

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

BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER

ITA No.1586/Bang/2024
Assessment year : 2017-18

The Deputy Commissioner of Income Tax, Circle 4(1)(1), Bangalore.	Vs.	EYGBS (India) Private Limited, 3 rd Floor, Tower C, RMZ Infinity, Old Madras Road, K.R. Puram, Bangalore – 560 016. PAN: AABCE 6565A
APPELLANT		RESPONDENT

Appellant by	:	Shri Chavali Narayan, CA
Respondent by	:	Ms. Neera Malhotra, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	12.11.2024
Date of Pronouncement	:	19.12.2024

ORDER

Per Prashant Maharishi, Vice President

1. This appeal is filed by the DCIT, Circle 4(1)(1), Bangalore (the appellant) against the appellate order passed by the Commissioner of Income Tax-1, Bangalore-12, [Id. CIT(A)] for the assessment year 2017-18 dated 14.6.2024 wherein the appeal filed by the assessee against the assessment order passed u/s. 143(3) of the Income-tax Act, 1961 (the Act) dated 24.12.2019 passed by the ACIT, Circle 4(2)(1), Bangalore (Id. AO) was allowed for statistical purposes.
2. The only grievance of the Id. AO is that the Id. CIT(A) erred on facts and in law in placing reliance on the coordinate Bench decision in

assessee's own case for AY 2010-11 dated 20.5.2020 in ITA No.199/Bang/2015 allowing deduction u/s. 10AA on account of voluntary adjustment made to arm's length price (ALP) of international transaction pursuant to the Advance Pricing Agreement (APA) without considering the fact that Special Leave Petition (SLP) of the Id. AO on this issue is pending before the Hon'ble Supreme Court.

3. The brief facts of the case show that assessee is a company, who filed its return of income on 30.10.2017 at a total income of Rs.100,26,18,189 , claimed a deduction u/s. 10AA of Rs.44,89,19,404 and deduction under Chapter VIA of Rs.11,92,067. The return of income was picked up for scrutiny. The fact shows that the assessee has claimed deduction u/s. 10AA after voluntary Transfer Pricing (TP) adjustment made to the tune of Rs.9,50,00,000 pursuant to APA entered into and consequent to that the profits of the undertaking of SEZ unit eligible for deduction u/s. 10AA was computed at Rs.55,80,52,277 wherein voluntary TP adjustment of Rs.6,77,00,000 was made resulting into eligible income for deduction u/s. 10AA of Rs.62,57,52,277. The claim of assessee was that assessee entered into APA on 16.3.2016 and consequently the ALP of the international transaction was agreed with higher adjustment of Rs.9.50 crores. It is the claim of the assessee that adjusted APA is not an adjustment made by the TPO, but as an agreed negotiated price and therefore provisions of section 92C(4) is not applicable and assessee is entitled to higher deduction. The Id. AO considered the explanation of the assessee and held that assessee is not eligible to deduction u/s. 10AA of the Act on

the above adjustment, pursuant to APA and accordingly excess claim of deduction u/s. 10AA of Rs.6,20,73,761 was disallowed by assessment order dated 24.12.2019.

4. The assessee preferred appeal before the Id. CIT(A), who passed an order relying on the CBDT Circular No.14 of 2006 and held that disallowance u/s. 10AA can be made only when the total income is enhanced by the Id. AO or the Id. TPO. The CIT(A) also noted that the coordinate Bench vide order dated 31.8.2020 for AY 2014-15 had allowed the claim of assessee on identical facts and circumstances. Accordingly, by the appellate order dated 14.6.2024, disallowance u/s. 10AA of the Act was deleted.

5. The Id. AO aggrieved, preferred appeal before us. The appeal is delayed by 9 days on account of annual general transfer and therefore there was delay in preparation of scrutiny report and filing of appeal. The petition for condonation of delay was filed on 23.9.2024.

6. The Id. DR submitted that delay is due to sufficient cause, nominal and therefore should be condoned. The Id. AR objected to the same.

7. Looking at the facts of the case, we find that the delay in filing the appeal by the revenue is merely 9 days which is also explained stating that due to the annual general transfer, there was delay in filing of scrutiny report as well as obtaining approval of PCIT-2, Bangalore. Meanwhile, the AO was holding the additional charge and certain documents were obtained through Income Tax Business Application

(ITBA), but linking of RSA Token could be done only on the next day and thereafter the appeal was immediately filed. We find that the appeal is delayed by 9 days because of sufficient cause and therefore same is condoned and appeal is admitted.

8. On looking at the facts of the case, we find that for AY 2014-15, identical issue arose in assessee's own case which was decided by the coordinate Bench in ITA No.2984/Bang/2018 dated 31.8.2020 wherein as per paras 17-23 of the order, the coordinate Bench has considered this issue as under: -

“ 17. The next aspect which requires consideration is as to, whether ALP adjustment pursuant to APA falls within the ambit of proviso to Section 92C(4) of the Act. Provisions of Section 92C(4) reads as follows:-

"Where an arm's length price is determined by the Assessing Officer under sub-section (3), the Assessing Officer may compute the total income of the assessee having regard to the arm's length price so determined.

Provided that no deduction under section 10A or section 10AA or section 10B or under Chapter VI-A shall be allowed in respect of the amount of income by which the total income of the assessee is enhanced after computation of income under this sub-section.”

18. On a reading of the above proviso to Section 92C(4) of the Act, it may be noted that the Act specifically denies claim of deduction under section 10AA of the Act on any adjustment made by the Transfer Pricing Officer under Section 92CA of the Act. Thus, the taxpayer is not eligible to claim the deduction under Section 10AA of the Act on the enhanced income on account of TP adjustment made by the TPO. However, on the contrary, increased income on account of voluntary transfer pricing adjustment or ALP adjustment pursuant to APA, made by the assessee would be eligible for claiming deduction under section 10AA of the Act.

19. The allowability of deduction under section 10AA in respect of Voluntary transfer pricing adjustment in the case of assessee for AY 2013-14 came up for consideration before CIT(A) and it was held as follows:-

“..... It is seen that appellant as well as the AO have accepted in principle that the issue has been dealt with by the Jurisdictional High Court in the case of I-gate Global Solutions Pvt Ltd in order dated 17.6.2014 in ITA 453/2008 holding that the benefit of section 10AA is to be allowed in respect of Voluntary Transfer Pricing adjustment. following the order of Jurisdictional High Court in the case (supra). in the case of appellant also. the appellant is entitled to benefit under section 10AA in respect of Voluntary Transfer Pricing adjustment which stand on different footing as compared to the Transfer Pricing adjustment made by the TPO. It is held accordingly.”

20. The aforesaid order of the CIT(Appeals) for AY 2013-14 on the said issue has been accepted by the department and no further appeal before the Tribunal has been filed by department.

21. Further, the ITAT Bangalore in assessee's own case for AY 2010-11 (ITA 199/Bang/2015) dated 20 May, 2020 relying on the decision of Hon'ble Karnataka High Court in case of I-Gate Global Solutions Ltd (supra), Pune Tribunal decision in case of Apoorva Systems (P) Ltd (92 Taxmann.com 82) and Delhi Tribunal in case of AT Kearney India Private Limited (ITA No 2623/De1/2015) dated 21 June 2019 held that assessee was eligible to claim deduction under section 10AA in respect of voluntary transfer pricing adjustment made on scientific basis in the computation of income in respect of Gurgaon SEZ unit as same was not hit by proviso to section 92C(4) of the Act.

22. The ITAT Bangalore in case of IBM India Pvt Ltd (59 CCH 260) dated 31 July 2020 , following the decision of Pune Tribunal in case of DAR AL Handasah Consultants (Shair & partners) India Pvt Ltd (2020) 203 TTJ 0218 (Pune), has held that deduction under section 10AA of the Act has to be allowed on incremental income arisen pursuant to APA as per modified return filed under section 92CD of the Act as same is not hit by proviso to section 92C(4) of the Act.

23. Accordingly, in light of the above judicial precedents, we hold that the ALP adjustment made pursuant to APA by the

assessee in respect of Gurgaon SEZ unit results in increase in profits of the business of the undertaking/unit, the increased profits of the assessee being eligible for deduction under section 10AA of the Act given the wide nature of the expression used in section 10AA i.e. 'Profits of the business of the undertaking/unit' and that the proviso to section 92C(4) is not a bar to allowing such a claim.”

9. Further, in para 21 of that order, decision of the Hon'ble Karnataka High Court was followed. Thus, appellate order passed by the Id. CIT (A) is following the decision of coordinate bench in assessee's own case where in the decision of honorable Karnataka high court is followed.

10. In view of the above facts, respectfully following the above decision of the coordinate Bench in assessee's own case, where all judicial precedents are considered and followed, we do not find any infirmity in the order of the Id. CIT(A). Accordingly, this ground of appeal raised by the Id. AO is dismissed and the order of the Id. CIT(A) is upheld.

11. In the result, the appeal by the AO is dismissed.

Pronounced in the open court on this 19th day of December, 2024.

Sd/-

(KESHAV DUBEY)
JUDICIAL MEMBER

Sd/-

(PRASHANT MAHARISHI)
VICE PRESIDENT

Bangalore,

Dated, the 19th December, 2024.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.