

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

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

IT(TP)A No. 523/Bang/2016
Assessment Year : 2011-12

The Deputy Commissioner of Income Tax, Circle – 5(1)(2), Bangalore.	Vs.	M/s. OnMobile Global Ltd., Tower # 1, 94/1C & 94/2, Veerasandra Village, Attibele Hobli, Anekal Taluk, Electronic City Phase-I, Bangalore – 560100. PAN: AAACO3900E
APPELLANT		RESPONDENT

&
IT(TP)A No. 535/Bang/2016
Assessment Year : 2011-12
(By Assessee)

Assessee by	:	Shri T. Surya Narayana, Advocate
Revenue by	:	Dr. Manjunath Karkihalli, CIT DR

Date of Hearing	:	07-03-2022
Date of Pronouncement	:	29-04-2022

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present cross appeals filed by assessee as well as revenue against the final assessment order dated the 25/01/2016 passed under

section 143(3) read with section 144C of the Act, by the Ld.DCIT Circle 5(1)(2), Bangalore, for the assessment year 2011-12.

2. Brief facts of the case are as under:

2.1 Briefly, the Ld.AR submitted that, the assessee provides mobile value-added services to telecommunication operators in India and abroad. The services include, ring back tones, contests, jokes and cricketer etc., which enable subscribers to personalise their mobile phones, and thereby enhance user experience. It is submitted that, the assessee enters into a contract with telecom operators in India and abroad for providing services to customers of telecom operators. In respect of customers situated outside India, once the contract is signed with the customer, the assessee establishes subsidiaries in the respective countries for furtherance of its business. The Ld.AR submitted that, the subsidiaries retain a return on cost for the services provided and transfer the rest of the proceeds to the assessee in India. The Ld.AR submitted that, the subsidiaries operate on a cost-plus model for the services rendered by them outside India within their respective territories.

2.2 The Ld.AR submitted that, during the year under consideration assessee entered into certain international transactions with its associated enterprises (being subsidiaries of assessee). The details of the international transactions are as under:

Services	Value
Receipt of business development services from Onmobile USA	Rs. 2,21,75,405/-
Receipt of technical support services from LATAM affiliates	Rs. 4,21,78,060/-
Interest received on loan granted to Onmobile Indonesia	Rs. 4,10,318/-
Interest received on loan granted to Onmobile Singapore	Rs. 1,39,931/-

2.3 The Ld.AR submitted that the revenue authorities proceeded on the footing that the subsidiaries/branches of assessee situated in various countries have availed the services rendered by OnMobile USA and therefore the costs incurred in that regard are to be shared by the 6 entities. The Ld.TPO apportioned 1/7th of the consideration paid to the assessee and it reminds the remaining 6/7th of consideration paid as TP adjustments in the hands of assessee.

2.4 It is a submissions of the Ld.AR that, the subsidiaries of assessee outside India work on cost-plus model and if the cost incurred by the assessee towards receipt of services from OnMobile USA, which itself bears a markup, is apportioned the other affiliates, the other affiliates would recover the said cost from the assessee, with further marker of 5 to 7%. It is the submissions of Ld.AR that, this would lead to reduction in the income of assessee in India and shifting of the same to foreign country which is contrary to the transfer pricing provisions.

The Ld.AR submitted that, the entire adjustment made by the Ld.AO/TPO, is on the premise that, the services were availed by

the said subsidiaries/branches in their respective jurisdiction from assessee, which is contrary to the facts.

3. The Ld.AR submitted that during the transfer pricing proceedings, since he did not have an opportunity to furnish the relevant agreements to demonstrate that the services rendered by OnMobile USA was not utilised by the entity situated in Latin American countries. The Ld.AR submitted that, the assessee has now procured all the relevant agreements based on which, the correct working model of assessee could be understood by the revenue authorities.

