IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.133/PUN/2024
निर्धारण वर्ष / Assessment Year: 2013-14

Entrata India Pvt. Ltd., International Tech Park, Block-1, Wing-A, 14th Floor, Kharadi, Pune- 411014. PAN : AAACW7089A	Vs.	DCIT, Circle-1(1), Pune.
Appellant		Respondent

आयकर अपील सं. / ITA No.66/PUN/2024
निर्धारण वर्ष / Assessment Year: 2013-14

DCIT, Circle-1(1), Pune.	Vs.	Entrata India Pvt. Ltd., International Tech Park, Block-1, Wing-A, 14th Floor, Kharadi, Pune-411014. PAN : AAACW7089A
Appellant		Respondent

Assessee by	:	Shri Kishor B. Phadke
Revenue by	:	Shri Ramnath P. Murkunde
Date of hearing	:	14.11.2024
Date of pronouncement	:	24.12.2024

आदेश / ORDER

PER VINAY BHAMORE, JM:

These are the cross appeals filed by the assessee as well as by the Revenue are directed against the order dated 24.11.2023 passed

by Ld. CIT(A)-13, Pune ['CIT(A)'] for the assessment year 2013-14.

2. First, we shall take up the appeal of the assessee in ITA No.133/PUN/2024 for adjudication.

ITA No.133/PUN/2024 – By Assessee :

3. The appellant has raised the following grounds of appeal :-

> *"1. The learned CIT(A) erred in law and on facts in disallowing expenses claimed on account of leasehold improvements of Rs.4,64,08,661/-, treating the same as capital expenditures without considering the nature of expenses involved therein and without appreciating various judicial pronouncements. On this point, the Ld. CIT(A) ought to have considered the fact that all such expenditure were co-terminus with the lease and hence, accordingly, were eligible revenue expenditures.*
>
> *2. The learned CIT(A) erred in assuming that the assessee still operates from the old address considering the inadvertent mentioning of the old address in its submissions during the CIT proceedings, thereby completely ignoring the new lease agreement executed by the assessee from 09/12/2022. Also, the learned CIT(A) erred in treating the new lease agreement as a service agreement."*

4. The facts of the case, in brief, are that the assessee is a company engaged in the business of software related services and filed its return of income 28.11.2013 declaring total income at Rs.Nil. The case was selected for scrutiny under CASS and accordingly notices u/s 143(2) and 142(1) were issued along with questionnaire. After considering reply of the assessee, the

Assessing Officer made following three disallowances /additions to the returned income :-

(a) Addition of Rs.4,40,88,228/- on account of disallowance of leasehold improvement expenses of Rs.4,64,08,661/-.

(b) The assessee has not set-off of unabsorbed depreciation of past years of Rs.36,68,211/- before computing current year's deduction u/s 10AA of the IT Act. The Assessing Officer has not accepted this proposition and computed the deduction u/s 10AA after set-off of brought forward losses of Rs.38,68,211/-.

(c) The Assessing Officer has disallowed Rs.2,13,87,394/- from final 10AA deduction being excess.

5. The Assessing Officer completed the assessment u/s 143(3) r.w.s. 92CA(4) of the IT Act by determining the book profit at Rs.5,14,57,685/- and taxable income as per normal provisions at Rs.2,15,34,462/-, as the tax liability as worked out u/s 115JB of the IT Act is more than the tax liability of total income as per normal provisions of the IT Act. The tax liability of the assessee company was worked on the books profits.

6. In first appeal, after considering the reply of the assessee, Ld. CIT(A) has deleted the additions/disallowances of Rs.38,68,211/-

& Rs.2,13,87,394/- respectively. However, the addition regarding disallowance of expenses on account of leasehold improvements of Rs.4,40,88,288/- was confirmed by observing as under :-

