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. 810/Bang/2016
Assessment Year : 2011-12

The Assistant Commissioner of Income Tax, Circle 3 (1)(2), Bangalore.	**Vs.**	M/s. EIT Services India Pvt. Ltd., Formerly known as Hewlett Packard Global Soft Pvt. Ltd., No. 39, 40, Electronic City, Phase – I, Bangalore – 560 100. PAN: AAACD4078L
APPELLANT		**RESPONDENT**

&
IT(TP)A No. 835/Bang/2016
Assessment Year : 2011-12
(By Assessee)

Assessee by	:	Shri Padam Chand Khincha, CA
Revenue by	:	Dr. Manjunath Karkihalli, CIT DR

Date of Hearing	:	30-03-2022
Date of Pronouncement	:	03-06-2022

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present cross appeals filed by the assessee and the revenue against the final assessment order dated 19.02.2016 passed by

the Ld.DCIT, Circle – 3 (1)(2), Bangalore for A.Y. 2011-12 on following grounds of appeal:

IT(TP)A No. 810/Bang/2016 – Revenue's Appeal:

"The directions of the DRP are opposed to law and facts of the case.
i) In the facts and circumstances of the case, Whether the Hon'ble DRP is correct in holding that the, M/s RS Software Pvt. Ltd., M/s Acropetal Technologies Ltd and M/s L&T Infotech ltd. cannot be taken as comparable, when it satisfies all the qualitative and quantitative filters adopted by the TPO.

ii) Whether the Hon'ble DRP is right in applying "onsite revenue filter" without appreciating the fact that the function carried out is "Software Development" irrespective of whether onsite or offshore.

iii) Whether the Hon'ble DRP in correct in excluding M/s RS Software Pvt. Ltd. and M/s Acropetal Technologies and M/s L&T Infotech ltd on the ground that they have significant onsite revenue without appreciating the fact that onsite development of software entails more cost and thereby results in lower profit margins.

iv) Whether the Hon'ble DRP was right in seeking exact comparability while searching for comparable companies of the assessee under TNMM method whereas requirement of law and international jurisprudence require seeking similar comparable companies.

v) Whether the Hon'ble DRP has erred on fact in deleting M/s E-infochips as a comparable on the ground that it fails the filter of service income less than 75% of the sales, when the said company has service income being 100% of the sales.

vi) Whether Hon'ble DRP erred in fact in rejecting the company M/s Infosys Technologies as a comparable on the ground that it is functionally different when the primary source of income of the comparable is from provision of software development services.

vi) Whether while seeking the exact comparability as mentioned above the DRP was right in fact and in law in imposing condition beyond law whereas the requirement of

law is to acknowledge only those differences that are likely to materially affect the margin.

vii) Whether the Hon'ble DRP is correct in fact and law in disregarding the position of law that there could be differences between the enterprises compared under the TNMM method that are not likely to materially affect the price or cost charged or the profits accruing to such enterprises?

viii) In the facts and circumstances of the case, Whether the Hon'ble DRP is correct in holding that the M/s Acropetal Technologies Ltd cannot be taken as comparable, when it satisfies all the qualitative and quantitative filters adopted by the TPO.

ix) Whether the Hon'ble DRP in correct in excluding M/s Acropetal Technologies on the ground that it has significant onsite revenue without appreciating the fact that onsite development of software entails more cost and thereby results in lower profit margins.

x) Whether the Hon'ble DRP erred in facts and law in excluding the company M/s Jeevan Scintific Technology as a comparable, on the ground of failing the service income filter, when only the segmental results have been considered for comparability

xi) Whether the Hon'ble DRP ought to have appreciated the fact that when segmental results are available and considered for comparability, the application of service income to total income filter does not arise

xii) Whether the Hon'ble DRP erred in fact and law in rejecting M/s Igate Global Solutions on the ground that segmental information is not available, when the company had classified itself to be operating in one segment i.e. provision of ITES

xiii) Whether the order of the Hon'ble DRP in rejecting comparable cases by insistence on strict comparability under TNMM defeats the very purpose of the law relating to determination of ALP under income Tax Act?

xiv) Whether the Hon'ble DRP erred in facts and law in excluding the company as a comparable on the ground of failing the service income filter when only the segmental results have been considered for comparability.

xv) Whether the Hon'ble DRP ought to have appreciated the fact that when segmental results are available and considered for comparability, the application of service income to total income does not arise.

xvi) The Hon'ble DRP erred in following the ratio laid down by the Hon'ble Karnataka High Court in the case of CIT Vs M/s Yokogawa India Ltd., (341 ITR 385)

xvii) The DRP erred in holding that the loss of non section 10A unit cannot be set off against the income of the 10A unit.

xviii) The DRP erred in following the ratio laid down by the Hon'ble High Court in the case of M/s Tata Elxsi Ltd.,

xix) The DRP erred in holding that the expenses reduced from the export turnover has to be reduced from the Total turnover also since no provision u/s 10A provides for exclusion of such expenses from the Total turnover.

xx) For these and other grounds that may be urged at the time of hearing, it is prayed that the directions of the Dispute Resolution Panel in so far as it relates to the above grounds may be reversed.

xxi) The appellant craves leave to add, alter, amend and /or delete any of the grounds mentioned above."

2. **Brief facts of the case are as under:**

2.1 EIT Services India Private Limited ("EITS" or "the Company" or "the Appellant") [Formerly known as Hewlett-Packard Global Soft Pvt. Ltd.]. During the year under consideration, the assessee functioned as a captive service provider for the Hewlett-Packard ("HP") Group entities ("Associated Enterprises" or the "AEs") and rendered the following services:

- Software development and software maintenance services ("SWD"); and

- Call centre/contract centre services, providing support to customers in respect of products sold by the AEs (hereinafter referred as the "ITES").

2.2 For the AY 2011-12, the assessee filed its return of income on 28/11/2011, claiming refund of INR 9,69,16,471. The return was picked up for scrutiny, assessment proceedings. During the course of the assessment proceedings, the Ld.AO made reference of international transactions entered by the assessee to the Transfer Pricing Officer, for determining the Arm's Length Price ("ALP") of such transactions, under section 92CA of the Act. The assessee appeared before the Ld.AO and TPO, for the hearings in respect of the assessment proceedings and filed submissions on the information / details called for.

2.3 Based on the information and explanation filed during the assessment proceedings and recommendations of the Ld.TPO, the Ld.AO, issued Draft Assessment Order ("DAO") under section 143(3) r.w.s 144C of the Act dated March 30,2015 proposing the following adjustments:

Particulars	Amount (In INR)
Returned income under the normal provisions of the Act	1,76,77,65,756
Add:	
Adjustment following the order under section 92CA(3) of the Act passed by the TPO under following segments: 1. Software Development Segment - 1,91,51,19,185 2. IT Enabled Services - 44,29,98,317 3. Marketing Services - 1,94,11,562	2,37,75,29,064
Reduction in deduction under section 10A and 10B of the Act As per ROI 99,59,24,204 Less: As per DAO 36,21,61,523	63,37,62,681
Disallowance on account of difference of service income in the financials and gross	7,32,917

amounts as per Form 26AS	
Assessed income	4,77,97,90,419

2.4 In view of typographic error, a corrigendum was passed by the Ld.TPO vide order dated 16 February 2015, wherein the Transfer Pricing adjustment was rectified as below:

Adjustment following the order under section 92CA(3) of the Act passed by the TPO under following segments: 1. Software Development Segment - 1,91,51,19,185 2. IT Enabled Services – 44,29,98,317	2,35,81,17,502

2.5 The assessee filed objections before the DRP on 29/04/2015. The DRP passed its direction, dated 31/12/2015.

2.6 In respect of deduction under section 10A of the Act, the DRP vide directed the Ld.AO to exclude foreign currency expenditure, and telecommunication expenses from 'total turnover' also for computing deduction under section 10A of the Act.

Pursuant to the directions issued by the DRP, the Ld.AO passed the Final Assessment order on 19/02/2016.

2.7 The summary of adjustments in the final assessment order are as under:

Computation of total income

Particulars	Amount (In INR)
Returned income under the normal provisions of the Act	1,76,77,65,756
Add:	
Adjustment following the order under section 92CA(3) of the Act passed by the TPO 1. Software Development Segment - 1,59,19,33,633 2. IT Enabled Services - 28,80,48,563	1,87,99,82,196
Reduction in deduction under section 10A and 10B of the Act As per ROI 99,59,24,204 Less: As per FAO 88,68,63,610	10,90,60,594
Disallowance on account of difference of service income in the financials and gross amounts as per Form 26AS	7,32,917
Assessed income	**3,75,75,41,464**

2.8 The assessee in the mean time had filed application with the Competent Authority in the United States of America ("USA") invoking the mutual agreement procedure ('MAP') under Article 27 of the Double taxation Avoidance Agreement ("DTAA") between India and USA on 17/03/2016. The Competent Authorities issued a resolution/closure of dispute letter dated 13/12/2021 that was accepted by the assessee vide letter dated 11/01/2022.

2.9 In view of the same, the assessee filed a letter with this *Tribunal* on 11/01/2022 withdrawing the appeal to the extent of the portion covered under the MAP i.e., the transfer pricing adjustment towards Software Development ("SWD") and Information Technology enabled Services ("ITeS") provided to the Associated Enterprise(s) situated in the United States of America.

2.10 Further, the assessee filed additional grounds before this *Tribunal* on 18/02/2022, wherein the assessee prayed that the arm's length price agreed between the Competent Authorities of USA and India in the Mutual Agreement Procedure invoked under the India-USA DTAA, may be applied to the transactions entered by the assessee with its AEs situated in countries other than in the USA.

2.11 The Ld.AR at the outset submitted that, transaction in respect of non-AE segment is tabulated as under for both the segments.

Particulars	**Amount (INR)**	**Amount (INR)**	**Total**
	SWD Segment	**ITES Segment**	
NON-US Portion	32,22,93,731	7,87,17,687	40,10,11,418

2.12 The Ld.AR submitted that the percentage adopted under the MAP may be considered.

2.13 The Ld.AR further submitted that, there is no distinction between the functions, assets and risks between the AE and non-AE transactions.

2.14 The Ld.AR relied on the following decision in support of its claim

- *Decision of Hon'ble Supreme Court in case of JP Morgan Services India (P.) Ltd. reported in [2020] 119 taxmann.com 414(SC)*
- *Decision of Hon'ble Bombay High Court in case of J.P. Morgan Services India (P.) Ltd. reported in [2019] 105 taxmann.com 40 (Bombay)*
- *Decision of Hon'ble Mumbai Tribunal in case of JP Morgan Services India (P.) Ltd. in ITA No. 784/Mum/2014*
- *Decision of Hon'ble Ahmedabad Tribunal in case of IQVIA RDS (India) Pvt. Ltd. in IT(TP)A No. 3161/Ahd/2010*
- *Decision of Coordinate Bench of Tribunal in case of CGI Information Systems Management Consultants Pvt. Ltd. in IT(TP)A No. 1117/Bang/2011*
- *Decision of Coordinate Bench of Tribunal in case of Tesco Bengaluru Pvt. Ltd. in IT(TP)A No. 262/Bang/2014*

2.15 We have perused the above submissions by the Ld.AR.

2.16 We note that, the Ld.TPO considered both AE and non-AE transaction together for benchmarking the international transaction, and therefore respectfully following the observations of *Hon'ble Bombay High Court* in case of *PCIT vs. J.P. Morgan Services India (P.) Ltd. (supra),* we are of the view that, the rates agreed by the CBDT for the US based transactions can be adopted for non US transaction.

We therefore direct the Ld.AO to adopt the rates for the non-AE transaction being the agreed rate under the MAP with US entity, for both the segments.

Accordingly, grounds related to transfer pricing adjustment in respect of non-AE transaction stands disposed off, and the grounds relating to the US transaction stands resolved in

accordance with MAP vide letter dated 11.01.2022 for both the segments.

3. Grounds 1 to 15 raised by the revenue relating to TP issues stands withdrawn pursuant to MAP.

Corporate Grounds:

Brief facts are as under:

3.1 During the course of assessment proceedings, the Ld.AO enquired regarding the foreign currency expenditure amounting to INR 3,63,98,79,000. He reduced the foreign exchange expenses from the 'export turnover' for the purpose of computing relief under section 10A of the Act.

3.2 In response, the assessee submitted that, the adjustment to the export turnover is applicable, when a Company is engaged in rendering technical services outside India and the assessee is in the business of rendering Software Development services ("SD") / ITeS. Only a part of the SD services is carried out at onsite location. It was thus submitted that being a company involved in software development, it is not engaged in rendering technical services outside India. The Ld.AO disregarded the submissions made by the assessee in this regard during the assessment proceedings.

3.3 The Ld.AO in the draft assessment order held that foreign currency expenditure incurred by the assessee, amounting to Rs.3,63,98,79,000/- pertains to rendering technical services outside India, and hence the same needs to be reduced from the 'export turnover' for the purpose of computing relief under section 10A of the Act.

3.4 Aggrieved by the draft assessment order, objections were filed before the DRP.

3.5 DRP directed the Ld.AO to exclude the foreign currency expenditure from 'total turnover' also for computing deduction u/s. 10A of the Act.

3.6 The Ld.AO while passing the impugned order, reduced foreign currency expenses from both export turnover and total turnover without giving any details on the computation.

3.7 Before us, the Ld.AR placed reliance on the decision of *Hon'ble Karnataka High Court* in case of *CIT vs. Mphasis Ltd.* reported in *[2016] 74 taxmann.com 274 (Karnataka),* wherein it is held that, the foreign currency expenditure incurred for providing software development services outside India cannot be excluded from export turnover for the purpose of computing deduction u/s. 10B. Similar was the ratio in the following decisions:

- *Decision of Hon'ble Karnataka High Court in case of Motor Industries Co. Ltd.* reported in *[2015] 55 taxmann.com 377*
- *Decision of Hon'ble Karnataka High Court in case of Mindtree Ltd. vs. ACIT* reported in *[2020] 122 taxmann.com 163 (Karnataka)*

3.8 We have perused the above submissions based on the records filed before us.

We note that *Hon'ble Karnataka High Court* in case of *Mphasis Ltd. (supra)* was considering the issues regarding claim of certain expenses attributable to the delivery of software outside India or in providing technical services, whether to be excluded from export turnover for purpose of computing deduction. *Hon'ble Karnataka High Court* answered the issues in negative and in favour of the assessee. This view has been affirmed by *Hon'ble Supreme Court*

in case of *CIT vs. Mphasis Ltd.* reported in *(2020) 113 taxmann.com 74.*

Respectfully following the above view, we hold that the expenditure incurred in foreign currency cannot be excluded from export turnover for computing deduction u/s. 10A of the Act in the present facts.

However, the decision of *Hon'ble Supreme Court* in case of *CIT vs. HCL Technologies Ltd.* reported in *(2018) 93 taxmann.com 33* has observed as under:

> *"**12.** It is undisputed fact that the Respondent was engaged in the business of software development for its customers engaged in different activities at software development centres of the Respondent. However, in the process of such customized software development, certain activities were required to be carried out at the sight of customers on site, located outside India for which the employees of the branches of the Respondent located in the country of the customers are deployed. It is true that it is not defined that which activity will be termed as providing technical services outside India. Moreover, after delivery of such softwares as per requirement, in order to make it fully functional and hassle free functioning subsequent to the delivery of softwares in many cases, there can be requirement of technical personnel to visit the client on site. The Assessing Officer could not bring any evidence that the Respondent was engaged in providing simply technical services independent to software development for the client for which the expenditures were incurred outside India in foreign currency.*
>
> ***13.** The Respondent company has claimed deduction under Section 10A as per certificates filed on Form No. 56F. The Respondent, while computing the deduction, has taken the same figure of export turnover as of total turnover. The Respondent cited various judicial cases but all these cases pertain to deduction under Section 80HHC. Further, the definition of total turnover has been defined in Section 80HHC and 80HHE of the IT Act. As discussed earlier, the definition of total turnover has not been defined under Section 10A of the IT Act.*

14. *In the above backdrop, we are of the opinion that the definition of total turnover given under Sections 80HHC and 80HHE cannot be adopted for the purpose of Section 10A as the technical meaning of total turnover, which does not envisage the reduction of any expenses from the total amount, is to be taken into consideration for computing the deduction under Section 10A. When the meaning is clear, there is no necessity of importing the meaning of total turnover from the other provisions. If a term is defined under Section 2 of the IT Act, then the definition would be applicable to all the provisions wherein the same term appears. As the term 'total turnover' has been defined in the Explanation to Section 80HHC and 80HHE, wherein it has been clearly stated that "for the purposes of this Section only", it would be applicable only for the purposes of that Sections and not for the purpose of Section 10A. If denominator includes certain amount of certain type which numerator does not include, the formula would render undesirable results.*

15. *A Statute is the intention of the legislature who enacts it after having regard to various facts and circumstances. It is a cardinal principle of law that the interpretation by the Court shall be done in such a way that the intention of the legislature shall prevail and no injustice occurred with the parties. The rule of harmonious construction is the thumb rule to interpretation of any statute. An interpretation which makes the enactment a consistent whole, should be the aim of the Courts and a construction which avoids inconsistency or repugnancy between the various sections or parts of the statue should be adopted.*

16. *In CIT v. J.H. Gotla [1985] 23 Taxman 14J/156 ITR 323 (SC) this Court has held as under:*

"46. Where the plain literal interpretation of a statutory provision produces a manifestly unjust result which could never have been intended by the Legislature, the Court might modify the language used by the Legislature so as to achieve the intention of the Legislature and produce a rational construction. The task of interpretation of statutory provision is an attempt to discover the intention of the Legislature from the language used....

47 ....If the purpose of a particular provision is easily discernible from the whole scheme of the Act which, in the present case, was to counteract, the effect of the transfer of assets so far as computation of income of the Respondent was concerned, then bearing that purpose in

mind, the intention should be found out from the language used by the Legislature and if strict literal, construction leads to an absurd result, i.e. result not intended to be subserved by the object of the legislation found out in the manner indicated above, then if other construction is possible apart from strict literal construction, then that construction should be preferred to the strict literal construction. Though equity an taxation are often strangers , attempt should be made that these do not remain so always so and if a construction results in equity rather than in injustice , then such construction should be preferred to the literal construction. Furthermore, in the instant case, we are dealing with an artificial liability created for counteracting the effect only of attempts by the assessee to reduce tax liability by transfer...."

17. *The similar nature of controversy, akin this case, arose before the Karnataka High Court in* ***CIT*** *v.* ***Tata Elxsi Ltd.*** *[2012] 204 Taxman 321/17/taxmann.com 100/349 ITR 98. The issue before the Karnataka High Court was whether the Tribunal was correct in holding that while computing relief under Section10A of the IT Act, the amount of communication expenses should be excluded from the total turnover if the same are reduced from the export turnover? While giving the answer to the issue, the High Court, inter-alia, held that when a particular word is not defined by the legislature and an ordinary meaning is to be attributed to it, the said ordinary meaning is to be in conformity with the context in which it is used. Hence, what is excluded from 'export turnover' must also be excluded from 'total turnover', since one of the components of 'total turnover' is export turnover. Any other interpretation would run counter to the legislative intent and would be impermissible.*

18. *Accordingly, the formula for computation of the deduction under Section 10A of the Act would be as follows:*

$$\text{Export Profit} = \text{total Profit of the Business} \times \frac{\text{Export turnover as defined in Explanation 2 (IV) of Section 10A of IT Act}}{\text{Export turnover as defined in Explanation 2(IV) of Section 10A of the IT Act + domestic sale proceeds}}$$

19. *In the instant case, if the deductions on freight, telecommunication and insurance attributable to the delivery of computer software under Section10A of the IT Act are allowed only in Export Turnover but not from the*

> *Total Turnover then, it would give rise to inadvertent, unlawful, meaningless and illogical result which would cause grave injustice to the Respondent which could have never been the intention of the legislature.*
> ***20.*** *Even in common parlance, when the object of the formula is to arrive at the profit from export business, expenses excluded from export turnover have to be excluded from total turnover also. Otherwise, any other interpretation makes the formula unworkable and absurd. Hence, we are satisfied that such deduction shall be allowed from the total turnover in same proportion as well.*
> ***21.*** *On the issue of expenses on technical services provided outside, we have to follow the same principle of interpretation as followed in the case of expenses of freight, telecommunication etc., otherwise the formula of calculation would be futile. Hence, in the same way, expenses incurred in foreign exchange for providing the technical services outside shall be allowed to exclude from the total turnover."*

Respectfully following the above view, we direct the Ld.AO to compute the deduction under section 10A in the light of principles laid down by *Hon'ble Supreme Court* in case of *CIT vs.HCL Technologies Ltd (sputa).*

Accordingly this ground raised by the assessee stands allowed.

4. Ground no. 7.3 –Reduction of telecommunication expenditure from the export turnover while computing deduction u/s. 10A/10B of the Act.

4.1 At the outset, both sides submitted that this issue is no longer *resintegra* by the decision of *Hon'ble Supreme Court* in case of *HCL Technologies Ltd.* reported in *(2018) 93 taxmann.com 33.* The Ld.AO is directed to compute the deduction u/s. 10A / 10B in accordance with the principles laid down by *Hon'ble Supreme Court* in case of *HCL Technologies (supra).*

Accordingly this ground raised by the assessee stands allowed and Ground nos. 18-19 in revenue's appeal stands dismissed.

5. Ground no. 7.4 – Set-off of inter unit profit and losses and **Ground no. 7.5** – Computation of deduction u/s. 10A of the Act on the basis of consolidated profits, export turnover and total turnover.

5.1 The Ld.AO in the draft assessment order set-off brought forward business losses, incurred by the non-eligible units, with the profit of the eligible units, while computing the deduction u/s. 10A and 10B of the Act. The set-off was done while computing the eligible profit for computing the deduction u/s. 10A.

5.2 On raising objections before the DRP, the computation by the Ld.AO was upheld.

5.3 In the impugned order, the Ld.AO as per the directions of the DRP, set-off brought forward business losses incurred by the non-eligible units with the profit of the eligible units while computing the deduction u/s. 10A and 10B of the Act.

5.4 Aggrieved by the impugned order, the assessee filed appeal before this *Tribunal.*

5.5 The Ld.AR submitted that there were total nine units, STP V, VI and VII were eligible units, for deduction u/s. 10A and STP IX was eligible unit for deduction u/s. 10B. Further, the deduction u/s. 10A for STP units I, II & III exhausted.

5.6 He submitted that, while computing the deduction u/s. 10A and section 10B of the Act, the Ld.AO set off the brought forward losses incurred by the non-eligible STPI units (I, II & III), amounting to Rs.3,918,182, with the profits of the other eligible STPI units (V, VI & VII).

5.7 The Ld.AR submitted that this issue stands squarely covered in case of *CIT and Anr vs. Yokogawa India Ltd. and others* reported

in *341 ITR 385,* which stands approved by the *Hon'ble Supreme Court* in case of *CIT vs. Yokogawa India Ltd.* reported in *[2017] 77 taxmann.com 41 (SC)* wherein *Hon'ble Court* held that the deduction u/s. 10A of the Act has to be computed on the eligible profits, without adjusting the losses of other units. This is because, section 10A computation is to be done, undertaking wise, in which process, the occasion to set off loss of the other units or brought forward loss of the same unit does not arise.

5.8 The *Hon'ble Supreme Court* observed and held as under:

> *"18. For the aforesaid reasons we answer the appeals and the questions arising therein, as formulated at the outset of this order, by holding that though Section 10A, as amended, is a provision for deduction, the stage of deduction would be while computing the gross total income of the eligible undertaking under Chapter IV of the Act and not at the stage of computation of the total income under Chapter VI. All the appeals shall stand disposed of accordingly."*

5.9 The Ld.CIT.DR relied on orders passed by authorities below.

5.10 We have perused the submissions advanced by both sides in the light of records placed before us.

5.11 Based on the ratio laid down by the *Hon'ble Supreme Court* in case of *CIT vs. Yokogawa India Ltd. (supra),* we direct the Ld.AO to compute the deduction u/s. 10A and 10B in accordance with the principles laid down therein.

Accordingly this ground raised by assessee stands allowed.

Department grounds 16 & 17 – dismissed.

6. Ground no. 7.6 – Adjustment in respect of onsite revenue while computing deduction u/s. 10A of the Act.

<u>Brief facts are as under:</u>

6.1 During the course of assessment proceedings, the Ld.AO enquired onsite development of computer software. In this regard,

it was submitted that, the assessee is engaged in the software development and related services. It was submitted that, as a part of the entire process of such rendering of services, the assessee is contractually required to carry out some work onsite and some of offshore. And that, in this connection the assessee is required to send some of its personnel, onsite on temporary basis. It was further submitted that, all the onsite work undertaken by the assessee with respect to contracts/SOW's entered with customers are under the direct supervision and control of the respective STP units of the assessee and that, no onsite work carried out is detached from the STP units. It was therefore, submitted that there is a direct nexus between the onsite work and the respective STP units.

6.2 In the draft assessment order, the Ld.AO observed that the assessee is involved in rendering onsite development of software which has no direct and intimate link of such onsite activities with the Indian STP's claiming benefit under section 10A and section 10B of the Act. In doing so, the AO has primarily referred to the assessment order passed in the earlier AYs and has made an ad-hoc disallowance of 12.50 percent of the relief computed under section 10A and section 10B of the Act.

6.3 Aggrieved by the order of Ld.AO, assessee raised objection before the DRP.

6.4 The DRP while considering this issue followed its own direction for A.Y: 2010-11 as under:

> *"Having considered the submission, it is noticed by us that similar issue was considered by the DRP in A.Y. 2010-11 and the DRP allowed the relief to the assessee by observing as under :-*

"4.3 From the submissions and explanation given by the assessee, we are of the view that the development and export of software to a customer in a foreign country requires onsite activity also. which can be related to the contract and SOW reiating to the business of a particular undertaking. Unless the examination of such documents prove that the business carried out by a particular undertaking partly or wholly involves rendering technical services outside India, such disallowance made on ad hoc basis cannot be sustained. Assessing Officer has failed to point out a single discrepancy, document or facts to support his action, which would be rendered arbitrary uniess based on reliable evidence and acceptable reasoning. Unless such finding of fact is there based on which any part of the turnover could be said to be relating to technical services rendered outside India, no reduction of export turnover is permissible. Assessee's objection is therefore, accepted.

