

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A”BENCH: BANGALORE**

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

IT(TP)A No.1487/Bang/2013
Assessment Year: 2005-06

NTT Data Global Delivery Services Ltd. No.17, South End Road Basavanagudi Bangalore 560 004 PAN NO :AAACI4796E	Vs.	ACIT Circle-11(5) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri Chavali Narayan, A.R.
Respondent by	:	Ms. Neera Malhotra, D.R.

Date of Hearing	:	01.07.2021
Date of Pronouncement	:	16.07.2021

O R D E R

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

This appeal was initially disposed of by the Tribunal on 6.4.2016. The assessee, inter alia, had raised following three grounds with regard to the eligibility of “recruitment fee income” for deduction u/s 10A of the Income-tax Act, 1961 [‘the Act’ for short].

“14. The learned CIT(A) has erred in law and on facts in not expunging the remarks of the Assessing Officer holding that deduction under section 10A of the Act should not be eligible for recruitment fees as such remarks were made without verifying the nature of services undertaken by the Appellant in this regard;

15. The learned CIT(A) has erred in law and on facts in not appreciating that the recruitment fees is eligible for deduction

under section 10A of the Act since it is covered within the notified information technology enabled services constituting computer software;

16. The learned CIT(A) has erred in law and on facts in ignoring and not following the Honourable Tribunal's decisions in the Appellant's own case for the assessment year 2007-08, being binding on the lower authorities, without appreciating the fact that the issues and facts covered under the present appeal are identical and similar with that of the Appellant's own case for the AY 2007-08"

2. Ground Nos.14 & 15 referred above was disposed of by the Tribunal, vide its order dated 6.4.2016, as under:

"18. Ground Nos.14 & 15 challenge denial of relief u/s 10A in respect of recruitment fees earned. The Ld. CIT(A) upheld the action of the AO in denying deduction u/s 10A in respect of recruitment fees placing reliance on the decision of the Hon'ble Supreme Court in the case of Liberty India Vs. CIT (317 ITR 218). The relevant finding of the Ld. CIT(A) is as under:

"From the above mentioned precedents, it is very clear that a receipt should have direct nexus with export activity, to be eligible for a deduction u/s 10A(1) read with section 10A(4) of the Act. I have considered the facts and circumstances of the case and find that the receipts on account of recruitment fees, interest and miscellaneous activity do not have any nexus, whatsoever with the activity of export of computer software. As such they cannot be treated as part of business profits in the computation of deduction u/s 10A. Hence, I uphold the action of the AO".

We do not find any reason to differ with the reasoning of the Ld. CIT(A). Hence, the grounds of appeal in this regard are dismissed."

3. Since Ground No.16 was not adjudicated by the Tribunal, the assessee filed a miscellaneous petition before the Tribunal, which was numbered as MP No.80/Bang/2016. Against the above said petition, the Tribunal, vide its order dated 23.9.2016 recalled the order for limited purpose of adjudicating certain grounds which included ground No.16. Subsequently, the Tribunal, vide its order dated 03.03.2017, adjudicated ground no.16 by observing as under:-

“3. Ground No.16 is general in nature and does not require any specific adjudication therefore the same is dismissed.”

4. Not satisfied with the order was passed with regard to ground no.16, the assessee filed appeal before Hon'ble High Court of Karnataka and the Hon'ble High Court vide its order dated 19.11.2020 passed in ITA No.526/2017 remitted the ground No.16 to the file of Tribunal with the following observations:

“We have considered the submissions made on both sides and have perused the record. From perusal of the grounds raised by the assessee before the Tribunal as well as the order passed by the Tribunal, it is evident that the grounds raised by the assessee has not been adjudicated by the Tribunal and the Tribunal has held the same to be academic. The Tribunal ought to have adjudicated the grounds raised by the assessee on merits instead of holding the grounds to be academic and not deciding the same.

5. *In view of preceding analysis, the order passed by the Tribunal dated 03.03.2017 insofar as it pertains to ground No.16 raised by the assessee, is hereby quashed and **the matter is remitted to the Tribunal to adjudicate ground No.16 afresh in accordance with law.**”*

5. While the appeal (referred above) filed before Hon'ble Karnataka High Court was pending, the assessee also filed another miscellaneous petition before the Tribunal against the order dated 03-03-2017 passed by the Tribunal and the same was numbered as MP No.229/Bang/2017. The assessee submitted in that miscellaneous petition that there is apparent mistake in the order of the Tribunal in saying that the Ground No.16 is general. It was contended that ground no.16 is not a general ground as held by the Tribunal. The co-ordinate bench, vide its order dated 07-11-2017, rejected the miscellaneous petition with the following observations:-

4. *"We have considered the rival submissions. We find no force in the submissions of the learned AR of the assessee. We reproduce the said ground i.e. Ground No. 16. It is as under:-*

"The learned CIT (A) has erred in law and on facts in ignoring and not following the Honourable Tribunal's decision in the Appellant's own case for the assessment year 2007 - 08, being binding on the lower authorities, without appreciating the fact that the issues and facts covered under the present appeal are identical and similar with that of the appellant's own case for the AY 2007 - 08."

5. *We find that as per Ground Nos. 1 to 13, the dispute is about T. P. Adjustment. Ground Nos. 14 & 15 are in respect of dispute ror allowability of deduction u/s 10A for Recruitment Fees. Ground No. 17 is for allowability of deduction u/s 10A for interest income and misc. income. As per the earlier tribunal order dated 06.04.2016, Ground Nos. 14 & 15 were decided and rejected as per Para No. 18 of that tribunal order and in the M. P. order dated 23.09.2016, the order was not recalled for fresh decision in respect of Ground Nos. 14 & 15. In view of these facts, there is no merit in this contention that Ground No. 14 & 15 are also to be decided afresh. Therefore, there is no mistake in the tribunal order that the Ground No. 16 is general and it does not require any specific adjudication and this ground was rejected on this basis. The M. P. filed by the assessee is liable to be dismissed as we find no mistake in the tribunal order."*

6. Consequent to the order passed by the Hon'ble High Court of Karnataka, this appeal was placed before us for the purpose of adjudicating Ground no.16.

7. We heard the parties and perused the record. The main contentions of Ld A.R are that:-

(a) Ground No.14, 15 and 16 are independent and without prejudice to each other. Hence adjudication of ground nos. 14 & 15 has no effect on Ground no.16. Therefore ground no.16 can be decided independently as directed by Hon'ble High Court.

(b) In Ground No.16, the assessee had placed reliance on the order passed for AY 2007-08 in the assessee's own case in

ITA No.1182/Bang/2011 dated 21st June 2013, wherein an identical issue has been decided in favour of the assessee.

(c) The Principles of consistency and rule of precedence should be followed where there are no changes in facts.

(d) Not following the earlier decision of the co-ordinate bench on the issue amounted to review of its own order which is not permissible. The error committed by the Hon'ble Tribunal has been set right by the Hon'ble High Court by directing the Hon'ble Tribunal to decide the Ground No.16 afresh and in accordance with law.

(e) Further, the Hon'ble High Court of Karnataka, in its order passed in ITA No.544 of 2013, has upheld the order passed by the Tribunal passed for AY 2007-08. Hence the assessee is entitled for deduction u/s 10A in respect of recruitment fee income.

8. As noticed earlier, the assessee has raised three grounds, viz., Ground No.14, 15 & 16 in respect of the issue relating to eligibility of "recruitment fee income" for deduction u/s 10A of the Act. Even though the Ld A.R has contended that ground nos. 14, 15 & 16 are independent and without prejudice to each other, the fact remains that all the three grounds go together and relate to a single issue referred above. At the most, it can be said that the three grounds are independent arguments and without prejudice to each other in respect of single issue of eligibility of "recruitment fee income" for deduction u/s 10A of the Act.

