

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

**Before Shri George George K, JM & Shri B.R.Baskaran, AM**

IT(TP)A No.508/Bang/2016 : Asst.Year 2011-2012

The Dy.Commissioner of Income-tax, Circle 5(1)(1) Bangalore.	v.	M/s.NTT Data Global Delivery Services (Formerly known as Keane India Limited) No.18 & 81/1, South End Road, Basavangudi Bangalore – 560 004. <b>PAN : AABCK7777J.</b>
(Appellant)		(Respondent)

Appellant by : Ms.Neera Malhotra, CIT-DR

Respondent by : Sri.Chavali Narayan, CA

<b>Date of Hearing : 01.04.2021</b>	<b>Date of Pronouncement : 12.04.2021</b>
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**ORDER**

**Per George George K, JM :**

This appeal at the instance of the Revenue is directed against the final assessment order dated 28.01.2016 passed u/s 143(3) r.w.s. 144C(13) of the I.T.Act. The relevant assessment year is 2011-2012.

2. The grounds raised read as follow:

*“1. The direction of the Dispute Resolution Panel are opposed to the law and not on the facts and circumstances of the case.*

*2. On the facts and in the circumstances of the case, the DRP erred in law on upholding that the benefit of tax holiday u/s 10A is available to interest income earned by the company without appreciating the fact that all incidental and miscellaneous income which do not conform to the test of “direct nexus” between the profit and the industrial undertaking are ineligible for deduction u/s 80IB of the Act. The interest income can be in nature of business income and may also be related to EOU unit but the same cannot be treated as income derived from export oriented undertaking.*

3. *On the facts and in the circumstances of the case, the DRP erred in law in directing the Assessing Officer to reduce the expenditure incurred in travel, telecommunication etc, both from the Export Turnover as well as the Total Turnover for the purpose of computation of deduction u/s 10A of the IT Act without appreciating the fact that the statute allows exclusion of such expenditure only from the 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. On the other hand, there is no specific provision in section 10A warranting exclusion of above expenses from total turnover also.*

4. *On the facts and in the circumstances of the case, the DRP erred in law in holding that foreign exchange loss or gain is a part of operating expenses or operating income, as the case may be when the TPO has excluded this date from that of the comparables.*

5. *Whether DRP is correct in holding foreign exchange fluctuation as operating in nature, while treatment of foreign exchange fluctuation is non-operating in nature by the TPO.*

6. *Whether Ld.DRP has erred in granting 1% risk adjustment arbitrarily without appreciating the facts of the case and its comparables.*

7. *For these and other grounds that may be urged upon, direction of the Dispute Resolution Panel may be reversed and that assessment order be restored.*

8. *The appellant craves leave to add, alter, amend or delete any other grounds on or before hearing of the appeal.”*

2.1 We shall adjudicate the issues raised in the above grounds as under:-

3. **Ground No.2**

3.1 The brief facts in relation to the issue raised in ground No.2 are as follows:

3.2 The A.O. while calculating deduction u/s 10A of the I.T.Act, excluded interest income from profits of business.

3.3 The DRP directed the AO to include interest income in the business profits. The DRP followed the judgment of the Hon'ble jurisdictional High Court in assessee's own case in ITA No.1125/Bang/2008 (judgment dated 13.10.2014).

3.4 The Revenue being aggrieved is in appeal before the Tribunal.

3.5 We have heard rival submissions and perused the material on record. The Hon'ble jurisdictional High Court in assessee's own case (supra) had held that interest income cannot be excluded from business profits while calculating deduction u/s 10A of the I.T.Act. In view of the judgment of the Hon'ble High Court in assessee's own case, we hold that the DRP is justified in its direction to grant 10A benefit to interest income earned by the assessee.

4. **Ground No.3**

4.1 The A.O. while calculating deduction u/s 10A of the I.T.Act, had reduced expenditure incurred in foreign currency from the export turnover on the ground that such expenses were incurred towards providing technical services outside India. The A.O. also rejected the alternative contention of the assessee that if the impugned amounts are reduced from the export turnover, necessarily the same also need to be reduced

from the total turnover while calculating deduction u/s 10A of the I.T.Act.