4.4 Having heard the assessee, we agree with the contention that apart from reference to the assessment order of earlier years, the Assessing Officer's conclusions are not based on the critical analysis of the voluminous documents filed by the assessee in support of the claim that none of the revenue attributed to the exempt units could be said to be related to DTM activity, or to wholesale onsite activity. While it has been vaguely mentioned that in numerous SOWs the place of work/location of service were onsite location/ foreign clients sites, but no further details have been brought out with regard to the client, period and the STP unit the assessee has claimed such work to relate to. We are of the view that there is no bar under the provisions of section 10A that no part of the contract for export of softvvare/service could be performed onsite. The Assessing Officer has to identify such SOWs and the revenue involved in such work which has been claimed to be related to any particular 10A unit by the assessee. We are also of the view that deduction u/s 10A has to be computed unit-wise with regard to the contracts/SOWs executed by the undertaking which specifies the efforts and revenue, softex forms certified by the STPI/SEZ authorities, and FIRCs linked with such softex forms evidencing the realization of the export bills raised. The deduction cannot be curtailed/restricted in an ad-hoc manner based on estimate across the units, without reference to the eligible profits, eligible export turnover, and without identifying the revenue which could not be said to be part of eligible business. The assessee's objection is therefore accepted. The Assessing Officer is

directed to verify the documents submitted by the assessee and give specific finding with respect to each of the undertakings, for the purpose of re-computation of deduction u/s 10A if any. If ric discrepancy could be specified based on the evidence, the deduction as certified by the STPI authorities and auditor's report should be allowed.
As the factual position for the assessment year remain the same, we direct the A.O. to take the decision following the directions given by the DRP in the preceding assessment year reproduced above."

6.5 The Ld.AO while passing the impugned order observed and held as under:

"2.7. The assessee has always claimed itself to be a software service company. However, it has been the contention of the revenue for the last 10 years that the assessee company has actually been providing technical services abroad. As per the definition of Export Turnover, the expenses incurred in foreign currency with respect to technical services provided abroad have to be reduced from the export turnover. It is seen that the assessee company has not done the same. The company is regularly being assessed and this issue is being scrutinized the stand of the assessee company on this issue has been as below :
"Non reduction of onsite foreign expenses from Export turnover as per provisions
We wish to reiterate our submissions provided in paragraph 5 of our submissions dated October 12, 2011 and submit that HPGS is not engaged in rendering technical services outside India and therefore, it has not incurred any foreign expenditure for the purposes of rendering technical services outside India and therefore, there is no question of exclusion of any such foreign currency expenditure either from export turnover or even the total turnover for the purposes of computation of section 10A relief
In addition, we also wish to submit a recent ruling of the Honourable Karnataka High Court in the case of ACTT vs Tata Elxsi Ltd (ITA No 70 of 2009) (copy enclosed as Annexure 4) wherein it has been held that what is reduced from the export turnover shall also be reduced from the total turnover"
2.8. Considering the same this issue was raised once again. The AR of the company stated the same contention. On consideration of the assessee's contention it is to be

mentioned that, in this regard CBDT has issued a clarificatory circular no 1/2013.

2.10 Circular Explained: The issues of taxation of the software sector specifically the denial of deduction u/s. 10A with respect to DTAA and 100 % onshore revenues hod been matters of judicial scrutiny in the last couple of years. The Hon'ble Prime Minister has set up a committee to examine the issues of taxation with respect to software sector under the chairmanship of Shri. Rangachary, Former chairman 01 CBDT. The said committee submitted reports and based on the same, the CBDT has issued a detailed circular on issues of taxation as below :

(i) (a) WHETHER "ON-SITE" DEVELOPMENT OF COMPUTER SOFTWARE QUALIFIES AS AN EXPORT ACTIVITY FOR TAX BENEFITS UNDER SECTIONS 10A, 10AA AND 10B OF THE INCOME TAX ACT, 1961; AND

(a) CBDT had earlier issued a Circular (Circular No. 694 dated 23.11.1994) which provided that a unit should not be denied tax-holiday under sections 10A or 10B on the ground that the computer software was prepared 'on. -site', as long as it teas a product of the unit. i.e., it is produced by the unit. However, certain doubts appear to have arisen following the insertion of Explanation 3 to section 10A and 10B (vide Finance Act, 2001) and Explanation 2 to section IAA (vide Special Economics Zones Act, 2005) providing that " the profits and gains derived from on site development of computer software (including services for development of software) outside India shall he deemed to be the profits and gains derived from the export of computer software outside India". and a clarification has been sought on the impact of the Explanation on the tax-benefits as compared to the situation that existed prior to the amendments.

2.11 The matter has been examined, In view of the position of law as it stands now, it is clarified that the software developed abroad at a client's place would be eligible for benefits under the respective provisions, because these would amount to 'deemed export' and tax benefits would not be denied merely on this ground. However, since the benefits under these provisions can be availed of only by the units or undertaking set up under specified schemes in India, it is necessary that there must exist a direct and intimate nexus or connection of development of software done abroad with the eligible

units set up in India and such development of software should be pursuant to a contract between the client and the eligible unit. To this extent, Circular No. 694 dated 23.11.1994 stands further clarified. The circular has brought to focus the following three issues :

a) That the benefits, u/s. 10A/ 10B/ 10AA can be availed of only by the units or undertakings. To this extent, it is noted that the tax holiday is availed of only by the units and not by the assessee at large.

b) That the current circular issued is only an extension of the earlier circular No. 694 dated 23-11-1994 issued on the same subject.

c) That the assessee as well as undertaking must prove a direct and intimate nexus or connection of development of software done abroad with that of the eligible units set up in India and as such development of software should be pursuant to the contract between the client and the eligible unit.

2.12 The assessee company has also claimed that a similar treatment of reduction of foreign currency expenses from Export turnover had been rejected in the case of M/s. Infosys Technologies Ltd for Asst. year : 93-94 to 97-98. However, it is seen that in a recent decision, in the case of M/s. Infosys Technologies for Asst. Year : 93-94 to Ass.t Year : 97-98, the Honble High court of Karnataka, has upheld the revenue's stand of reducing the foreign exchange expenses incurred in relation to the business of providing of technical services abroad. The foreign exchange expenses have been given by the assessee as below:

Expenditure in foreign currency (accrual basis)

	2011 Rs. '000'	*2010 Rs. '000*
Overseas Travel	*664164*	*52,79,58*
Professional & Consultancy charges	*29,914*	*3,92,62*
Employee expenses including prior period expenditure Rs. 157132 (2008-Nil)	*23,02,757*	*183, 28,57*
Other overseas Business expenses	*6,43, 044*	*44,93,86*
	363,98,79	*284,94,63*

2.13 The forex expenses as above are considered. The assessee has been asked on several occasions to submit MSAs and SOWs that it had with its clients. The assessee has only been able to provide some of the sample SOWs. The assessee has also not been able to give a detailed

description of the software services rendered as well as software deliverables of the year. In addition to the same, it is also seen that the assessee company had rendered services to the client of the client. This would mean that the assessee's engineers had been put to work at the premises of the client of the client at various locations abroad. The issue was examined in detail for the A.Y. 2009-10 also. The assessee's stand has been as below:-

