

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI

(DELHI BENCH 'E' : NEW DELHI)

**BEFORE SH. G.S.PANNU, HON'BLE PRESIDENT
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.6878/Del/2017
(Assessment Year : 2014-15)

Cognizant Technology Solutions India Private Limited (As a successor-in-interest of M/s. Medfin India Pvt. Ltd.) D-11, Basement, Maharani Bagh, New Delhi-110065	Vs.	Income Tax Ward-16(3), Room No. 304, C.R.Building, New Delhi
(APPELLANT)		(RESPONDENT)

Assessee by	Sh. Nageshwer Rao, Adv., Sh. S. Chakrabarty, Adv.
Revenue by	Sh. Sumit Kumar Verma, Sr. DR

Date of hearing:	17.05.2022
Date of Pronouncement:	30 .06.2022

ORDER

PER ANUBHAV SHARMA, JM:

This appeal has been preferred by the assessee against the appellate order dated 06.09.2017 in appeal no. 186/2017-18 for the assessment year

2014-15 passed by Commissioner of Income Tax (Appeals)-28 in an appeal pending before it against assessment order dated 31.08.2016 passed u/s 143(3) of the Income Tax Act 1961 (herein after referred as the Act) by ITO, Ward-16(3), New Delhi.

2. The facts in brief are assessee is a company engaged in the business of export of data processing services and registered as Special Economic Zone unit. It filed return of income for the assessment year 2014-15 declaring export turn over of Rs. 10,53,51,894/-. The case of assessee was taken up for scrutiny and notice u/s 43(2) followed by notice u/s 42(1) was issued by the Ld. AO who by impugned assessment dated 31.08.2016 recalculated the book profits to Rs. 2,37,31,799/- and raised demand of Rs. 3,38,330/- while considering the deduction u/s 10AA of the Act. Further an addition of income to the extent of Rs. 2,52,931/- was also made and Ld. CIT(A) had sustained the same.

3. Thus, assessee has raised following grounds of appeal :-

“The grounds of appeal listed below are without prejudice to each other.

1. The order of the learned Commissioner of Income-tax (Appeals) [‘CIT(A)’] is erroneous, bad in law, prejudicial to the Appellant and contrary to the facts and circumstances of the case.

2. The learned AO and the learned CIT(A) have erred, on law and facts, by making adjustments under section 10AA(9) read with section 80IA(10) of the Act to the returned income, without establishing that the business between the Appellant and associated enterprise has been so “arranged” for earning more than ordinary profits which might be expected to arise in such eligible business.

3. The learned AO and the learned CIT(A) have failed to appreciate that multiple judicial precedents have held that onus of proving the existence of an arrangement is on the Revenue.

4. The learned CIT(A) and the learned AO have erred in not appreciating that mere earning of higher profits would not tantamount to the existence of an arrangement for the purpose of section 80-IA(10) of the Act.

5. *The learned AO and the learned CIT(A) have erred in reducing the interest income earned by the Appellant from cluster deposits from the profits of the eligible undertaking in computing the deduction under section 10AA of the Act and including the same as income under the head 'other sources' without appreciating the fact that multiple judicial precedents have held that interest on deposits should be included as part of eligible profits for the purpose of computation of deduction under section 10A (erstwhile section 10AA of the Act) of the Act.*

6. *The learned CIT(A) has erred in dismissing the ground of the Appellant that the method for computation of deduction under section 10AA of the Act adopted by the learned AO is erroneous.*

The Appellant craves leave to add, supplement, amend, delete or otherwise modify any of the grounds stated hereinabove at the time of hearing."

4. Heard and perused the record. The grounds as raised are determined as below.

5. **Ground no. 1 to 4** ; It was submitted that the Id. Tax Authorities below have fallen in error in making the observation that assessee has arranged its business transaction with its associate concern so that more than ordinary profit could be shown to claim higher deduction u/s 10AA of the Act. It was submitted that the Tax Authorities have fallen in error in observing that when arms length price determined by the auditor of assessee shows the difference of Rs. 17,38,693/- then nothing is left on the part of AO to establish that transaction have been arranged in such manner that they could produce more than ordinary profits. It was submitted that the Id. Tax Authorities failed to appreciate the fact that mere extraordinary profits cannot lead to the conclusion that there was an arrangement between the parties. It was submitted that this would penalize efficient functioning and reliance was placed on the judgment of **Hon'ble Bombay High Court in Commissioner of Income Tax- 7 vs. Schmetz India (P) Ltd.**

5.1 Ld. Counsel also relied the judgment of Pune Bench in *M/s. Honeywell Automation India Limited vs. D.C.I.T., ITA No. 18/PN/2011* to contend that there is no presumption due to existence of close connection and high profits leading to “an arrangement” within the meaning of Section 80IA(10) of the Act .

5.2 However, Ld. DR defended the orders of the Tax Authorities below.

6. Giving thoughtful consideration to the matter on record it can be observed that Ld. CIT(A) has given finding of an admitted fact of close connection between the assessee company and its associate enterprises. The Ld. CIT(A) has also observed that transaction between the assessee and its associate have been arranged in such a manner that the transactions have produced the assessee more than ordinary profits which might be expected to arise in such eligible business. On these two assumed admitted facts the ld. CIT(A) has upheld the order of ld. AO.

6.1 The Tribunal is of the considered opinion that there can be no assumption of an arrangement as an admitted fact. It is a matter of fact and initial burden is on the Revenue to indicate from some reliable evidence that the course of business has been arranged so as to inflate profits with intent to abuse tax concession u/s 10A of the Act.

6.2 Section 80IA(10) of the Act provides “(10) Where it appears to the Assessing Officer that, owing to the close connection between the assessee carrying on the eligible business to which this section applies and any other person, or for any other reason, the course of business between them is so

arranged that the business transacted between them produces to the assessee more than the ordinary profits which might be expected to arise in such eligible business, the Assessing Officer shall, in computing the profits and gains of such eligible business for the purposes of the deduction under this section, take the amount of profits as may be reasonably deemed to have been derived therefrom:” The concluding phrase makes it mandatory that the Assessing officer on his part has to do some exercise of ascertaining what amount of profits may have been actually derived from the alleged arrangement. However, here is a case where based on assessee’s own Report in Form 3CEB, whatever amount of Rs70,38,693/- was found received in excess of price determined at Arm’s Length was considered to be undue benefit.

6.3 The following observations of Tribunal in M/s Honeywell Automation India Limited Case (supra) are relevant to understand as to what is expected from Assessing officer to give finding of an abusive arrangement ;

“32. In our considered opinion, the result of the Transfer Pricing assessment can at best be taken as an indicator for the Assessing Officer to investigate as to whether or not there exists any arrangement which has resulted in more than ordinary profits qua the requirements of section 10A(7) r.w.s. 80-IA(10) of the Act. Even if it is accepted that the difference between the operating margins of the assessee and the comparables show existence of more than the ordinary profits in the hands of the assessee, so however, it was still imperative for the Assessing Officer to establish on the basis of substantive evidence and corroborative material that qua section 10A r.w.s. 80-IA(10) of the Act, the course of business between the

assessee and the associated enterprises is so arranged that the business transacted between them produces to the assessee more than the ordinary profits with the intent of abusing tax concession. Quite clearly, in the entire assessment order, there is no whisper of any material or evidence in this regard.” Similar are the circumstances here when Ld. CIT(A) has proceeded to uphold the findings of Ld. AO on the basis of alleged admitted fact of arrangement, which had no foundation except the opinions of Ld Tax Authorities below. Consequently these grounds are sustained.

7. **Ground no. 5 & 6** ; It was submitted on behalf of the assessee that the Ld. Tax Authorities below have fallen in error in considering the interest on deposits from revenue generated by export sales consideration to be income from other sources and it should have been included as part of eligible profits for the purpose of Section 10A. However, Ld. DR submitted that there is no error in the findings of ld. CIT(A).

8. In this regard it can be observed that Ld. CIT(A) in para no. 7.1 of its order has observed that the assessee has failed to establish by evidence that the interest income has been earned out of funds which are part of total export proceeds received in convertible foreign exchange. The Bench is of considered opinion that when there is no dispute to the fact that assessee is a hundred percent export oriented unit registered as special economic zone unit then the entire turnover from international transactions must have been in convertible foreign exchange only. The incidental activity of parking surplus funds with any institution earning interest is an integral part of the export business activity and such incidental income cannot be delinked from profit and gains derived by the undertaking. Reliance in this regard can be placed on the Division Bench judgment of Hon’ble Karnataka High Court in

CIT & Anr. Vs. M/s. Hewlett Packard Global Soft Pvt. Ltd. ITA no 812
Decided on 30/10/17. Thus these issues are also decided in favour of the
assessee.

**Since the grounds of appeal, are decided in favour of the assessee, the
appeal succeeds and impugned orders are set aside.**

Order pronounced in the open court on 30th June, 2022.

Sd/-

**(G.S.PANNU)
PRESIDENT**

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Date:- 30 .06.2022

Binita, SR.P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**