

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

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND
SHRI B. R. BASKARAN, ACCOUNTANT MEMBER**

IT(TP)A No.705/Bang/2016
Assessment Year : 2011-12

M/s. Harman Connected Services Corporation India Private Limited, (formerly known Symphony Teleca Corporation India Private Limited), Plot No.3 and 3A, EOIZ Industrial Area, Sy. No.85 and 86, Sadaramangala Village, Krishnarajapuram Hobli, Bengaluru – 560 066. PAN: AABCG 5658 E	Vs.	DCIT, Circle – 3(1)(2), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. T. Suryanarayana, Advocate
Revenue by	:	Shri. Sumer Singh Meena, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	22.02.2022
Date of Pronouncement	:	23.05.2022

ORDER

Per B. R. Baskaran, Accountant Member:

The assessee has filed this appeal challenging the assessment order dated 29-01-2016 passed by the Assessing Officer (AO) u/s 143(3) r.w.s 144C(13) of the Act for assessment year 2011-12 in pursuance of the directions given by Ld Dispute Resolution Panel (DRP).

2. The assessee herein is formerly known as Symphony Teleca Corporation India Private Limited. Prior to that, it was known as Symphony

Services Corporation India Pvt. Ltd. It is engaged in the business of development of computer software, training and other consultancy services.

The grounds urged by the assessee give rise to the following issues:

- (a) Disallowance of marked to market loss (MTM)
- (b) Disallowance of provision for legal and professional charges under section 40A of the Act.
- (c) Disallowance of depreciation under section 40(a)(ia) of the Act on computer software.
- (d) Computation of deduction under section 10A of the Act.
- (e) Alternative contention for enhancement in deduction under section 10A in respect of MTM losses.
- (f) Non-set off of losses of Mumbai unit as per direction of Ld DRP.
- (g) Deduction claimed for education cess paid by the assessee.

3. The Ld AR advanced these arguments in respect of the above said issues only. Accordingly, the other issues are dismissed as not pressed.

4. The first issue relates to disallowance of marked to market losses. The assessee had claimed a sum of Rs.5,22,43,701/- as hedging loss relating to outstanding contracts. The AO disallowed the above said claim holding it as notional in nature by following the CBDT's instruction No.3/2010. He also held it to be speculative in nature. The Ld DRP also confirmed the view taken by the AO.

4.1 The Ld AR submitted that the issue is now covered by the decision rendered by the jurisdictional Karnataka High Court in the case of PCIT Vs. Mphasis Ltd., (2021) 128 taxmann.com 138. He submitted that the MTM

losses relating to revenue items have been held to be allowable as deduction by Hon'ble jurisdictional High Court by following the decision rendered by Hon'ble Bombay High Court in the case of D. Chetan and Co., 75 taxmann.com 300 and also the decision by Hon'ble Supreme Court in the case of CIT Vs. Woodward Governor P Ltd., (2009) 179 Taxman 326 (SC).

4.2 We heard the Ld DR and perused the material on record. It is now well settled proposition of law that the MTM losses arising on revaluation of revenue assets and the related forward contracts as at the end of the year is allowable as deduction as per the decisions referred to in the previous paragraph. We notice that the AO has disallowed the loss of Rs.5,22,43,701/-. However, the break-up details of losses are not given in the Assessment Order and hence we could not identify as to whether they are related to revenue items only. The Ld D.R also submitted that the loss arising from revenue assets and related forward contracts are allowable as deduction. Accordingly, we are of the view that this factual aspect needs to be verified. Accordingly, we restore this issue to the file of the AO to examine the claim of the assessee afresh following the decision rendered by the jurisdictional High Court in the case of M/s. Mphasis Ltd) (supra) and also the decision rendered by Hon'ble Supreme Court in the case of Woodward Governor India P Ltd (supra). Needless to mention that, the losses arising on revaluation as at the yearend of revenue items and the forward contracts related to the revenue items should be allowed as deduction.

5. The next issue relates to disallowance of provision for legal and professional charges amounting to Rs.25,63,441/-. The AO noticed that the assessee has claimed a sum of Rs.4.61 Crore under the head "Legal and

Professional Charges” and it included yearend provision of Rs.25,63,441/-. It was noticed that the assessee has not deducted tax at source from the year end provision. Accordingly, the AO disallowed the above said sum of Rs.25,63,441/- 40(a)(ia) of the Act. The Ld DRP also confirmed the same.

5.1 The Ld AR submitted that the yearend provision was made on estimated basis and hence TDS was not deducted. He submitted that the assessee has deducted when the payments were made to the payee. He submitted that if the assessee had provided for higher amount and settled the payment for lower amount, then the assessee would have deducted tax at source on actual payment made and accordingly, it will not be liable to deduct tax at source on the excess payment. Accordingly, he prayed that the AO may be directed to allow deduction in the year of deduction of TDS.

5.2 We heard the Ld AR on this issue and perused the material on record. We find merit in the alternative prayer of Ld AR. Accordingly, we direct the AO to allow deduction of the expenditure in the year in which TDS was deducted. As submitted by the Ld A.R, if the assessee is not liable to make payment of the provision for expenses so made, then there will not be any liability to deduct tax at source from the provision or excess provision so made and hence no disallowance u/s 40(a)(ia) is called for in this year. Accordingly, we restore this issue to the file of AO with the direction to examine this issue afresh in the light of discussions made supra.

6. The next issue relates to disallowance of depreciation on computer software. The AO noticed that the assessee has purchased software and has not deducted tax at source from the payment made for the same. The assessee submitted that it has capitalized the purchase of software and hence

no expenditure was claimed as deduction. The AO noticed that the assessee has claimed depreciation on software amounting to Rs.4.13 Crore. The AO disallowed the same under section 40(a)(ia) of the Act. The Ld DRP also confirmed the same.

6.1 The Ld AR submitted that the depreciation claimed is a statutory deduction available to the assessee and hence the same cannot be disallowed under section 40(a)(ia) of the Act. In this regard, he took support of the decision rendered by Hon'ble jurisdictional High Court in the case of DCIT Vs. Tally Solutions Pvt. Ltd., (2021) 123 taxmann.com 21.

6.2 We heard Ld DR on this issue and perused the record. We notice that the contention of the assessee would get support from the decision rendered by Hon'ble Karnataka High Court in the case of Tally Solutions Pvt. Ltd., (supra) wherein the Hon'ble High Court has upheld the view that the provisions of section 40(a)(ia) of the Act is not attracted in respect of claim for depreciation. Accordingly, following the above said binding decision, we direct the AO to delete the disallowance of depreciation claimed on computer software u/s 40(a)(ia) of the Act.

7. The next issue relates to the computation of deduction u/s 10A of the Act. While computing deduction u/s 10A of the Act, the AO deducted communication expenses, insurance expenses and other foreign currency expenses from Export turnover only and did not make corresponding deduction from the total turnover. Ld DRP, however, directed the AO to deduct the expenses both from export turnover and total turnover, following the decision rendered by Hon'ble jurisdictional Karnataka High Court in the case of Tata Elxsi Ltd (247 ITR 334). It is the grievance of the assessee that

the AO did not give effect to the direction to so given by Ld DRP. The decision rendered by Hon'ble jurisdictional High Court in the case of Tata Elxsi Ltd (supra) has since been upheld by Hon'ble Supreme court in the case of HCL Technologies Ltd (Civil Appeal No.8535 of 2013). Accordingly, we direct the AO to reduce the expenses both from Export turnover and Total turnover while computing deduction u/s 10A of the Act.

8. The next issue relates to the alternative contention of the assessee that if any of the disallowance is sustained, then it will go to increase the business profits eligible for deduction u/s 10A of the Act. In that case, the assessee should be given enhanced deduction u/s 10A of the Act. This prayer of the assessee finds support from the decision rendered by Hon'ble Bombay High Court in the case of Gem Plus Jewellery India Ltd (330 ITR 175)(Bom). Accordingly, we direct the AO to allow enhanced deduction u/s 10A, when the disallowances go to increase the profit eligible for deduction u/s 10A of the Act.

9. The next issue relates to the non-setting off losses arising in Mumbai unit during the period from December, 2010 to March, 2011, i.e., for the period during which the unit was not registered with Software Technology Park of India. The assessee had incurred loss of Rs.59,38,744/- in its Mumbai unit during the period from December 2010 to March 2011. During this period, the Mumbai unit was not registered with STPI. The assessee claimed this loss against the profits generated from other non-STPI units. The AO did not allow the set off. The Ld DRP directed the AO to verify the claim of the assessee and allow set off as per law. In the final assessment order, the AO did not examine the claim and did not allow set off.

9.1 We heard the parties on this issue and perused the record. We notice that the Ld DRP has already given directions to the AO to examine the claim of the assessee and allow set off as per law. We notice that the AO did not follow the said directions, which is not legally correct. Accordingly, we restore this issue to the file of the AO with the direction to implement the directions given by Ld DRP on this issue.

10. The last issue relates to the claim for allowing deduction of Education cess paid by the assessee. The assessee has raised this issue by way of additional ground. We notice that the Act has been amended now by Finance Act, 2022 and it provides for disallowance of the education cess paid by the assessee. Accordingly, we reject this ground of the assessee.

11. In the result, the appeal of the assessee is treated as partly allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-
(N.V. VASUDEVAN)
Vice President

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

Bangalore,
Dated: 23.05.2022.
/NS/*

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| 1. Appellants | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.