4. It is the submissions of the Ld.AR that, the issues pertaining to transfer pricing adjustments may be remanded to the Ld. AO/TPO to consider based on these contracts. The Ld.AR emphasise that the actual functions performed and risk assumed by assessee is necessary to be understood before analysing the arm's-length of the international transactions undertaken by assessing.

5. The Ld DR though objected, could not controvert that the functions of assessee is understood by the Ld.TPO is not correct. He therefore did not object for the issue to be remanded.

6. Based on the above submissions, we remand the transfer pricing issues alleged by assessee in **ground number 3-7** back to Ld.TPO. The Ld.TPO would analyse the documents/evidence is filed by assessee and understand the business model in order to verify the arm's-length of the international transactions undertaken by assessee. The Ld.TPO is directed to consider the transfer pricing issues de novo in accordance with law and by giving proper opportunity of being heard to assessee.

Accordingly ground number 3-7 raised by assessee stands allowed for statistical purposes.

7. In **Ground No.8-9**, assessee is challenging the action of Ld.TPO in imputing interest by taking Indian PLR as against USB LIBOR.

8. It is a submission of the assessee that the loans advanced to OnMobile Singapore and OnMobile Indonesia are in Singapore dollars and US dollars respectively. The interest on the said loans are payable in the said currencies. Since the loan have been denominated in foreign currency and interest is payable in the same currency the interest on outstanding interest cannot be imputed by taking Indian PLR. Reliance is placed on following decisions

- *Decision of Hon'ble Delhi High Court in case of CIT vs. Cotton Naturals (I)(P.) Ltd., reported in (2015)55 taxman.com 523.*
- *Decision of Hon'ble Bombay High Court in case of PCIT vs. India Debt Management (P) Ltd., reported in (2019) 106 taxman.com 55.*
- *Decision of coordinate bench of this Tribunal in case of Praxair India Pvt.Ltd. vs. DCIT in IT(TP)A No.506/B/2016 by order dated 06/12/2021.*

The Ld.AR DR relied on orders passed by authorities below.

9. We have perused the decisions relied by the Ld.AR in the light of submissions advanced by both sides. It is a settled position that interest rates should be the marketer to remind interest rate applicable to the currency concerned in which the loan is to be repaid. We direct the Ld.TPO to compute interest on delayed interest payable based on the currency in which the said interest is payable to assessee. The Ld.TPO cannot apply Indian PLR in this transaction. Interest if any is to be computed it has to be

computed by adopting LIBOR. We therefore remand these issue back to the Ld.TPO to recompute the interest on the interest payable to assessee by the subsidiaries/branches by adopting LIBOR.

Accordingly, these grounds raised by assessee stands allowed for statistical purposes.

10. **Ground number 11-13** raised by assessee are relating to the credit of taxes, deducted at source not granted by the assessing officer. It is submitted that, the Ld.TPO while computing the tax payable erroneously treated ₹ 4,40,04,660/- as having been refunded to assessee whereas assessee has not received any surgery for during the year under consideration. It is also submitted that assessing officer has not granted MAT credit available to assessee for year under consideration despite the directions by DRP on this issue.

11. Both assessee as well as the Ld.DR submitted that, these issues may be remanded to the Ld.AO/TPO to consider it in accordance with the evidence is filed by the assessee.

Accordingly all these issues are remanded to assessee to consider the claim after verification of the documents filed by assessee in accordance with law.

Accordingly these grounds raised by assessee stands allowed for statistical purposes.

Revenues appeal:

12. The only effective ground, in appeal filed by revenue is ground No.2 and 3. It is submitted that the other grounds are general in nature and therefore do not require any adjudication.

13. **Ground No.2** raised by revenue challenging the action of the DRP in directing grant of depreciation of the rate of 60% on NMS CG/TX cards, switches et cetera on the ground that these items do not come within the definition of “computer”.

14. Both sides submitted that, this issue stands covered in favour of assessee by following decisions of coordinate bench of this *Tribunal*:

- for assessment year 2008-09 by order dated 21/02/2014 in ITA No.1175/B/2012 at page 769-774 of PB
- for assessment in 2009-10 by order dated 13/11/2015 in ITA No. 987/B/2015 at page 780-781 of PB
- for assessment year 2010-11 8by order dated 26/08/2016 in ITA No.1513/B/2015 at page 789-797 of PB

15. It is also submitted that the order passed by this *Tribunal* for assessment year 2008-09 has been affirmed by *Hon’ble Karnataka High Court* vide order dated 18/01/2021 in ITA No. 340 of 2021 at page 824-826 of PB

Based on the above submissions we do not find any merit in the ground raised by revenue.

Accordingly this ground raised by revenue stands dismissed.

16. **Ground No.3** raised by revenue is challenging the action of the land area in granting deduction under section 10A of the Act. It is submitted that this issue is also squarely covered in favour of assessee in assessee’s own case for assessment in 2008-09 to assessment year 2010-11 (supra). The Ld.AR also submitted that the order passed by this *Tribunal* in assessee’s own case for assessment year 2008-09 on this issue has been confirmed by the *Hon’ble Karnataka High Court* vide order dated 18/01/2021 in ITA number 340/2021.

17. We note that, *Hon'ble Karnataka High Court* observed as under:

"11. Sofar as claim for deduction of the assessee under Section 10A of the Act is concerned, before proceeding further, it is apposite to take note of relevant extract of Section 10A(1) of the Act which reads as under:

"10A (1) Subject to the provisions of this section, a deduction of such profits and gains as are derived by an undertaking from the export of articles or things or computer software for a period of ten consecutive assessment years beginning with the Assessment Year relevant to the previous year in which the undertaking begins to manufacture or produce such articles or things or computer software, as the case may be, shall be allowed from the total income of the assessee."

*Thus, from perusal of the relevant extract of Section 10A(1), it is evident that the deduction under Section 10A of the Act is available to an undertaking if sale proceeds of articles of things of computer software exported out of India or received in or brought into in India in convertible foreign exchange, within a period of six months from the end of previous year or within such further period that the competent authority may allow in this behalf. The Tribunal, in paragraph 7.4.4 has taken note of the activities of the assessee and has held that the assessee is engaged in the business of mobile added value services, which involve content development in its STP unit. It has further been held that the assessee has a dedicated studio in this STP unit where music related content is developed. The assessee procures music and other contents on the third parties. The assessee also uses its studios for content development. It has further been held that assessee is engaged in the activity of developing content and conversion of procured content into mobile readable format and the same would qualify to be classified as content development or data processing and the same would be covered under the notification dated 26.09.2000 issued by the Central Board of Direct Taxes. The High Court of Delhi in *ML OUTSOURCING P. LTD.*, *supra* and *MCKINSEY*, *supra*, has interpreted the notification and has held that intention of the legislature is not to constrain or restrict but to enable the Board to include several services of products of similar nature in the ambit of Section 10A of the Act. It has further been held that the notification covers within its ambit even the services which cannot be sent abroad. Thus, the Tribunal*

has rightly held that the assessee is entitled to benefit of deduction under Section 10A of the Act. Thus, the third substantial question of law is also answered against the revenue and in favour of the assessee.”

18. We note that, the disallowance was made by the Ld.AO following his predecessor's opinion for assessment year 2008-09. As the Hon'ble Karnataka High Court has upheld the claim of deduction under section 10A, on identical facts for assessment year 2008-09 respectfully following the above view we hold that assessee is entitled to deduction under section 10A of the Act.

Accordingly this ground raised by revenue stands dismissed.

In the result appeal filed by assessee stands allowed for statistical purposes and appeal filed by revenue stands dismissed.

Order pronounced in open court on 29th April, 2022.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 29th April, 2022.
/MS /

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

By order

Assistant Registrar,
ITAT, Bangalore