4.2 The DRP directed the AO to exclude the impugned expenditure both from the export turnover as well as from the total turnover while computing deduction u/s 10A of the I.T.Act. For the above directions of the DRP, they relied on the judgment of the Hon'ble jurisdictional High Court in the case of CIT v. Tata Elxsi Ltd. (2012) 349 ITR 98.

4.3 Aggrieved, the department has filed this appeal before the Tribunal.

4.4 We have heard rival submissions and perused the material on record. The issue in question is squarely covered by the judgment of the Hon'ble jurisdictional High Court in the case of CIT v. Tata Elxsi Ltd. (supra), wherein the Hon'ble High Court upheld the principle of parity and held that if expenses are reduced from the export turnover, equal amount should be reduced from the total turnover for computing deduction u/s 10A of the I.T.Act. The judgement of the Hon'ble Karnataka High Court has been affirmed by the Hon'ble Supreme Court in the case of CIT vs. HCL Technologies Ltd. reported in 404 ITR 719 (SC). Therefore, we uphold the directions of the DRP.

## 5. **Ground Nos.4 & 5**

5.1 The AO/TPO did not consider foreign exchange fluctuation as part of operating margin of assessee as well as comparable companies.

5.2 The DRP following the ITAT order in assessee's own case for assessment year 2007-2008, directed the AO/TPO to consider the foreign exchange fluctuation in respect of assessee as well as comparable companies as operating in nature.

5.3 Aggrieved by the above direction, the Revenue is in appeal before the Tribunal.

5.4 We have heard rival submissions and perused the material on record. The Bangalore Bench of the Tribunal in the case of SAP Lab India Pvt. Ltd. (2010-TII-44-ITAT-BANG-TP) and also in assessee's own case for assessment year 2007-2008 have held that foreign exchange gains / losses are to be considered as operating in nature for determining the margins. In view of Co-ordinate Bench orders of the Tribunal, we uphold the directions of the DRP.

## 6. **Ground No.6**

6.1 The AO/TPO did not make any suitable adjustment to account for differentials in risk profile of the assessee vis-à-vis the comparable companies.

6.2 The DRP directed 1% adjustment to the average margin to be provided towards risk adjustment and restored the case to the TPO.

6.3 The Revenue being aggrieved, is in appeal before the Tribunal. The relevant directions of the DRP reads as follow:-

*“The objection regarding adjustment on account of risk profile was raised by the assessee before DRP in relation to Assessment Year 2010-2011 also and following the decision of*

*the Hon'ble ITAT Bangalore in Intellinet Technologies India Pvt. Ltd. v. ITO (ITA No.1237/Bang/2007) the TPO was directed to decide the percentage of risk adjustments to be calculated in that case. By means of guidance, it was mentioned that in the case of DCIT v. Hello Soft Pvt. Ltd. (2913) 32 taxmann.com 101 (ITAT, Hyd) 1% adjustment to the average margin was provided towards risk differential. Since the facts of the case remain the same, the TPO is directed to do the needful in above terms."*

6.4 The DRP had restored the issue to TPO and directed him to give 1% adjustment to the average margin for the risk differentials. The DRP in the above said directions, had relied on various orders of the Tribunal. In view of the above orders of the Tribunal (cited by the DRP), we hold that the DRP is justified in the aforesaid directions. It is ordered accordingly.

7. Ground Nos.1, 7 and 8 are general in nature and no adjudication is required.

8. In the result, the appeal filed by the Revenue is dismissed. Order pronounced on this 12<sup>th</sup> day of April, 2021.

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

**Sd/-**  
**(George George K)**  
**JUDICIAL MEMBER**

Bangalore; Dated : 12<sup>th</sup> April, 2021.  
Devadas G\*

Copy to :

1. The Appellant.
2. The Respondent.
3. The DRP-2, Bangalore.
4. The Pr.CIT-5, Bangalore.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore