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

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

ITA No. 317/Bang/2012
Assessment Year : 2007-08

M/s. ABB Ltd., 49, Khanija Bhavan, Race Course Road, 2nd Floor, East Wing, Bangalore – 560 001. PAN: AAACA3834B	**Vs.**	The Addl. Commissioner of Income-tax (LTU), Bangalore.
APPELLANT		**RESPONDENT**

&

ITA No. 335/Bang/2012
Assessment Year : 2007-08
(By Revenue)

Assessee by	**:**	Ms. Vasanti Patel, Advocate
Revenue by	**:**	Shri Dilip, Standing Counsel for Dept.

Date of Hearing	**:**	13-01-2022
Date of Pronouncement	**:**	24-02-2022

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present cross appeals filed by assessee and the Revenue arises out of order dated 16/01/2012 passed by Ld.CIT(A), LTU, Bangalore relating to Assessment Year 2007-08 on following grounds of appeal.

Assessee's appeal:

"Your appellant being dis-satisfied with the order passed by the Learned Commissioner of Income Tax (Appeals) LTU, Bangalore (TIT (A)') dated January 16, 2012, presents this appeal on the following grounds :-

1. The Learned CIT(A) erred in invoking the provision of section 14A of the Income tax Act, 1961 read with Rule 8D of the Income tax Rule 1962 which is applicable from Assessment Year 2008-09 thereby disallowing the expenditure of Rs. 6,814,466/- treating it as expenses incurred towards earning of exempt income.

It is submitted that no investment has been made out of the interest bearing funds and therefore the Learned CIT(A) erred in confirming the invoking of the provision of the section 14A of the Act by Assessing Officer. The Learned CIT(A) should have considered no expenditure incurred for earning exempt income. It is submitted that it may be so held now.

Without prejudice to our above contentions, it is submitted that the disallowance made on account of expenditure attributable to earning of exempt income is very much on the higher side and should the provisions of Section 14A of the Income tax Act, 1961 read with Rule 8D of the Income tax Rule 1962 be invoked from this assessment year itself then the amount that ought to be disallowed on this account would be Rs. 2,422,351/- and not Rs.6,814,466/- as worked out by the Assessing Officer

2. The Learned CIT(A) erred in confirming the disallowance made by the Assessing Officer of a sum of Rs.37,284/- being an expenditure towards cost of club services considering the same as non-business expenditure.

It is submitted that the expenditure has been incurred to promote the business of the company and there is no enduring benefit and therefore the same ought to have been allowed by the Learned CIT(A).

3. The Learned CIT(A) erred in confirming the disallowances made by the Assessing Officer stating that the telecommunication expenses of Rs. 2,911,762/- is towards delivery for software outside India.

Without prejudice it is further submitted that the Learned CIT(A) ought to have only considered the telecommunication charges attributable to delivery of software outside India and / or only to the extent of the expenditure incurred in foreign exchange towards delivery of software outside India.

Your appellant reserves it's right to add, alter, amend and withdraw any of the above ground of appeal."

Revenue's appeal:

"1. The order of the ld. CIT (Appeals) is opposed to law and facts of the case.

2. The ld. CIT(A) erred in allowing the claim of expenses on the basis of purchase of packing materials, loose tools and consumables in the year of purchase without regard to actual consumption such items during the year.

3. The ld. CIT (A) erred in allowing the claim of expenses towards club subscription fees paid by the assessee as revenue expenditure though it is one time payment at the time of entry of member and therefore is capital in nature.

4. The ld. CIT (A) ought to have appreciated that the liability for warranty expenses will accrue only when the claim is made and hence setting apart money to meet contingent liability is not a deductible expenditure.

5. The Ld.CIT(A) erred in allowing the deduction u/s 10A claimed by the assessee.

5. The appellant craves leave to add/alter/amend/and/or delete any of the grounds on or before the hearing of appeal."

At the outset, it is submitted that on identical facts issues raised by both sides stands covered by orders passed by this *Tribunal* in assessee's own case in Assessment Year 2004-05 in ITA Nos. 1227 & 1256/Bang/2007 dated 29.09.2021, A.Y. 2002-03 & 2003-04 in ITA Nos. 790, 791, 896 & 897/Bang/2008 by order dated 23.07.2021.

Assessee's appeal:

2. Ground No. 1 – Disallowance u/s. 14A

2.1 The Coordinate Bench of this *Tribunal* on identical facts in assessee's own case for A.Y. 2004-05 (supra) and AY 2002-2003 & 2003-04 in ITA No.790,791,896 &897 /Bang/2008 order dated 23.7.2021, decided this issue as under: -

> *"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.*

2.2 There is nothing on record placed by revenue in order to take a contrary view.

Respectfully following the aforesaid decision of the Tribunal, we allow this grounds raised by the assessee.

3. Ground No. 2-Cost of Club Services

3.1 The coordinate bench of this *Tribunal* on identical facts in Assessee's own case for A.Y. 2004-05 (supra) and AY 2002-2003 & 2003-04 in ITA No.790 & 791/Bang/2008 order dated 4.3.2021 decided this issue 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."

3.2 There is nothing brought on record by the revenue to take a contrary view. Respectfully following the aforesaid decision of the Tribunal, we allow this ground raised by the assessee.

4. Ground No. 3 – Telecommunication expenses of Rs.29,11,762/- - Not pressed.

The Ld.AR submitted that the Ld.CIT(A) has decided the issue in favour of the assessee.

Accordingly, the appeal of the assessee stands allowed.

Revenue's appeal:

5. Ground no. 1 is general in nature and therefore do not require any adjudication.

6. Ground no. 2 –Expenses on the basis of purchase of packing material, loose tools etc., in the year of purchase.

6.1 The coordinate bench of this Tribunal on identical facts in Assessee's own case for AY 2002-2003 & 2003-04 in ITA No.790 & 791/Bang/2008 order dated 4.3.2021 and A.Y. 2004-05(supra) decided this issue 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."

6.2 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.

7. Ground no. 3 – Entrance and subscription fees paid to the club.

This issue has been already allowed while considering ground no. 2 of assessee's appeal.

Accordingly, this ground raised by revenue stands dismissed.

8. Ground no. 4 – Liability for warranty expenses

8.1 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 and A.Ys. 2005-06 & 2006-07(supra) decided this issue in favour of the assessee by observing as under:-

> *"3. At the time of heating, 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."*

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. 5 – Deduction u/s. 10A

The coordinate bench of this *Tribunal* on identical facts in Assessee's own case for AY 2005-06 & 2006-07(supra) decided this issue as under:

> ***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.

Respectfully following the above, this ground stands allowed.

Accordingly, the appeal filed by revenue stands dismissed.

In the result, appeal by the assessee stands allowed and the appeal of the revenue stands dismissed.

Order pronounced in the open court on 24th February, 2022.

Sd/-	Sd/-
(B.R. BASKARAN)	(BEENA PILLAI)
Accountant Member	Judicial Member

Bangalore,
Dated, the 24th February, 2022.
/MS /

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore