

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

<b>ITA No.1129/Bang/2009 &amp; 639/Bang/2010</b>
<b>Assessment Year : 2005-06 &amp; 2006-07</b>

ABB Limited, Khanija Bhavan, Race Course Road, IInd Floor, East Wing, Bengaluru-560001.  <b>PAN - AAACA 3834 B</b>	<b>V s.</b>	The Addl. Commissioner of Income-tax (LTU), Bengaluru.
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>ITA No.1256/Bang/2009 &amp; 737/Bang/2010</b>
<b>Assessment Year : 2005-06 &amp; 2006-07</b>

The Addl. Commissioner of Income-tax (LTU), Bengaluru.	<b>V s.</b>	ABB Limited, Khanija Bhavan, Race Course Road, IInd Floor, East Wing, Bengaluru-560001.  <b>PAN - AAACA 3834 B</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Ms. Vasanti Patel, Advocate
Revenue by	:	Shri Dilip Reddy, Sr. Counsel

Date of Hearing	:	27-09-2021
Date of Pronouncement	:	30-09-2021

**ORDER**

**Per Bench**

Present cross appeals filed by assessee and the Revenue arises out of order dated 30/09/2009 and passed by CIT(A), LTU, Bengaluru, relating to Assessment Year 2005-06 and 2006-07 respectively.

2. As common issues are involved in these appeals, these are being disposed off by way of a common order. -

2.1 At the outset it is submitted that issues raised by both sides for asst. years under consideration are identical and stands covered by orders passed by this *Tribunal* in assessee's own case in proceeding assessment year.

**Assessee's Appeal – Asst. Year 2005-06**

**3. Ground No.1 - Disallowance of sum of Rs. 14,66,705 being technical and professional fees paid to M/s Kotawala**

3.1 This issue has been decided on identical facts for assessment year 2004-05 in assessee's own case in ITA No.1227/B/2007 as under:-

*3.2 We have perused submission advanced by both sides in light of records placed before us.*

*3.2 This ground challenges the disallowance of Rs.14,66,705/ being payment of technical and professional fees to M/s Kotawala (India) Ltd. alleging that no services has been received by the assessee.*

*3.3 The contentions of Ld.Counsel was that the assessee also submits that payment for the services rendered by the agent were made through account payee cheque in pursuance to an agreement. M/s Kotawala (India) Ltd. is assessed to tax as evidenced by its Permanent Account Number.*

*3.4 However Ld.CIT(A) has observed and held as under:*

*“I have carefully considered the submissions of the appellant and also the reasons given by the AC for disallowing the commission paid to M/S Kotawala(India) Ltd. The AC has relied on the statement given by the Managing Director of M/s.Kotawala (India) Ltd., stating that he has*

*no evidence for rendering services to the appellant. Besides this, the AC has also pointed out certain discrepancies / contradictions in the accounts and the TDS certificates issued by the appellant, indicating that the transaction is not free from doubt. However, the appellant in its submission during appeal proceedings and also during assessment proceedings has never contested the statement of the Managing Director of M/s.Kotawala (India) Ltd. The appellant reiterates its stand that the payment has been made by account-payee cheque, which is duly reflected in its bank account and the TDS on such payments has been made and credited to the government account accordingly. Further, it is also stated by the appellant that M/s.Kotawala (India) Ltd. is assessed to tax as evidenced by the PAN number without confirming whether the recipient has reflected the amounts received by it in its return of income. The appellant has not produced any evidence regarding rendering of the service by the recipient of commission either at the assessment stage or at the appeal stage, except the copies of the agreement entered into by it with M/s.Kotawala (India) Ltd. dated 02/01/2002 and 18/10/2002 and the invoices raised by M/s.Kotawala (India) Ltd. dated 23/10/2003 and 24/10/2003. The appellant has not given any details regarding the projects awarded to it in pursuance of the said agreements such as the date of the award, the correspondence with MIs. Kotawala (India) Ltd., etc. It is noteworthy That the TDS certificate mentions the period of rendering service as 01/03/2004 to 31/03/2004 whereas the bills were raised by M/s Kotawala (India) Ltd. on 23/10/2003 and 24/10/2003 and on the same days the amounts have been credited to the account of M/s.Kotawala (India) Ltd. At no stage, the appellant has contradicted the statement given by the M.D. of M/s.Kotawala (India) Ltd. nor has it produced anything to disprove the statement so given. When the appellant itself has not produced any evidence in support of the services received by it, the question of allowing the claim for expenditure does not arise. In view of the above discussion, the action of the AO is confirmed.”*

*3.5 Even before us the Ld.Counsel could not counter the statement given by the Director of Kotawala. Further nothing was placed on record before us to establish that services have been rendered. We therefore do not find any infirmity in the view taken by Ld.CIT(A) and the same is upheld.*

3.2 There is no change in the facts for year under consideration.

**Accordingly this ground raised by assessee stands dismissed.**

**4. Ground No.2 - Disallowance u/s 14A**

4.1 The coordinate bench of this *Tribunal* on identical facts in Assessee's own case for AY 2004-2005 in ITA No.1227 & 1256/Bang/2007 order dated 29.9.2021 decided this issue by following the decision in assessee's own case for asst. year 2002-03 & 2003-04 in order dated 23/7/2021:-

*"43. We heard Ld. D.R. on this issue and perused the record. We notice that the A.O. has extracted interest free funds available with the assessee as well as the value of investments in both the years under consideration. We notice that the own funds available with the assessee as on 31.3.2002 was Rs.440.92 crores as against the value of investments of Rs.12.95 crores. Similarly, as on 31.3.2003, the assessee was having own funds of Rs.505.51 crores as against value of investments of Rs.0.95 crores. Accordingly, we notice that the own funds available with the assessee in both the years are in far excess of the value of investments. Accordingly, as per the decision rendered by Hon'ble Karnataka High Court in the case of Micro Labs Ltd. (supra), no disallowance out of interest expenditure is called for. Accordingly, we set aside the order passed by Ld. CIT(A) on this issue in both the years under consideration and direct the A.O. to delete disallowance made u/s 14A of the Act in both the years under consideration."*

4.2. There is nothing brought on record by revenue to contradict the above. We thus direct the Ld.AO to deter the disallowance made u/s 14A.

**Accordingly this ground stands allowed.**

**5. Ground No.3 Repairs and Renovation**

5.1. This ground is not pressed by the assessee hence it is dismissed as not pressed.

**6. Carry forward of losses amounting to Rs.1,55,44,000**

6.1 The Ld.Counsel for the assessee submitted that the Ld.AO had considered the 'Carry forward of Losses' and set off was

provided While giving effect to the order passed by the Ld. CIT(A) for assessment year 2009-10.

**Accordingly this ground of the assessee becomes infructuous. Accordingly appeal filed by assessee for assessment year 2005-06 stands partly allowed.**

**Assessee's appeal for assessment year 2006-07**

7. Only one issue arises for assessment year 2006-07 in the appeal filed by assessee.

**7.1. Telecommunication expenses amounting to Rs.6,61,168/- being excluded from export turnover:**

The grievance of assessee is that the authorities below excluded telecommunication expenses from the export turnover. It is the plea of the Ld.Counsel that the aforesaid expenses are not required to be excluded from export turnover or in the alternative, the same should be reduced from total turnover also. The Ld.Counsel submitted that this issue has been considered by coordinate bench of this *Tribunal* for assessment year 2006-07 by order dated 31/10/2013 in ITA No. 1353/B/2011 as under:

*"7. We have heard the rival submissions. As far as the alternative claim is concerned, we find that Hon'ble High Court of Karnataka in case of Tata LXE Ltd. (2012) 349 ITR 98 has held that while computing deduction under section 10 A of the income tax act, 1961 (the act), expenditure incurred by assessee, if excluded from the export turnover (ET) should also be excluded from the total turnover (TP). It has been held that,*

- the TT would have 2 components-ET and domestic turnover. Therefore if the ET in the numerator is to be arrived at after excluding certain expenses these should also be excluded in computing ET as a component of TT in the denominator.*

- *Though there is no definition of TT in section 10 A of the act, there is nothing in the said section to mandate that is what is excluded from the numerator and would nevertheless form part of the denominator.*
- *The principle laid out in the judgements rendered in the in Context of section 80 HHC of the act will equally applied while interpreting section 10 A of the act since the principle underlying both these provisions is the same.*

*8. In view of the aforesaid decision of Hon'ble High Court of Karnataka, we are of the view that the grievance of the assessee projected in the additional ground would get redressed, if the AO is directed to reduce the telecommunication expenses from the export turnover as well as the total turnover, while computing deduction under section 10 A of the act. We hold and direct accordingly."*

7.2. Respectfully following the above view, we direct the Ld.AO to exclude the telecommunication expenses from the total turnover for the purpose of computing deduction under section 10 A of the act.

**Accordingly this ground raised by assessee stands allowed.**

**Accordingly appeal filed by assessee for assessment year 2006-07 stands allowed.**

**Revenue's appeal – Asst. Year 2005-06 & 2006-07**

8. It is submitted by both sides that, identical ground are raised by revenue for both assessment years under consideration. Accordingly, both the assessment years are considered together as under.

**Ground No.1: General Ground**

Ground No.1 is general in nature hence needs no adjudication.

**8. Ground No.2: Expenses on the basis of purchase of packing material, loose tools etc., in teh year of purchase**

8.1 The coordinate bench of this *Tribunal* on identical facts in Assessee's own case for AY 2004-2005 in ITA No.1227 & 1256/Bang/2007 order dated 29.9.2021 decided this issue by following the decision in assessee's own case for asst. year 2002-03 & 2003-04 as under.

*"13. The facts with regard to this ground are that the assessee consistently used to follow the method of writing off the packing materials, loose tools and consumables that are purchased in a year without taking an inventory of the same at the end of the year. This method has always been accepted in the past. According to the assessee, the method is also in accordance with accounting principles. The AO for the first time whilst completing the assessment for AY 2000-01, has come to the conclusion that this methodology is not permissible and in the present AY estimated the closing inventory of the aforesaid items at 18.8% of the amounts charged to the profit and loss account. In determining this percentage, the AO took the basis as ratio of Inventory of finished goods in relation to consumption of raw materials. The action of the AO resulted in an addition of Rs.2,65,15,000/- to the total income of the assessee as value of closing stock.*

*14. On appeal by the assessee, the CIT(A) deleted the addition made by the AO by following the order of the CIT(A) on identical issue for Assessment Year 2000-01 and 2001-02. At the time of hearing, it was brought to our notice that identical issue was decided by the Tribunal in Assessment Year 2000-01 in ITA No.3959/Mum/2004 order dated 08.03.2020 and the Tribunal held as follows:*

*"We have given a careful consideration to the rival submissions and are of the view that the order of the CIT(A) on this issue has to be upheld. Admittedly the method of accounting followed by the Assessee was consistent and accepted in the past by the Revenue authorities. There is no reason why the same should be disturbed. The decision in the case of Abdul Latif (supra) supports the plea of the Assessee. In the said decision, the facts were that the Assessee was engaged in business of manufacture of papers. In return of income for AY 2005-06, assessee had shown, inter alia, purchases of packing material as on 31-3-2005, but no amount of packing material was shown in closing stock. The Assessee submitted before Assessing Officer that; (i) packing material shown as purchases as on 31-3-2005 was actually purchased in earlier months and such packing material was consumed during process; (ii) on account of some computer problem, bills were posted on 31-3-2005, and (iii)*

*entire packing material left after end of year became obsolete and, therefore, it was not shown in closing stock. The Assessing Officer rejected account books of assessee and made certain addition to his income. The Tribunal held that:- (i) it was not case of revenue that purchases as debited as on 31-3-2005 were not genuine, and (ii) assessee was following a consistent method of valuing closing stock by including packing material as consumed at time of purchase. Rejection of account books of assessee and addition to his income was held to be not justified. We therefore uphold the order of CIT(A) on this issue and dismiss ground No.5 raised by the Revenue.”*

8.2 There is nothing brought on record by the revenue to take a contrary view. Respectfully following the aforesaid decision of the Tribunal, we dismiss this grounds raised by the revenue for both years under consideration.

**9. Ground No. 3 - Entrance and subscription fees paid to the club**

9.1 The coordinate bench of this *Tribunal* on identical facts in Assessee's own case for AY 2004-2005 in ITA No.1227 & 1256/Bang/2007 order dated 29.9.2021 decided this issue by following the consistent view taken by co-ordinate bench of this *Tribunal* in order dated 23/7/2021 for asst. year 2002-03 & 2003-04 as under:

*6. As far as the above ground is concerned, the law is well settled that entrance fee and membership fees paid where the employees become members is allowable as a business expenditure and was allowed as deduction in Assessee's own case in AY 1999-2000. When membership of a club is taken in the name of director, it is for the assessee-company to prove that membership was obtained solely for the purpose of business. [New India Extrusions (P) Limited v ACIT 10 Taxmann.com 165]. Further Entrance fees paid towards corporate membership of the club is an expenditure incurred wholly and exclusively for the purpose of business and not towards capital account*

*as it only facilitates smooth and efficient running of a business enterprise and does not add to the profit earning apparatus of a business enterprises and accordingly CIT (A) was justified in deleting the disallowances of entrances fee made by the Assessing Officer. [Dy. CIT vs. Bank of America Securities (India) (P) Ltd. 136 TTJ 441]. Again, Corporate membership fees payable to club is revenue exp. [CIT v Samtel Colour Limited 326 ITR 425]. Ground No.3 is accordingly dismissed.*

9.2 There is nothing brought on record by the assessee to take a contrary view.

Respectfully following the aforesaid decision of the *Tribunal*, we dismiss this grounds raised by the revenue for both years under consideration.

#### **10. Ground No.4 – Liability of warranty expenses**

10.1 It is submitted that the coordinate bench of this *Tribunal* on identical facts in Assessee's own case for AY 1996-1997 in ITA No.894/Bang/2007 by order dated 30.9.2021 decided this issue in favour of the assessee by observing as under:-

*“3. At the time of hearing, learned AR relied on the decision of the Madras High Court in the case of CIT v. Rotork controls India Ltd. & others 293 ITR 311. In the aforesaid decision, as there was no evidence of actual expenditure In prior years, the provision was concluded as not deductible. Facts are different In the present case. The learned CIT(A) has considered the details meticulously and then granted relief to the assessee After going through the facts of the case, we do not find any infirmity In the order of the learned CIT(A) granting relief to the assessee as the provision was made on the sales effected during that year. It is ordered accordingly.”*

10.2 There is nothing brought on record by the revenue to take a contrary view. Respectfully following the aforesaid decision of the

*Tribunal*, we dismiss this grounds raised by the revenue for both years under consideration.

**Accordingly Revenue's appeals stands dismissed for years under consideration.**

**In the result, appeal filed by assessee for assessment year 2005-06 stands partly allowed, appeal filed by assessee for assessment year 2006-07 stands allows and appeal filed by Revenue stands dismissed for both years under consideration.**

Order pronounced in the open court on 30<sup>th</sup> Sept, 2021

Sd/-  
**(CHANDRA POOJARI)**  
**Accountant Member**

Sd/-  
**(BEENA PILLAI)**  
**Judicial Member**

Bangalore,  
Dated, the 30<sup>th</sup> Sept, 2021.

/Vms/

**Copy to:**

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

By order

Assistant Registrar, ITAT, Bangalore

		<b>Date</b>	<b>Initial</b>	
1	Draft dictated on	On Dragon		Sr.PS
2.	Draft placed before author	-9- 2021		Sr.PS
3.	Draft proposed & placed before the second member	-9- 2021		JM/AM
4.	Draft discussed/approved by Second Member.	-9- 2021		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	-9- 2021		Sr.PS/PS
6.	Kept for pronouncement on	-9- 2021		Sr.PS
7.	Date of uploading the order on Website	-9- 2021		Sr.PS
8.	If not uploaded, furnish the reason	--		Sr.PS
9.	File sent to the Bench Clerk	-9- 2021		Sr.PS
10.	Date on which file goes to the AR			
11.	Date on which file goes to the Head Clerk.			
12.	Date of dispatch of Order.			
13.	Draft dictation sheets are attached	No		Sr.PS