> *"On account of working for client of client and not taking up original software development work*
>
> *As indicated earlier in our submissions, HPGS is carrying out software development for its clients under contractual arrangements. Further, the only criteria stipulated in section 10A(1) of the Act for claiming a tax holiday is that the undertaking should be engaged in the business of production of articles, things or computer software. The law does not make a distinction between types of software development (ie, original or otherwise) and hence this proposal is not in line with the provisions of law."*

2.14 Further the assessee's additional claim in view of the Jurisdiction High Court decisions in the case of M/s Tata Elxsi has been as below:

> *"Non reduction of onsite foreign expenses from total turnover as per provisions*
>
> *"HPGS is not engaged in rendering technical services outside India and therefore, it has not incurred any foreign expenditure for the purposes of rendering technical services outside India and therefore, there is no question of exclusion of any such foreign currency expenditure either from export turnover or even the total turnover for the purposes of computation of section 10A relief*

In addition, we also wish to submit a recent ruling of the Hon'ble Karnataka High court in the case of ACIT Vs Tata Ebcsi Ltd (ITA No. 70 of 2009) wherein it has been held that what is reduced from the export turnover shall also be reduced from the total turnover."

2.15. On consideration of the assessee's contention, It is seen that the assessee could not explained the exact nature of software services rendered as well as detailed description of software deliverables for the year. The assessee has not been able to submit all the SOWs and MSAs entered for software contract services. Considering the same, the assessee company is held to be also in the business of providing technical services. Considering the same the foreign exchange expenses of Rs. 363,98,79,000/- are reduced from the Export Turnover

> *computation u/s. 10A. It is also seen that this reduction of forex expenditure from Export Turnover need not be done from Total Turnover. Regarding the alternative argument that expenses when reduced, should be reduced from the total turnover. This claim of the assessee would lead to an absurdity if not perversity in the understanding of provisions of Income Tax Act. Section 10A/ 10B has given a proportionate basis of giving deduction by giving a formula for deduction as :*
>
> $$\frac{\text{Profits of the business x Export Turnover}}{\text{Total Turnover}}$$
>
> *If all that is reduced from the Export turnover has to be reduced from the Total turnover, this would lead to an absurdity and perverse understanding of the Income Tax provisions. The order of the Hon'ble ITAT and High Court in the case of M/s. Tata Elexi Ltd. is only in the context of telecommunication expenses. This judgment cannot be extended to the reduction of foreign exchange expenses from Export Turnover.*
>
> *Considering the same, it is observed that the foreign exchange expenses shall be reduced form the Export Turnover and not from the Total Turnover for the purpose of computation of deduction u/s. 10A/10B of the Income Tax Act."*

6.6 Aggrieved by the order of Ld.AO, assessee raised the issue before this *Tribunal.*

6.7 The Ld.AR submitted that the work carried on by each of the STP unit is identified separately and each STP unit raises invoices separately in respect of the work carried out by it under the respective SOW pursuant to the MSA and hence there is a direct and intimate nexus between the respective STP Unit, and the work carried out by it.

6.8 The Ld.AR submitted that the DRP in its direction for A.Y. 2010-11 observed that the development of software and export software to a customer in a foreign country requires onsite activity also, which can be related to the contract and SOW relating to the business of a particular entity. The Ld.AR referring decision of *Hon'ble Karnataka High Court* in case of *Mphasis Ltd.* reported in

(2015) 62 taxmann.com 165 submitted that the *Hon'ble Court* it held that profit and gains derived from 'on-site' development of computer software would also be covered u/s. 10A of the Act. It was also held that income earned by an assessee through 'on-site' development of software by the AE, on behalf of the assessee, would be eligible for deduction u/s. 10A of the Act. The Ld.AR submitted that this view by *Hon'ble Karnataka High Court* was appealed before the *Hon'ble Supreme Court* by the revenue and the SLP has been dismissed.

6.9 The Ld.AR then referred to the decision of *Hon'ble Pune Tribunal* in case of *iGate Global Solutions Ltd.* reported in *[2019] 109 taxmann.com 48* wherein it is held that consideration received by the assessee from the Onsite activities should not be excluded from the eligible revenue for computing the deduction u/s. 10A of the Act.

6.10 The Ld.CIT.DR relied on the orders passed by the authorities below.

6.11 We have perused the submissions advanced by both sides in the light of records placed before us.

6.12 We note that *Hon'ble Pune Tribunal* while considering identical issue observed and held as under:

> *"28. This contention, in our considered, is sans merit. There are two reasons. The first is that the Explanation 3 is a deeming provision, which specifically brings profits and gains derived from on site development of computer software and services for development of software outside India within the meaning of `the profits and gains derived from the export of computer software outside India'. The second is that sub-section (1) of section 10A containing the words `derived from' is not an exhaustive provision in itself. The expression `profits ... derived ...from .. export of ... computer software' employed in sub-section (1) of section 10A of the Act has been further elaborated in*

> *sub-section (4) to mean: `the amount which bears to the profits of the business of the undertaking, the same proportion as the export turnover in respect of such articles or things or computer software bears to the total turnover of the business carried on by the undertaking.' The expression `profits of the business of the undertaking' as used in sub-section (4), in fact, IT(TP)A No.286/Bang/2013 M/s. IGate Global Solutions Ltd.*
> *gives meaning to the expression `derived... from ... export of ... computer software' as used in sub-section (1) and amplifies the scope of the latter by mitigating the rigor and making the provision liberal and more inclusive. There is no gainsaying that `profits of the business of the undertaking' are not only the profits derived from the export of computer software but also those which are attributable to the business of undertaking. So long as there exists a direct link between the eligible undertaking and some income, the same is profit of the business of undertaking, even if may not be derived from the export of computer software etc. Without accepting, even if we presume the contention of the ld. DR as correct that income from DTM and onsite software services rendered abroad cannot be considered as derived from the export of computer software, it, in any case, will have to be regarded as `profits of the business of the undertaking'. In view of the foregoing discussion, we uphold the impugned order on this score."*

6.13 In the present facts of the case, there is no dispute regarding the link between the eligible undertaking and the profits of the business of the undertaking even though it may not have been derived from export of computer software.

6.14 Therefore the income earned from onsite revenue forms part of profit of the business of the undertaking and therefore will automatically come as a part of the total turnover for the purpose of computing deduction u/s. 10A of the Act.

6.15 Respectfully following the above view by *Hon'ble Supreme Court* and *Hon'ble Pune Tribunal,* we direct the Ld.AO to consider the onsite revenue for the purpose of computing deduction u/s. 10A of the Act.

Accordingly ground no. 7.6 stands allowed.

