[2010] 194 Taxman 192 and judgments of Hyderabad Bench in the case of *Bartronics India Ltd.* v. *Asstt. CIT* [2012] 22 taxman.com 5/52 SOT 188.

On the other hand, the ld DR has submitted that the judgment relied upon by the ld AR are not applicable to the facts and circumstances of the case. Further, it was contended that for the purposes of sec. 10A, the income which is derived by an undertaking from the export of article etc. allowable as deduction from the total income of the assessee. The judgment referred by the ld AR viz., iNautix Technologies India (P) Ltd., was on different facts and in fact. The coordinate bench in the matter of iNautix Technologies India (P) Ltd., has relied upon the judgment of Bombay High Court in *Gem Plus Jewellery India Ltd.* case (*supra*) wherein it was held that the assessee was entitled to exemption u/s 10A with reference to addition or disallowance of various payments as the plain consequence of disallowance and add back made by the AO is increased in the business profit of the assessee.

12. We have considered the rival submissions and we find force in the submissions of the learned AR of the assessee on this issue because if part of expenses claimed by the assessee against business income is considered as expenses incurred for earning tax free income and is disallowed u/s 14A, the business income stands increased by that amount and only such increased business income should be considered for computing the amount of deduction u/s 10A. AO is directed accordingly."

10. Following the aforesaid decision, we direct the AO to allow deduction u/s. 10AA of the Act on the profits of the business as increased by addition u/s. 14A of the Act.

11. In the result, the appeal by the assessee is partly allowed.

Pronounced in the open court on this 21st day of August, 2020.

Sd/-	Sd/-
(G MANJUNATHA)	(N V VASUDEVAN)
ACCOUNTANT MEMBER	VICE PRESIDENT

Bangalore,
Dated, the 21st August, 2020.

/Desai S Murthy /

Copy to:

1. Appellant 2. Respondent 3. CIT 4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.