

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'C' NEW DELHI)**

BEFORE SHAMIM YAHYA, ACCOUNTANT MEMBER

AND

SH. YOGESH KUMAR U.S., JUDICIAL MEMBER

ITA No. 5375/Del/2015, (A.Y. 2008-09)

DCIT Central Circle-19, Room No. 104, ARA Centre, E-2, Jhandewalan Extension New Delhi	Vs.	Granada Services Pvt. Ltd. B-44, Malcha Marg, Chanakya Puri, New Delhi PAN: AAACG0361K
Appellant		Respondent

C.O No. 428/Del/2015 in

(ITA No. 5375/Del/2015) (A.Y. 2008-09)

Granada Services Pvt. Ltd. B-44, Malcha Marg, Chanakya Puri, New Delhi PAN: AAACG0361K	Vs.	DCIT Central Circle-19, Room No. 104, ARA Centre, E-2, Jhandewalan Extension New Delhi
Appellant		Respondent

ITA No. 5376/Del/2015, (A.Y. 2009-10)

DCIT Central Circle-19, Room No. 104, ARA Centre, E-2, Jhandewalan Extension New Delhi	Vs.	Granada Services Pvt. Ltd. B-44, Malcha Marg, Chanakya Puri, New Delhi PAN: AAACG0361K
Appellant		Respondent

**C.O No. 429/Del/2015 in
(ITA No. 5376/Del/2015) (A.Y. 2008-09)**

Granada Services Pvt. Ltd. B-44, Malcha Marg, Chanakya Puri, New Delhi PAN: AAACG0361K	Vs.	DCIT Central Cirle-19, Room No. 104, ARA Centre, E-2, Jhandewalan Extension New Delhi
Appellant		Respondent

(ITA No. 5377/Del/2015) (A.Y. 2010-11)

DCIT Central Cirle-19, Room No. 104, ARA Centre, E-2, Jhandewalan Extension New Delhi	Vs.	Granada Services Pvt. Ltd. B-44, Malcha Marg, Chanakya Puri, New Delhi PAN: AAACG0361K
Appellant		Respondent

**C.O No. 430/Del/2015 in
(ITA No. 5377/Del/2015) (A.Y. 2010-11)**

Granada Services Pvt. Ltd. B-44, Malcha Marg, Chanakya Puri, New Delhi PAN: AAACG0361K	Vs.	DCIT Central Cirle-19, Room No. 104, ARA Centre, E-2, Jhandewalan Extension New Delhi
Appellant		Respondent

(ITA No. 5378/Del/2015) (A.Y. 2011-12)

(ITA No. 5379/Del/2015) (A.Y. 2012-13)

DCIT Central Cirle-19, Room No. 104, ARA Centre, E-2, Jhandewalan Extension New Delhi	Vs.	Granada Services Pvt. Ltd. B-44, Malcha Marg, Chanakya Puri, New Delhi PAN: AAACG0361K
Appellant		Respondent

(ITA No. 5372/Del/2015) (A.Y. 2010-11)

DCIT Central Circle-19, Room No. 104, ARA Centre, E-2, Jhandewalan Extension, New Delhi	Vs.	iServices India Pvt. Ltd. B-44, Malcha Marg, Chanakya Puri, New Delhi PAN: AABCI0800Q
Appellant		Respondent

C.O No. 425/Del/2015 in**(ITA No. 5372/Del/2015) (A.Y. 2010-11)**

iServices India Pvt. Ltd. B-44, Malcha Marg, Chanakya Puri, New Delhi PAN: AABCI0800Q	Vs.	DCIT Central Circle-19, Room No. 104, ARA Centre, E-2, Jhandewalan Extension New Delhi
Appellant		Respondent

Assessee by	Shri Amit Goel, CA & Sh. Pranav Yadav, CA
Revenue by	Mr. Javed Akhtar, CIT DR

Date of Hearing	28/05/2024
Date of Pronouncement	10/06/2024

ORDER**PER BENCH:**

ITA Nos. 5375, 5376, 5377/Del/2015 (Revenue) and C.O Nos. 428,429, 430 (Assessee) (A.Y 2008-09 to 2010-11) Granada Services Pvt. Ltd.)

ITA No. 5372/Del/2015 (Revenue) and C.O No.425/Del/2015 (A.Y 2010-11) (iServices Pvt. Ltd.)

The above appeals are filed by the Revenue challenging the orders of the Ld. CIT(A) dated 08/06/2015 for Assessment Years 2008-09 to 2010-11 in the case of Granada Services Pvt. Ltd. for Assessment Year 2010-11 in the case of iServices India Pvt. Ltd. The assessee herein has filed the C.Os. against the said orders of the Ld. CIT(A) by challenging the jurisdiction of the A.O. u/s 153A of the Income Tax Act, 1961 ('Act' for short) and also challenged the action of the Ld. A.O./CIT(A) not allowing deduction u/s 10A on account of enhanced business profit.

2. The common Grounds of Appeal raised by the Revenue except difference in amount are as under:-

"1. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in deleting the addition of Rs. 4,22,99,093/- made by Assessing Officer on account of diversion of profit.

(a) The order of the Ld. CIT (Appeals) is erroneous and not tenable in law and on facts.

(b) The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.

*Deputy Commissioner of Income Tax Central Circle-19,
New Delhi.*

The common Grounds raised by the Assessee in C.Os except difference in amount are as under:-

“1. On the facts and circumstances of the case and in law, the addition of Rs.4,22,99,093/- on account of alleged diversion of profit of BPO business carried down by the appellant company is beyond the scope of Jurisdiction under section 153A of the Income Tax Act, 1961.

2. On the facts and circumstances of the case and in law, the Ld. Assessing Officer erred in not allowing deduction u/s10A on the account of enhanced business Profit.

The appellant craves leave to add, amend or alter any of the grounds of appeal before or at the time of hearing of appeal.

The aforesaid grounds of appeal are without prejudice to each other.”

3. Since the issues involved are common, the Appeal filed by the Revenue and the C.Os filed by the Assessee are heard together and disposed off by this common order.

4. The Assessee Representative submitted that the assessee will not be pressing the Ground No. 1 of the C.Os. Accordingly, the Ground No. 1 of the Cross Objections filed by the assessee are dismissed as not pressed.

5. In Ground No. 2 of the C.Os, the Assessee has challenged the action of the Ld. CIT(A) in not deciding the Ground on the issue of allowance of deduction u/s 10A of the Act on account of enhanced business profit.

6. Since the issues are common, the brief facts for Assessment Year 2008-09 in ITA No. 5375/Del/2015 in the case of Granada Services Pvt. Ltd. has been taken for consideration. For the sake of convenience the brief facts mentioned in the order of the Ld. CIT(A) are reproduced as under:-

“The brief facts of the case as culled out from the assessment order are that the appellant company during the year under consideration operated as Business Process Outsourcing Unit, providing back office services and infrastructural support to its customer. A search and seizure operation u/s 132 of the Income Tax Act, 1961 was conducted by the Investigation Wing of the department on 22.03.2012 in M/s Focus Energy Group of cases and simultaneously the appellant's premises at A-37, Sector-60, Noida was also covered u/s 132(1) of the I.

T. Act, 1961. The case of the appellant was centralized with the Central Circle-10, New Delhi vide order u/s 127 and F. No. CIT- IV/Centralization/148/2012-13/2765 dated 24.12.2012 now restructured as Central Circle-19, New Delhi. Thereafter a notice u/s 153A of the I. T. Act, 1961 was issued to the appellant on 9.1.2013. In response to the same, vide letter dated 19.3.2013, the appellant submitted a copy of its income tax return filed u/s 139 on 26.9.2008 and requested the Assessing Officer that the same may be treated as return filed in compliance to notice issued u/s 153A. In the original return filed u/s 139 of the I. T. Act, 1961, the appellant declared an income of Rs. 1,02,519/- under the normal provisions of the I. T. Act, 1961 and a book profit of Rs. 19,57,09,369/- as per the provisions of u/s 115JB of the I. T. Act, 1961. Subsequently, notices u/s 143(2), 142(1) and a detailed questionnaire and show cause notice were issued to the appellant. In response to the same, the ARs of the appellant attended the assessment proceedings and filed necessary details, information and documents called from

time to time, which were considered by the Assessing Officer. Thereupon, the assessment was completed in terms of order u/s 143(3) r.w.s 153A of the I. T. Act, 1961 dated 30.3.2015 wherein although the book profit declared as per the provisions of section 115JB was accepted but the income of Rs. 1,02,519/- declared by the appellant under the normal provisions of Income Tax Act, 1961 was computed at Rs.4,46,57,910/-.”

7. The Ld. A.O. has made similar additions for the A.Y 2008-09 to 2010-11 in the case of Granada Services Pvt. Ltd. and for AY 2010-11 in the case of iServices Pvt. Ltd. Aggrieved by the assessment orders, the assessee preferred the Appeals before the CIT(A). The Ld. CIT(A) vide orders dated 08/06/2015 by adjudicating the issues on merit deleted the additions made by the A.O.

8. It is pertinent to note that the assessee has also raised Ground regarding not allowing the deduction u/s 10A of the Act on the basis of enhancement in the business profit of the Assessee. The Ld. CIT(A) held that as the addition on account of diversion of profit

made by the A.O. has been deleted on merit, the said ground of appeal regarding not allowing the deduction u/s 10A has become in-fructuous. In Ground No. 2 of the Cross Objections, the assessee has challenged the action of the CIT(A) in dismissing the said Ground.

9. The Ld. Counsel for the assessee submitted that in all the above Appeals in ITA Nos. 5375, 5376, 5377/Del/5372/Del/2015 the entire income of the assessee was exempt u/s 10A of the Act and there is no dispute by the authorities with regard to the said fact, therefore, sought for allowing the Ground No. 2 of the Cross Objections.

10. Per contra, the Ld. Departmental Representative relying on the findings and the conclusion of the CIT(A), contended that the test of genuineness of the transaction has to be seen by the Revenue Authorities irrespective of exemption u/s 10A of the Act. Therefore, submitted that the Ground No. 2 of the Cross Objection filed by the assessee liable to be dismissed.

11. We have heard both the parties and perused the material available on record. In all the above Assessment Years i.e. 2008-09, 2009-10 and 2010-11 of Granada Services Pvt. Ltd. and for Assessment Year 2010-11 in the case of iServices India Pvt. Ltd. admittedly up to 2010-11 the entire income of the assessee's company were exempt u/s 10A of the Act and there is no dispute regarding the said fact. During the assessment proceedings, the A.O. increased profit of business by making addition, but the A.O. failed to appreciate that once the profit of business is increased it will correspondingly increase the amount of deduction u/s 10A of the Act. Even if profit of business is increased there will be no change in the return taxable income of the assessee. The said ratio has been laid down by the Hon'ble High Court of Bombay in the case of CIT Vs. Gem Plus Jewelers India Ltd. (330 ITR 175) (BOM) and the same has been clarified in CBDT Circular No. 37/16 dated 02/11/2016. Considering the above facts and circumstances and following the ratio laid down in the case of CIT Vs. Gem Plus Jewelers (supra), we allow the Ground No. 2 of the Cross Objection filed by the assessee and hold that the Ld. Assessing Officer committed error in not allowing the deduction u/s 10A of

the Act on account of enhanced business profit. Accordingly, the Ground No. 2 in the Cross Objections filed by the Assessee are allowed.

12. In the result, Cross Objection Nos. 428,429, 430 & 425/Del/2015 are partly allowed.

13. Since we have allowed the Cross Objections filed by the Assessee, the Appeals filed by the Revenue in ITA Nos. 5375, 5376,5377/5372/Del/2015 have become in-fructuous, accordingly, the Appeals filed by the Revenue are dismissed.

ITA No. 5378/Del/2015 & ITA No. 5379/Del/2015 (Revenue)

14. In both the above appeals the solitary ground raised by the Revenue is against the deletion of the addition made by the A.O. on account of diversion of profit. These two years being Assessment Year 2011-12 and 2012-13 are not covered u/s 10A of the Act.

15. Brief facts are identical to the earlier Assessment Years discussed above. The additions have been made on account of diversion of profit and unexplained expenditure and the additions made by the A.O. have been deleted by the CIT(A). Aggrieved by

the order of the CIT(A) the Revenue preferred the present Appeal on the Grounds mentioned above.

16. The Ld. Departmental Representative vehemently submitted that the Ld. CIT(A) committed error in deleting the addition made by the A.O. on account of diversion of profit by ignoring the fact that the A.O. has referred the matter to the TPO for determining the Arms Length Price of the assessee transaction with iEnergizer Holding Ltd., though the TPO found that the transaction between the assessee and iEnergizer Holding Ltd. having been carried out at Arm's Length Price, the A.O. is having every right and duty bound to test the genuineness of the transaction. The said aspect has not been considered by the CIT(A) and the Ld. CIT(A) committed error in deleting the addition in violation of the Judgment of Jurisdictional High Court in the case of CIT Vs. M/s Chushman and Wakefield (India) Pvt. Ltd. order dated 23/05/2014 in ITA No. 475/Del/2012, accordingly, the Ld. Departmental Representative sought for allowing the Appeal of the Revenue.