7. Ground nos. 7.6.16 - on account of disallowance towards the Deputation of Technical Manpower

<u>Brief facts of the case are as under:</u>

7.1 During the course of assessment proceedings, the Ld.AO enquired on assessee's business of deputing technical manpower. In this regard, it was submitted that the assessee is not in the business of deputing technical manpower, but is engaged in the rendering software development services. As a part of the entire process of such rendering of services, the assessee, contractually is required to carry out some work onsite, and some onshore, and accordingly, is required to send some of its personnel onsite. It was submitted that, this cannot be construed to hold the appellant is obtaining revenues from deputation of technical manpower.

7.2 The Ld.AO in the draft assessment order, alleged that, the assessee is engaged in the activity of Deputation of Technical Manpower ("DTM") / 'body shopping', outside India, without having regard to the nature of the business of the appellant, and the facts and business realities in a software development lifecycle. The Ld.AO thus made disallowance of 12.50% of the relief computed under section 10A and section 10B of the Act.

7.3 We note that the DRP did not express any opinion on this issue, and while passing the final assessment order, the Ld.AO confirmed the addition made in the draft assessment order. The Ld.AO confirmed the addition, as assessee could not furnish substantial details for deciding on the services rendered in the form of contract entered into by the assessee.

7.4 Aggrieved by the addition made, assessee raised this issue before this *Tribunal.* The Ld.AR has submitted that, the assessee entered into a contract with its AE's for providing services to the clients of its AE's. Assessee works under the cost-plus model with its AE's. Assessee operates on an integrated model and the business demands the presence of the technical professionals in the customer premises as required under the contract entered between AE's and particular client. He submitted that these technical professionals are placed in the customer locations to understand the specifications of the customers and provide services in connection with development of the software. Hence, these activities cannot be termed as body shopping / DTM activities.

7.5 The Ld.AR placed reliance on the decision of *Hon'ble Pune Tribunal* in case of DCIT v iGate Global Solutions Limited (2019) reported in 109 taxmann.com 48 in support of the above submission. He also relied on *Circular No. 1 of 2013 dated January 17, 2013*

7.6 Alternatively, the Ld.AR argued that even if the contention of Ld.AO is accepted, the benefit of section 10A of the Act is available to ITeS activities, by way of deputation of technical manpower. He submitted that the term ITeS has been defined by the CBDT by way of the Notification No.S.O.890(E) of September 2000, that covers a list of activities which includes manpower deputation. It is the submission of Ld.AR that, the above notification, even if it is contended that the assessee is engaged in the activity of deputing personnel to customer locations / body shopping, the same shall get covered under the

term "Human resource services" and should be eligible to claim relief under section 10A of the Act. Similar issue was covered in the case of *NTT Data Global Advisory Services (P.) Ltd (ITA No. 544 of 2013),* where *Hon'ble Karnataka High Court* held that assessee-company was engaged in business of supply of manpower from India to its foreign clients after their recruitment in India, it was entitled to deduction under section 10A of the Act.

7.7 The Ld.DR thus relied on the orders passed by the authorities below.

7.8 We have perused the submissions advanced by both sides in the light of records placed before us.

We note that the assessee could not furnish details in support of the claim before the revenue. In the interest of justice, we remand this issue to the Ld.AO for verifying the details in light of the principles laid down by *Hon'ble Karnataka High Court* in above referred cases. Needless to say that proper opportunity of being heard must be granted to assessee.

Accordingly, this ground raised stands allowed for statistical purposes.

8. Ground no. 7.6.28

<u>Brief facts are as under:</u>

8.1 During the course of assessment proceedings, the Ld.AO enquired the reasons for phasing out STP Unit I and II, and whether the business conducted by the closed units has been diverted to other operating units. In this regard, it was submitted that both STP Unit I and II were commenced by the assessee in the years during which, it was a part of the Digital

Equipment Group and the business of these units was substantially from the Digital Equipment Group and its clients. Thereafter, over a period of time, this business reduced Owing to changes and decline in the overall business from the said customers of the STP Units, the said units were eventually closed in FY 2007-08.

8.2 The Ld.AO made ad-hoc disallowance of 14.45% by alleging that assessee transferred the businesses of older STP units to newer STP units. The Ld.AO referred to the assessment order passed in the case of the assessee for earlier assessment year and proceeded to make disallowance.

Aggrieved by the draft assessment order, assessee filed objections before the DRP.

The DRP upheld the order of Ld.AO.

8.3 The Ld.AO while passing the final assessment order reduced the percentage at 14.45% and made the disallowance.

Aggrieved by the order of Ld.AO, assessee raised this issue before this *Tribunal.*

The Ld.AR submitted that STP unit I & II commenced its business in the year, when it was a part of the Digital Equipment Group, and the business was substantially from the digital equipment group and its clients. It was submitted that, after a considerable period, of time owing to changes and decline, the assessee closed down the STPI units I & II during FY 2007-08. The Ld.AR submitted that the allegation by the Ld.AO that the units were formed by splitting of or by reconstitution of STPI units I & II is therefore factually incorrect.

8.4 He submitted that STPI unit I started claiming the relief u/s. 10A from the year 1993-94 and the 10th year of its claim was the F.Y. 2002-03. The Ld.AR submitted that the unit continued its operation in the subsequent years even after the expiry of its tax holiday. The Ld.AR vehemently argued that STPI unit I & II stopped claiming benefit u/s. 10A four years prior ot the commencement of the STPI unit V and STPI unit II stopped claiming benefit u/s. 10A one year prior to the commencement of STPI unit VI.

8.5 The Ld.AR then submitted that STPI unit V commenced its operation in F.Y. 2002-03 and was engaged in the business of providing ITES services which is totally distinct from the software development services and related activities that was carried on by STPI unit I & II originally. The Ld.AR thus argued that the allegations by the Ld.AO of shifting business from STPI unit I & II to STPI unit V is without any basis. The Ld.AR submits that no employees or assets have been transferred by assessee from STPI unit I & II which were located in Bangalore to STPI unit VI which is located in Chennai. In support he placed reliance on the decision of *Hon'ble Supreme Court* in case of *Textile Machinery Corporation Ltd. vs. CIT* reported in *[1977] 107 ITR 195 (SC).* It is the submission by the Ld.AR that the adhoc disallowance by the Ld.AO has been made based on the decision for A.Y. 2010-11 by the Ld.AO. It is also submitted that there is no basis or reasons given to adopt the disallowance at 14.45%. He thus prayed for the deduction has to be allowed as claimed by assessee.

8.6 On the contrary, the Ld.DR relied on the orders passed by authorities below.

8.7 We have perused the submissions advanced based on the records placed before us.

We note that, admittedly STPI Unit I & II stopped claiming benefit u/s. 10A and was closed in the year 2007-08. It is submitted that STPI unit I & II is located in Bangalore. Whereas STPI Unit V & VI are located in Chennai. Further admittedly STPI Unit I & II performed ITeS services whereas STPI Unit V & VI are into SWD services.

> *"Hon'ble Supreme Court in the case of Textile Machinery Corporation Ltd. (supra) has also approved the observations of Hon'ble Bombay High Court in the case of CIT v. Gaekwar Foam & Rubber Co.Ltd., reported in 35 ITR 662. Hon'ble Bombay High court held that reconstruction of business or industrial undertaking must necessarily involve the concept that the original business or undertaking do not cease functioning and its identity is not to be lost or abandoned. The underlying idea of a reconstruction is of a "business already in existence", there must be a continuation of the activities and business of the same industrial undertaking. Various High Court's in umpteen decisions have observed that every new creation in business is some kind of expansion and advancement. If the undertaking is new and identitiable undertaking, separate and distinct, from the existing business then it will not be reconstruction of business already in existence. Hon'ble Delhi Court in the case of CIT v. Gedore Tools India (Pvt.) Ltd., reported in 126 ITR 673 has held that, the fact that, the new Unit manufactured some of the items which were manufactured by the old unit will not make it an integral part of old unit, Even if new undertaking manufactures a product which is feeded to the old business even then it will not amount reconstruction of the old business. Establishment of the new unit with new separate plant and machinery by investing substantial funds is essential. If the new unit has not derived any thing from the old unit by way of equipment or by way of factory building and no assets of the old unit have been transferred to the new unit, the new unit had not been formed by reconstruction. We therefore are of the opinion that theLd.AR has rightly placed reliance on decision of Hon'be Supreme Court in case of Textile Machinery Corporation Ltd.,(supra)."*

Accordingly this ground raised by assessee stands allowed.

9. Ground no. 8 Reclassification of interest income

Brief facts are as under:

9.1 The Ld.AO failed to appreciate the fact that such interest income earned is incidental to the business activities of the assessee. Interest income should be considered to be part of business income rather than income from other sources. In this connection reliance can be placed on the *Hon'ble Karnataka High Court's* decision in case of *CIT vs Hewlett Packard Global Soft Ltd.* reported in *(2017) 403 ITR 453.* The Ld.AR placed reliance on the decision of *Hon'ble Karnataka High Court* held as under:

> *"37. On the above legal position discussed by us, we are of the opinion that the Respondent assessee was entitled to 100% exemption or deduction under Section 10-A of the Act in respect of the interest income earned by it on the deposits made by it with the Banks in the ordinary course of its business and also interest earned by it from the staff loans and such interest income would not be taxable as 'Income from other Sources' under Section 56 of the Act. The incidental activity of parking of Surplus Funds with the Banks or advancing of staff loans by such special category of assessees covered under Section 10-A or 10-B of the Act is integral part of their export business activity and a business decision taken in view of the commercial expediency and the interest income earned incidentally cannot be de-linked from its profits and gains derived by the Undertaking engaged in the export of Articles as envisaged under Section 10-A or Section 10-B of the Act and cannot be taxed separately under Section 56 of the Act."   (emphasis supplied)"*

9.3 The Ld.DR relied on the orders passed by the authorities below.

9.4 We note that identical issue was considered by *Hon'ble High Court* in case of sister concern of the assessee. Assessee is directed to provide details in respect of the investments made against which interest income has been earned before the Ld.AO. The Ld.AO is then directed to consider the claim of assessee in accordance with

the principles laid down by *Hon'ble Karnataka High Court in case of CIT vs Hewlett Packard Global Soft Ltd(supra).*

Accordingly this ground raised by the assessee stands allowed for statistical purposes.

10. **Ground no. 9.1 Addition on account of amounts appearing in Form 26AS.**

10.1 The Ld.AO has made an addition of Rs 732,917 representing the difference between the income as per profit and loss account and amounts as appearing in Form 26AS. The learned AO has made the adjustment merely stating that the assessee has not offered the receipts to tax in the AY 2011-12.

10.2 He submitted that the Ld.AO failed to consider the submissions which are as under:

The Ld.AO has failed to consider the submissions made in this regard during the assessment proceedings, where the difference between amounts as per Form 26AS and amounts as per books of account was explained as below:

- Primarily the reasons for the difference is that the amount as per Form 26AS is as per the actual receipt, whereas revenue as per the financials is on accrual basis; and
- The provision of Tax deduction at source contemplates deduction of TDS even on advance payments, whereas the revenue in the books of accounts is recorded on accrual basis.

10.3 He placed reliance on the following decisions in support of the contentions.

- *CIT v Ambalal Kilachand (210 ITR 844) (Bombay High Court)*
- *ITO vs Hans Road Carriers (P) Ltd (140 TTJ 642) (Ahmadabad ITAT)*
- *Lloyd Insulation (India) Limited vs Department of Income tax (ITA No.*
- *2400/Del/11) (Delhi ITAT)*

- *CTC Air Carriers Pvt Ltd vs Department of Income Tax (ITA No.*
- *145/Del/2012) (Delhi ITAT)*

10.4 The Ld.DR relied on the orders passed by the authorities below.

10.5 We note that this issue needs to be reconsidered by the Ld.AO based on the evidences filed by the assessee in respect of the tax deducted at source and the actual receipts. The Ld.AO is directed to consider the claim of assessee based on the evidences filed in accordance with law.

10.6 Needless to say that appropriate opportunity of being heard must be granted to assessee.

Accordingly this ground raised by the assessee stands allowed for statistical purposes.

11. Ground nos. 10.1 to 10.3

11.1 **Ground no. 10.1** The Ld.AO has erred, in applying incorrect rates for surcharge, education cess and secondary and higher education cess while determining the tax payable by the assessee.

11.2 **Ground No.10.2 -** The Learned AO has erred, in granting credit for Advance tax at INR 37,82,00,000 as against an amount of INR 37,95,80,000, leading to short grant to the extent of INR 1,38,000.

11.3 **Ground No. 10.3 -** The Learned AO has erred, in computing interest under section 115P of the Act even though the Appellant has remitted the Dividend Distribution Tax within the timelines provided under section 115-0 of the Act and thereby determining DDT payable at INR 96,52,42,087.

12. It is primarily submitted that a rectification application is pending before the Ld.AO for disposal on all the above issues. We direct the Ld.AO to consider the claim in accordance with law based

on the materials filed by assessee. Needless to say that proper opportunity of being heard must be granted to assessee.

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

13. **Ground No. 10.4 -** The Learned AO has erred in law and facts in computing the interest under section 234B and section 234D of the Act.

13.1 **Ground No. 10.5 -** The learned AO has erred in law and on fact, in initiating penalty proceedings under section 271(1)(c) of the Act.

These grounds are consequential in nature.

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

Order pronounced in open court on 03rd June, 2022.

Sd/-	Sd/-
(CHANDRA POOJARI)	(BEENA PILLAI)
Accountant Member	Judicial Member

Bangalore,
Dated, the 03rd June, 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