9. The Tribunal, in its order dated 06-04-2016 has disposed of ground no.14 & 15 by deciding the issue against the assessee and did not adjudicate "specifically" ground no.16, though it went along with ground no.14 & 15. Subsequently, upon the miscellaneous application filed by the assessee, the order was recalled for limited purpose of adjudicating ground no.16. The Tribunal, vide its order

dated 03-03-2017 has disposed of ground no.16 by observing that the same is general in nature. Another miscellaneous application filed by the assessee against the order dated 03-03-2017 was also rejected. As noted earlier, the Hon'ble High Court has set aside the order dated 03-03-2017 passed by the Tribunal with regard to Ground No.16 and has remitted the same to the file of the Tribunal for adjudicating the above said ground afresh. We have extracted the order passed by Hon'ble High Court and the direction is to adjudicate ground no.16 only.

10. We have noticed earlier that ground no.14, 15 & 16 go together. Ground No.14 & 15 dealt with the issue on merits and both the grounds have been adjudicated by deciding the issue against the assessee. We notice that, in ground no.16, the assessee has placed its reliance upon the decision rendered by the Tribunal in AY 2007-08. The question is whether ground no.16 can be adjudicated independently, when the decision rendered by the Tribunal for ground no.14 & 15 were not challenged. At the cost of repetition, we extract below ground no.16 again:-

"16. The learned CIT(A) has erred in law and on facts in ignoring and not following the Honourable Tribunal's decisions in the Appellant's own case for the assessment year 2007-08, being binding on the lower authorities, without appreciating the fact that the issues and facts covered under the present appeal are identical and similar with that of the Appellant's own case for the AY 2007-08"

A careful reading of the above said ground would so that the same is in the nature of argument advanced by the assessee in support of ground no.14 & 15, i.e., reliance has been placed by the assessee on the order passed by the Tribunal in AY 2007-08 on an identical issue. It is pertinent to note that the assessee, in its miscellaneous petition filed before the Tribunal, has not sought recall of ground no.14 & 15, which specifically dealt with the issue on merits. Hence

the decision rendered by the Tribunal in respect of Ground no.14 & 15 still remains intact.

11. It is no doubt true that an identical issue as that urged in Ground no.14 & 15 arose for consideration by this Tribunal in AY 2007-08 also. It is also a fact that in AY 2005-06, i.e., the year under consideration, the Tribunal has taken a contrary view on the identical issue. It is also pertinent to note that the order for AY 2007-08 was passed on 21.06-2013, much earlier to the order passed originally in AY 2005-06 on 06-04-2016. In the normal course, the Tribunal is required to follow the decision rendered earlier on an identical issue.

12. The problem arises here for the reason that the assessee has not sought recall of the decision given by the Tribunal in this year in Ground No.14 and 15. As observed earlier, the decision rendered on the above said two grounds remains intact. It is not known whether the assessee has challenged the decision so rendered by the Tribunal by filing appeal before the Hon'ble High Court of Karnataka.

13. Be that as it may, it is clear that, at this juncture, Ground no.16 could not be adjudicated independently ignoring the decision rendered for Ground No.14 & 15. Hence, at this stage, it will not be possible to follow the decision rendered in AY 2007-08 also. Hence the principle of consistency and rule of precedence cannot be applied here in view of the technical reasons discussed above.

14. We also notice that the Tribunal, on its own motion also, could not recall the decision rendered for Ground No.14 & 15 in view of the expiry of limitation period prescribed in sec.254(2) of the Act. Accordingly, we are of the view that, for the detailed reasons

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discussed above, ground no.16 is liable to be rejected. However, the assessee is at liberty to seek appropriate remedies by process known to law.

15. For the aforesaid reasons, ground no.16 raised by the assessee is rejected.

16. In the result, the ground no.16 raised by the assessee is dismissed.

Order pronounced in the open court on 16th Jul, 2021

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 16th Jul, 2021.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.