17. Per contra, the Assessee's Representative submitted that the TPO report is binding on the A.O. and the A.O cannot take different view other than that of the TPO, therefore, submitted that the Ld. CIT(A) has rightly allowed the Appeal of the assessee. The Ld. Counsel has also brought to the notice of the Bench that subsequent Assessment Year i.e Assessment Year 2013-14, 2014-15, 2015-16, 2017-18 & 2018-19, the Assessment orders have been passed u/s 143(3) of the Act without making the addition, wherein very same agreement and the transaction was involved. The Department cannot have different stands for different Assessment Years, therefore, submitted that the Appeals of the Revenue deserves to be dismissed.

18. We have heard both the parties and perused the material available on record. The assessee Company received service charges of Rs. 60,07,99,674/- in Assessment Year 2011-12 and Rs. 66,27,70,858/- for Assessment Year 2012-13 from a Mauritius based Company namely iEnergizer Holding Ltd. As per the A.O. the assessee entered into master service agreement dated 23/08/2010 w.e.f 01/04/2010, as a result of which the income of

the assessee earned from iEnergizer Holding Ltd. reduced as compared to the income earned up to the year end. During the assessment proceedings the A.O. doubted the Arm's Length of the transactions entered into with iEnergizer Holdings Ltd. and as per the A.O. the assessee diverted its profit to iEnergizer Holdings Ltd. It was the case before the A.O. by the assessee that there was no diversion of income and that the assessee had fully accounted its income the A.O. made reference to TPO for determining the Arms Length Price of the Assessee's transaction with iEnergizer Holding Ltd. The TPO made enquiry in compliance with the reference made by the A.O. and the Ld. TPO found that the transactions between the assessee and iEnergizer Holdings Ltd. having been carried out at Arm's Length Price. The TPO did not find anything adverse in the transaction, though the TPO passed order finding that the transactions are at Arm's Length, the A.O. ignored the order of the TPO and proceeded with his own methodology and made the addition. It is the case of Ld. Departmental Representative that the A.O. has referred the matter to the TPO only to the extent to test the transaction whether the same were at Arm's Length or not and not the genuineness of the transaction. The genuineness or otherwise

of the transaction has to be tested by the A.O. during the assessment proceedings.

19. In the present case in hand, though the TPO has opined that the transaction between the A.O. and the TPO are at Arm's Length, but the A.O. passed the assessment order by making the additions. It is not in dispute that the transaction of the Assessee are with iEnergizers Holdings Ltd. was pursuant to the Service Agreement dated 23/08/2010 w.e.f. 01/04/2010. It is also not in dispute that the very same service agreement and the transaction subsisted for subsequent years i.e. Assessment Year 2013-14, 2014-15, 2015-16 and 2018-19. It is pertinent to note that the assessments have been completed in those subsequent years u/s 143(3) of the Act and the very same agreement and the transactions have been tested by the A.O., wherein no doubt has been casted upon regarding the genuineness of the transaction of the Assessee with the iEnergizers Holdings Ltd. and the returned income and the book profit have been accepted by making no addition, which is evident from the Assessment Orders produced at Page No. 109 to 118 for AY 2013-14 to 2018-19. On the query made by the Bench it is also found

that the Department has not invoked provisions of Section 263 of the Act against the assessment orders passed for Assessment Year 2013-14, 2014-15, 2015-16 and 2018-19 and those assessment orders have reached finality. Thus, the Judgment relied by the Ld. Departmental Representative i.e. Chushman and Wakefield India Pvt. Ltd. (supra) will not come to the rescue of the Department.

20. Considering the fact that the similar transactions were also been tested by the Department in subsequent years in Assessee's own case regarding the very same agreement and those assessment orders have reached finality, the Department cannot have different approach for the year under consideration. Following the principal of consistency, we are of the considered opinion that the additions made by the A.O. deserves to be deleted and we find no error in the conclusion of the Ld. CIT(A) in deleting the addition made by the A.O. Accordingly, we find no merit in the Grounds of Appeal of the Revenue.

21. In the result, Appeal filed by the Revenue in ITA Nos. 5378/Del/2015 and 5379/Del/2015 are dismissed.

Order pronounced in the open court on 10th June, 2024

Sd/-

**(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

Date:- 10.06.2024

R.N, Sr. PS

Copy forwarded to:

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

Sd/-

**(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

ASSISTANT REGISTRAR
ITAT, NEW DELHI