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

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

IT(TP)A Nos. 203/Bang/2015
Assessment year : 2010-11

The Income Tax Officer, Ward 6(1)(1), Bengaluru.	Vs.	M/s. Sabre Travel Technologies Pvt. Ltd., Unit 1 & 2, Level 2, Navigator Building, ITPB, Whitefield Main Road, Bangalore – 560 066. **PAN: AAICS 5777P**
APPELLANT		RESPONDENT

IT(TP)A Nos. 559 & 595/Bang/2015 & ITA No.332/Bang/2018
Assessment years : 2010-11, 2010-11 & 2012-13

M/s. Sabre Travel Technologies Pvt. Ltd., Bangalore – 560 066. **PAN: AAICS 5777P**	Vs.	The Income Tax Officer, Ward 6(1)(1), Bengaluru.
APPELLANT		RESPONDENT

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

Date of hearing	:	12.08.2020
Date of Pronouncement	:	31.08.2020

O R D E R

Per N.V. Vasudevan, Vice President

IT(TP)A No.203/Bang/2015 is an appeal by the revenue, while IT(TP)A No.559/Bang/2015 is an appeal by the assessee. Both the appeals are directed against the order dated 30.1.2015 of the ITO, Ward 6(1)(1), Bengaluru passed u/s. 143(3) r.w.s. 144C(13) of the Income-tax Act, 1961 [the Act] in relation to assessment year 2010-11.

2. IT(TP)A No.595/Bang/2015 is an appeal by the assessee against order u/s. 154 of the Act passed by the AO rectifying certain computational errors in the final order of assessment dated 30.01.2015 for AY 2010-11 which is the subject matter in IT(TP)A No.203/Bang/2015. At the time of hearing, the ld. counsel for the assessee submitted that a decision in the cross appeals for AY 2010-11 would also decide the dispute in the order u/s. 154 of the Act and therefore this appeal viz., IT(TP)A No.595/Bang/2015 infructuous and may be dismissed. Accepting the plea of the ld. counsel for the assessee, this appeal is dismissed as infructuous.

3. Now we will take up for consideration the cross appeals by the assessee and revenue for AY 2010-11.

4. The issue in the revenue's appeal for AY 2010-11 is with regard to determination of Arm's Length Price in respect of international transaction of rendering of Software Development Services by the Assessee to its holding company. In the Assessee's cross appeal being IT(TP) A.No.559/Bang/2015, ground Nos. 1 to 8 are with regard to Transfer pricing issues and can be conveniently decided together with the appeal of the revenue. The grounds of appeal raised by the Revenue in its appeal and

the additional grounds of appeal raised by the revenue in its appeal read thus:-

Grounds of Appeal

"1. The directions of the Dispute Resolution Panel are opposed to law and facts of the case.

2. On the facts and in the circumstances of the case the Dispute Resolution Panel erred in law in directing the AO to exclude the telecommunication expenses, insurance charges and foreign exchange loss both from the export turnover as well as from total turnover for the purpose of computation of deduction u/s 10A, without appreciating the fact that the statute allows exclusion of such expenditure only from export turnover by way of specific definition of export turnover as envisaged by Sub-clause (4) of Explanation 2 below Sub-section (8) of Section 10A and the total turnover has not been defined in this Section.

3. On the facts and in the circumstances of the case the Dispute Resolution Panel erred in directing the AO to compute deduction u/s 10A in the above manner by placing reliance on the decision of Hon'ble High Court of Karnataka in the case of M/s Tata Elxsi Ltd., which has not become final since the same has not been accepted by the Department and SLPs are pending before the Hon'ble Supreme Court.

4. On the facts and in the circumstances of the case, the Disputes Resolution Panel erred in excluding uncontrolled comparables having turnover more than Rs. 200 crores in the absence of Turnover criterion prescribed in Rule 10B of Income Tax Rules and also there being no correlation between turnover and profit margin.

5. On the facts and in the circumstances of the case the Dispute Resolution Panel relying on the decision of the jurisdictional ITAT in the case of DCIT Vs. Hello Soft Pvt. Ltd. (2013) erred in directing the AO to apply risk adjustments at 1% to the average margin without appreciating the fact that a single customer risk borne by the tax payer in its status of a captive

service provider was equivalent to the marketing and technical risk attached to the comparables and the TPO was justified in not allowing any adjustment on account of risk.

6. For these and other grounds that may be urged at the time of hearing, it is prayed that the directions of the Dispute Resolution Panel in so far as it relates to the above grounds may be reversed.

7. The appellant craves leave to add, alter, amend and / or delete any of the grounds mentioned above."

Additional grounds of appeal

1.	The order of the DRP is opposed to law and the facts and circumstances of the case.
2.	Whether the Hon'ble DRP, Bangalore has erred in directing the TPO to apply RPT filter of 0%.
3.	Whether the Hon'ble DRP, Bangalore was right in not following the judicial decisions passed by different ITAT, including ITAT Bengaluru, where threshold of 25% RPT was accepted.
4.	For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the DRP in so far as it relates to the above grounds may be reversed and that of the Assessing Officer be restored.
5.	The appellant craves leave to add, alter, amend or delete any of the grounds that may be urged at the time of hearing of the appeal.

5. In Assessee's appeal, the grounds pressed for adjudication are Grds.No.3(b) & 4 (other grounds relating to Transfer Pricing were not pressed) and these grounds read as follows:-

"3. The learned AO / learned TPO erred in rejecting the TP documentation maintained by the Appellant by invoking provisions of sub-section (3) of 92C of the Act contending that the information or data used in the computation of the ALP is not

reliable or correct. The learned AO/ learned TPO has grossly erred therefore in :

……..
following company selected as functionally comparable by the learned AO / learned TPO ought to have been rejected:
Kals Information Systems Ltd
…….

4. The learned AO/learned TPO erred in accepting the following comparable companies, which were rejected by the Hon'ble DRP by applying Related Party Transaction (RPT) filter. The learned AO/ leaned TPO has grossly erred in not giving effect to the directions passed by the Hon'ble DRP:-

- I C R A Techno Analytics Ltd. (seg)
- Persistent Systems & Solutions Ltd
- Thinksoft Global Services Ltd."

6. The Assessee is a company engaged in the business of providing contract Software Development Services (SWD Services) to its holding company. The transaction of rendering software development services to holding company was a transaction with an Associated Enterprise (AE) and was therefore an international transaction. As per the provisions of Sec.92 of the Act, income from international transaction has to be computed having regard to Arm's Length Price (ALP).

7. The details of the international transaction of rendering SWD services between the Assessee and its AE in AY 2010-11 is as follows:-

Particulars	**Amount in Rs.**
Provision of SWD services	88,25,18,949

SOFTWARE DEVELOPMENT SERVICES SEGMENT

8. It is not in dispute between the Assessee and the revenue that the Transaction Net Margin Method (TNMM) was the Most Appropriate Method (MAM) for determination of ALP and that the profit level indicator to be adopted for comparison of the Assessee's profit with that of comparable companies was Operating Profit/Total Cost (OP/TC). The OP/TC of the Assessee was 12.29%. The Assessee in its TP study selected 13 comparable companies whose arithmetic mean of OP/TC was arrived at 13.36%. Since the profit margin of the Assessee was within the permitted range as per the proviso to Sec.92CA(2) of the Act, it was claimed by the Assessee that the price charged by it in the international transaction was at Arm's Length. The Transfer Pricing Officer (TPO) to whom the determination of ALP was referred by the AO, accepted 2 out of the 13 comparable companies suggested in the TP study by the Assessee (viz., Tata Elxsi Ltd., & Mindtree Ltd.) as comparable with the Assessee. The TPO on his own selected 9 other companies as comparable companies with the Assessee. Thus a final set of 11 comparable companies was chosen by the TPO as comparable companies. The arithmetic mean of profit margin of these companies after and before adjustment towards working capital adjustment was as follows:-

Comparables selected by the TPO and their arithmetic mean:

Sl. No.	Name of the Company	Unadjusted Margins as per TPO Order	Adjusted Margins as per TPO
1	ICRA Techno Analytics Ltd. (seg)	24.94%	25.23%
2	Infosys Ltd.	44.98%	25.25%
3	Kals Information Systems Ltd (Seg)	34.41%	30.98%
4	Larsen & Toubro Infotech Ltd.	19.33%	19.99%

Sl. No.	Name of the Company	Unadjusted Margins as per TPO Order	Adjusted Margins as per TPO
5	Mindtree Ltd. (seg)	14.83%	13.32%
6	Persistent Systems & Solutions Ltd.	15.38%	15.72%
7	Persistent Systems Ltd.	30.35%	28.64%
8	R S Software (India) Ltd.	10.29%	11.03%
9	Sasken Communication Technologies Ltd.	17.36%	16.98%
10	Tata Elxsi Ltd. (seg.)	20.93%	17.77%
11	Thinksoft Global Services Ltd.	17.05%	14.54%
AVERAGE MARGIN		**22.71%**	**21.76%**

The TPO restricted the working capital adjustment to 1.98%.

9. Based on the above average arithmetic mean of profit margin of the comparable companies, the TPO computed the ALP of the international transaction of rendering of SWD services by the Assessee to its holding company as follows:-

Computation of arm's length price by the TPO and the adjustment made:

Computation of Arm's Length Price

Particulars	Amount INR
Arithmetic Mean PLI	22.71%
Less: Working Capital Adjustment	0.95%
Adjusted Arithmetic mean PLI	**21.76%**

Arm's Length Price

Particulars	Amount INR
Operating Cost	78,58,99,253
Arm's Length Price ("ALP") @ 121.76% of Operating Cost	**95,69,10,930**

Price received vis-à-vis the Arm's Length Price

Particulars	Amount INR
Arm's Length Price @ 121.76% of Operating Cost	95,69,10,930
Price received	88,25,19,949
Shortfall being adjustment u/s 92CA	**7,43,91,982**

10. The difference between the price charged by the Assessee and the ALP determined by the TPO viz., Rs.7,43,91,982 was added to the total income by the AO in his drat assessment order dated 20.3.2014 as addition on account of shortfall being adjustment u/s.92CA of the Act.

11. The Assessee filed objections to the draft assessment order by the AO before the Disputes Resolution Panel (DRP). The DRP in its directions dated 26.12.2014 accepted some and rejected the other objections of the Assessee. The AO passed a fair order of assessment making the addition on account of determination of ALP by the TPO. Aggrieved by the addition made in the fair order of assessment, the Assessee and aggrieved by the reliefs allowed to the Assessee, the revenue have filed the present appeals before the Tribunal.

12. As far as the appeal of the revenue is concerned, grounds No.1, 6 & 7 are general in nature and do not require any specific adjudication. The issue in ground Nos. 2 & 3 of the revenue's appeal is with regard to exclusion of telecommunication expenses, insurance charges and foreign exchange loss both from the export turnover and total turnover for the purpose of computation of deduction u/s. 10A of the Act. It is not in dispute before us that the Hon'ble High Court of Karnataka in the case of *CIT v. Tata Elxsi Ltd [2012] 349 ITR 98 (Karn)* has held that charges/expenses relating to telecommunication, insurance charges and

foreign exchange loss should be excluded both from export turnover and total turnover while computing deduction u/s.10A of the Act i.e., whatever is removed from the numerator should also be excluded from the denominator while working total turnover and export turnover for allowing deduction u/s.10A of the Act. The aforesaid decision of the jurisdictional 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. In view of the above, we are of the view that the order of AO calls for no interference.

13. We have heard the rival submissions. As far as ground No.4 raised by the Revenue is concerned the question boils down on application of turnover filter in choosing comparable companies. As far as excluding the companies on the basis of turnover is concerned, the issue has been settled in several decisions of the Tribunal and has been elaborately discussed by this Tribunal in the case of *Autodesk India Pvt. Ltd. v. DCIT in IT(TP)A No.540 & 541/Bang/2013, order dated 06.07.2018.* The Tribunal in this decision after review of entire case laws on the subject, considered the question, whether companies having turnover more than 200 crores upto 500 crores has to be regarded as one category and those companies cannot be regarded as comparables with companies having turnover of less than 200 crores, the Tribunal held as follows:-

> "17.7. We have considered the rival submissions. The substantial question of law (Question No.1 to 3) which was framed by the Hon'ble Delhi High Court in the case of Chryscapital Investment Advisors (India) Pvt.Ltd., (supra) was as to whether comparable can be rejected on the ground that they have exceptionally high profit margins or fluctuation profit margins, as compared to the Assessee in transfer pricing analysis. Therefore as rightly submitted by the learned counsel for the Assessee the

observations of the Hon'ble High Court, in so far as it refers to turnover, were in the nature of obiter dictum. Judicial discipline requires that the Tribunal should follow the decision of a non-jurisdiction High Court, even though the said decision is of a non-jurisdictional High Court. We however find that the Hon'ble Bombay High Court in the case of CIT Vs. Pentair Water India Pvt.Ltd. Tax Appeal No.18 of 2015 judgment dated 16.9.2015 has taken the view that turnover is a relevant criterion for choosing companies as comparable companies in determination of ALP in transfer pricing cases. There is no decision of the jurisdictional High Court on this issue. In the circumstances, following the principle that where two views are available on an issue, the view favourable to the Assessee has to be adopted, we respectfully follow the view of the Hon'ble Bombay High Court on the issue. Respectfully following the aforesaid decision, we uphold the order of the DRP excluding 5 companies from the list of comparable companies chosen by the TPO on the basis that the 5 companies turnover was much higher compared to that the Assessee.

17.8. In view of the above conclusion, there may not be any necessity to examine as to whether the decision rendered in the case of Genisys Integrating (supra) by the ITAT Bangalore Bench should continue to be followed. Since arguments were advanced on the correctness of the decisions rendered by the ITAT Mumbai and Bangalore Benches taking a view contrary to that taken in the case of Genisys Integrating (supra), we proceed to examine the said issue also. On this issue, the first aspect which we notice is that the decision rendered in the case of Genisys Integrating (supra) was the earliest decision rendered on the issue of comparability of companies on the basis of turnover in Transfer Pricing cases. The decision was rendered as early as 5.8.2011. The decisions rendered by the ITAT Mumbai Benches cited by the learned DR before us in the case of Willis Processing Services (supra) and Capegemini India Pvt.Ltd. (supra) are to be regarded as per incurium as these decisions ignore a binding co-ordinate bench decision. In this regard the decisions referred to by the learned counsel for the Assessee supports the plea of the learned counsel for the Assessee. The decisions rendered in the case of M/S.NTT Data (supra), Societe Generale Global

> Solutions (supra) and LSI Technologies (supra) were rendered later in point of time. Those decisions follow the ratio laid down in Willis Processing Services (supra) and have to be regarded as per incurium. These three decisions also place reliance on the decision of the Hon'ble Delhi High Court in the case of Chriscapital Investment (supra). We have already held that the decision rendered in the case of Chriscapital Investment (supra) is obiter dicta and that the ratio decidendi laid down by the Hon'ble Bombay High Court in the case of Pentair (supra) which is favourable to the Assessee has to be followed. Therefore, the decisions cited by the learned DR before us cannot be the basis to hold that high turnover is not relevant criteria for deciding on comparability of companies in determination of ALP under the Transfer Pricing regulations under the Act. For the reasons given above, we uphold the order of the CIT(A) on the issue of application of turnover filter and his action in excluding companies by following the ratio laid down in the case of Genisys Integrating (supra)."

14. In the light of the aforesaid decision of the Tribunal, we do not find any infirmity in the directions of the DRP in excluding the companies having turnover more than Rs.200 crores. Consequently ground No.4 raised by the revenue is dismissed.

15. As far as ground No.5 of revenue regarding grant of risk adjustment @ 1% by DRP is concerned, we find from para 13.5 of the DRP's directions that the DRP has not directed the AO to allow risk adjustment @ 1%, but has only directed the AO to decide the percentage of risk adjustment to be calculated and to take guidance from the decision of the ITAT Bangalore in the case of *Hellosoft Pvt. Ltd. [2013] 32 taxmann.com 101 ITAT Hyd.* Hence we are of the view that the ground projected by the revenue does not arise out of the directions of the DRP.

16. As far as the additional grounds of appeal raised by the revenue is concerned, it can be conveniently decided together with ground No.4 raised

by the assessee in its appeal. It was the plea of assessee before the DRP that a company cannot be chosen as a comparable where its Related Party Transaction (RPT) is more than 0%. This objection of the assessee has been dealt with by the DRP in paras 10 to 10.5. The DRP after noticing that there were divergent views on application of RPT filter between 15% and 25% i.e., if transaction with related parties is between 15% to 25% of the assessee's sales/revenue, then that company is treated as not comparable. The DRP, however, following the decision of the ITAT Delhi Bench in the case of *Mentor Graphics P. Ltd. 109 ITD 101 (Del)* took the view that there should be Nil RPT for a company to be taken as a comparable company. The department is in appeal on the above conclusion of the DRP.

17. As far as ground No.4 of the assessee is concerned, the assessee did not object to inclusion of Thinksoft Global Services Ltd., & and Persistent Systems & Solutions Ltd., before the TPO and accepted the inclusion of these companies as comparables. The Assessee did not challenge inclusion of those 2 companies before the DRP as well. The assessee did challenge ICRA Techno Analytics Ltd., being included as comparable on the ground of RPT filter before DRP. Because of the direction of the DRP that the threshold limit of RPT filter should be 0%, the Assessee now seeks exclusion of these three companies from the list of comparable companies chosen by the TPO. The ld. DR's objection was that the assessee not having challenged the inclusion of Persistent Systems & Solutions Ltd. and Thinksoft Global Ltd. before the DRP, cannot seek to take advantage of the DRP's direction of RPT filter and seek exclusion of these two companies. As far as ICRA techno analytics Ld., is concerned, the Assessee challenged the inclusion of this company on functional comparability but not on application of RPT filter. As far as

application of RPT filter is concerned, this Tribunal has been taking a consistent view that the threshold limit for application of RPT filter should be 15% and in cases where the available samples are less, then the threshold limit can be fixed at 25%. Therefore, we are of the view that the directions of the DRP fixing the threshold limit as 0% for application of RPT filter is not correct. We direct the TPO to adopt the RPT filter @ 15% and decide the comparability of all the companies that remain for comparability as per the directions in this order. Accordingly, the additional grounds by the revenue and ground No.4 by the assessee are partly allowed.

18. In the result, the appeal by the revenue stands partly allowed.

19. As far as assessee's appeal is concerned, the only other ground that remains for consideration on the question of determination of ALP is ground 3(b) wherein the assessee seeks exclusion of KALS Information Systems Ltd. The ld. counsel for the assessee has pointed out that in the case of SWD services provider such as the assessee in a decision rendered by the ITAT for AY 2010-11 in *Logitech Engg. & Design (I) Pvt. Ltd., v. DCIT, IT(TP)A No.287/Bang/2015, order dated 3.3.2017,* in para 6 of the order the Tribunal excluded KALS Information Systems Ltd. on the ground that it is not functionally comparable with SWD service provider such as the assessee. Following the aforesaid decision, we direction exclusion of KALS Information Systems Ltd. Ground 3(b) is thus treated as allowed.

20. The AO is directed to compute the ALP in accordance with the directions contained in this order, after affording assessee opportunity of being heard.

21. In the assessee's appeal, the corporate tax issues start from ground No.10. Ground No.10 reads as follows:-

> "10. Disallowance of lease rentals claimed as revenue expenditure — Rs.14,800,936
>
> i. The learned AO / DRP has erred in treating the lease rental payments made by the Appellant as capital expenditure.
>
> ii. The learned AO / DRP has erred in not appreciating the fact that the Appellant has paid lease rentals towards fit-outs provided by the lessor."

22. The assessee had taken a premise on lease and paid lease rent of Rs.3,79,39,583 which was debited to the P&L account. In the computation of total income, the assessee claimed deduction of a sum of Rs.1,64,45,484 towards fit-outs which is payable in EMIs over a period of 5 years which was not debited to the P&L a/c. In the proceedings before the AO, the assessee submitted with regard to the aforesaid deduction as follows:-

> "I) Deduction on account of lease rentals paid during the year amounting to Rs.16,445,484
>
> In this regard, the Company would like to submit that it has taken office premises on rent from Information Technology Park Limited (ITPL). The company has entered into a lease agreement with ITPL whereby ITPL has agreed to provide fit-outs to the rented premises as per the requirements of the Company. The lease rentals for such fit-outs shall be payable in equal monthly instalments for a period of five years after which the Company shall not be liable to pay any monthly rentals to ITPL on account of fit-out charges.
>
> The lease rentals paid to ITPL towards such fit-outs has not been debited to the profit and loss account. Accordingly. the Company has claimed the lease rental paid to ITPL amounting to Rs.

16,445,484 towards such fit-out charges as revenue expenditure in the computation of income.

The copies of lease rental agreement are enclosed as Annexure 1."

23. The AO, however, came to the conclusion that the payment was capital in nature and therefore cannot be allowed as a deduction. The same was accordingly added to total income of the assessee. The DRP on this issue held that assessee can claim depreciation on the amount disallowed. The following were the relevant observations:-

"16.1 Disallowance of lease rentals claimed as revenue expenditure amounting Rs. 16,445,484

a) The Learned Assessing Officer ("learned A0") has erred in treating the lease rental payments made by the Assessee as capital expenditure, thereby, disallowing an amount of Rs. 16,445,484 being lease rental payments claimed as tax deductible expenditure in the Return of income filed on 30 September 2010.

b) The learned AO has erred in not appreciating the fact that the assessee has paid lease rentals towards fit-outs provided by the lessor i.e. Information Technology Park Limited (ITPL), Bangalore and claimed the same as tax deductible expenditure for the year ended 31 March 2010.

c) Notwithstanding and without prejudice to the above, should the claim of lease rental payments be treated as capital expenditure, consequential allowance of depreciation in respect of such expenditure should be allowed.

16.2 This Panel is not able to agree clearly with the Assessee's contention in Para a) in view of the enduring nature of asset which is inseparable from the building. However the alternate claim of depreciation is maintainable and AO is directed to allow depreciation at the normal rate applicable to buildings."

24. Aggrieved by the aforesaid directions, the assessee has preferred ground No.10 before the Tribunal.

25. We have heard the rival submissions. From the order of AO and DRP as well as the submissions made by the assessee before us, it is not clear as to what is the break-up of the fit-outs that was provided in the lease premises. A copy of the lease agreement between the assessee and owner of the property is at page 334 to 347 of PB and this agreement does not contain any description of the nature of fit-outs. Without the details and nature of fit-outs, it is not possible to conclude whether the expenditure is capital or revenue in nature. In the circumstances, we deem it fit and proper to set aside the order of AO and remand the question for consideration *de novo* by the AO with a direction to ascertain the nature of fit-outs and the manner of adjustment of cost of fit-outs bet ween the assessee and the owner of the premises who provided the fit-outs. Ground No.10 is accordingly decided.

26. Ground No.11 by the assessee reads as follows:-

> "11. Disallowance of contribution to approved gratuity fund — Rs.6,231,918
>
> i. The learned AO / DRP has erred in disallowing an amount of Rs. 6,231,918, being contribution made to an approved gratuity fund.
>
> ii. The learned AO has erred in stating that the Appellant has not furnished any verifiable documentary evidence in support of its claim of contribution to an approved gratuity fund.
>
> iii. The learned AO / DRP had erred in not appreciating the fact that the Appellant had submitted (vide submission dated 19 March 2014) before the learned AO a copy of ledger extract of contributions made towards gratuity fund duly approved by the Commissioner of Income-tax.

iv. The learned AO had erred in not appreciating that the Appellant had submitted before the Honourable DRP bank statement evidencing the remittance of contribution made by the Appellant and copy of the receipt from the approved gratuity fund."

27. In the computation of total income, the assessee claimed a deduction of Rs.62,31,918 towards gratuity contribution paid during the year. The assessee submitted that the gratuity was a part of approved gratuity fund and contributions were entitled to deduction u/s. 43B of the Act. The AO held that the assessee did not file any documentary evidence regarding proof of payment and therefore disallowed the claim of assessee for deduction.

28. Before the DRP, the assessee submitted that the documentary evidence was filed and the AO's observations were not correct. The DRP directed the AO to verify from the record regarding the claim of assessee that evidence was filed on 19.3.2014 in the course of assessment proceedings and if found correct, direct the AO to act in accordance with the law. In the final order of assessment, the AO has again held that no proof is filed and therefore the addition is being sustained.

29. Before us, the ld. counsel for the assessee drew our attention to the details of payment of gratuity which are available at page 221 to 226 of assessee's PB and pages 348 of PB Vol.II. Since before passing the final order of assessment, opportunity is not given to the assessee, the assessee could not point out the evidence already filed before the AO. We are therefore of the view that this issue should also be set aside to the AO for verification of proof of payment. If necessary evidence is available on record, the AO is directed to allow deduction and if some additional

evidence is required, the AO should afford opportunity to assessee to produce the same to substantiate its claim for deduction. We hold and direct accordingly.

30. Ground No.12 of the assessee reads as follows:-

> "12. Error in computation of deduction under section 10A
>
> i. Incorrect amount of export turnover considered for computation of section 10A deduction - Rs.866,650,477
>
> a) The learned AO / DRP has failed to appreciate that the Appellant has suo-moto reduced the amount of unrealized foreign exchange loss of Rs. 15,868,472 from export turnover while computing the deduction under section 10A of the Act as evident from Form 56F.
>
> b) The learned AO / DRP has erroneously reduced the amount of unrealized foreign exchange loss of Rs.15,868,472 from export turnover resulting in reducing the foreign exchange loss twice from export turnover.
>
> ii. Incorrect amount of business income considered for the purpose of computation of deduction under section 10A of the Act - Rs.112,978,469
>
> a) The learned AO / DRP has wrongly considered a business income at Rs. 112,978,469 instead of Rs.90,301,067 while claiming deduction under section 10A of the Act."

31. At the time of hearing, both the parties agreed that the aforesaid incorrect computation requires verification by the AO and for this purpose this has to be sent back to the AO. Accordingly the AO is directed to consider the plea of the assessee and rectify the error in the computation of deduction u/s. 10A of the Act as claimed in ground No.12.

32. Ground No.13 with regard to charging of interest u/s. 234B of the Act is purely consequential and the AO is directed to give consequential relief.

ITA 332/Bang/2018

33. This appeal by the assessee is against the order dated 31.10.2017 of the CIT(Appeals)-6, Bengaluru relating to AY 2012-13.

34. Ground Nos.2 & 3 are substantive grounds which read as follows:-

> "2 Disallowance of lease rentals claimed as revenue expenditure
>
> The Ld. M(-A), without taking cognisance of the submissions filed by the Appellant has erred in law and in facts in holding that the Learned Assessing Officer (Id. AO') was justified in treating the lease rental payments made by the Appellant as capital expenditure instead of revenue expenditure.
>
> 3 Non grant of consequential depreciation on disallowance made in earlier years
>
> Without prejudice to the above, the Ld. AO has erred in law and in facts in not granting the consequential depreciation on lease rental payment made by the Appellant, which were treated as capital expenditure by him and was disallowed during the assessment proceedings of AY 2010-11 and AY 2011-12."

35. The issue projected in the aforesaid ground is identical to ground No.10 raised by the assessee in its appeal for the AY 2010-11. This issue is set aside and remanded to the AO for fresh consideration in accordance with the directions contained for the AY 2010-11.

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

37. In the combined result, IT(TP)A Nos. 559/Bang/2015 and 203/Bang/2015 are partly allowed, IT(TP)A No. 595/Bang/2015 is dismissed and ITA No.332/Bang/2018 is allowed for statistical purposes.

Pronounced in the open court on this 31st day of August, 2020.

Sd/-	Sd/-
(B R BASKARAN) ACCOUNTANT MEMBER	(N V VASUDEVAN) VICE PRESIDENT

Bangalore,
Dated, the 31st August, 2020.

/*Desai S Murthy /*

Copy to:
1. Revenue 2. Assessee 3. CIT 4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.