> *"3.3 I have carefully considered the submission of the appellant in light of the facts of the case. The appellant has stated that it had taken on lease the office space at "wing A, upper Ground floor, Tower VIII, Magarpatta City, SEZ, hadapsar, Pune for 10 years from August, 2011. As is the usual practice, the space on lease was a bare shell and the appellant spent substantial amount of Rs 4,64,08,661 on interior decorations, furniture, fixtures befitting its commercial stature. It has capitalized the same as "leasehold improvements" in its books of accounts and charged depreciation as per company's act. However, while filing return of income, it has claimed the same to be revenue expenses. The learned AO applied the provisions of explanation-1 to Section 32 in para 6.2.1 of the assessment order extracted above and held the same to be capital expenditure and allowed depreciation at the rate of 10%. He also relied on the Hon'ble apex court's decision on Ballimal Naval Kishore Vs Commissioner of Income Tax [224 ITR 414(1997)(SC)].*
>
> *3.3.1 It is seen from the appellant's submission dtd 19.10.2023 and 10.11.2023 that the appellant has mentioned "Wing A, upper Ground floor, Tower VIII, Magarpatta City, SEZ, Hadapsar, Pune" as its address in the front page. Copy of the front page dtd 10.11.2023 is extracted as below:*
>
> *xxxxx*
>
> *Therefore it appears that the appellant is continuing to operate in the old premises even today, 12 years after the initial lease started and after the expiry of initial lease agreement. The mention of the supposedly old address in the letter dtd 19.10.2023 was pointed out to the AR during the hearing on 06.11.2023, but the old address is repeated in the letter dtd 10.11.2023 as seen above. One can infer safely that the appellant till today is continuing in the old office at Magarpatta. I agree with the AO that the nature of expenses are not in the nature of current repairs or renovation, but capital expenditure to make the space ready for functioning of a office by building glass partition, false ceilings, furniture and fixtures so on and so forth. The provisions of explanation-1 to Section 32 extracted above is directly applicable in the existing facts of the case. In any case, the AO has granted 10% depreciation rate on such expenditure and thus appellant would have recuperated this expenditure over so many years now. The appellant has furnished a new agreement for its claim*

of shifting to Kharadi. But the agreement is a service agreement and does not have the original lease agreement. The principle of resjudicata is not strictly applicable to the facts of this case. Thus it is held that the expenditure of Rs 4,64,08,661 incurred by the appellant has brought enduring benefits to the appellant and not in the nature of current repairs. Accordingly, the appeal is rejected on this ground."

7. It is this order against which the assessee is in appeal before this Tribunal.

8. Ld. AR appearing from the side of the assessee submitted before us that the order passed by Ld. CIT(A) to the extent of confirming the addition of Rs.4,40,88,288/- made by the Assessing Officer on account of disallowance of expenses of leasehold improvements of Rs.4,64,08,661/- is not justified. It was submitted by the counsel of the assessee that in immediately preceding assessment year i.e. A.Y. 2012-13, similar expenditure was allowed by the Assessing Officer in the case of assessee itself. But, Ld. CIT(A) has denied this ground by saying that in income-tax proceedings principle of *res judicata* is not applicable. Ld. Counsel of the assessee further submitted that merely on the basis of old letter head of the assessee company wherein old address was mentioned, Ld. CIT(A) presumed that the assessee company is continuing to operate from the old premises even today i.e. 12 years after the initial lease and this was one of the reason to

disallow the expenditure of Rs.4,64,08,661/- for leasehold improvements. In this regard, it was submitted that the assessee has already left this leasehold premises which is evident from the final exit order dated 22.08.2022. However, this final exist order could not be produced either before the Assessing Officer or before Ld. CIT(A) and, therefore, Ld. Counsel of the assessee requested before the Bench to admit this document as an additional evidence. Ld. Counsel of the assessee in support of its contention that leasehold improvements expenses are revenue in nature relied on various judgements which are referred in his paper book from page nos.183 to 217.

8.1 During the course of hearing before us, Ld. Counsel of the assessee furnished final exit order dated 22.08.2022 issued by the Government of India, Ministry of Commerce & Industry, Pune, wherein, the Specified Officer, Pune has issued no dues certificate stating that no recoverable dues are pending for recovery from M/s. Entrata India Pvt. Ltd. and the Developer, M/s. Magarpatta Township Development & Construction Company Ltd.- SEZ has also issued no objection certificate. Ld. Counsel of the assessee tried to demonstrate that the lease property which was obtained by him has been left by the company, therefore, the contention of the

Assessing Officer and Ld. CIT(A) that the expenditure of Rs.4,64,08,661/- incurred by the assessee has brought enduring benefits to the assessee and not in the nature of current repairs is not correct. Ld. Counsel of the assessee further submitted that the expenditure on leasehold improvement is with respect to electrical fittings, interior decoration, expenses of renovation of leasehold property as per assessee's business requirement and since the assessee is not owner of the leased property, the said expenditure is coterminous with the lease and thus the assessee is not going to enjoy any enduring benefit from it. Accordingly, it was requested before the bench to delete the disallowance of Rs.4,64,08,661/- incurred towards leasehold improvements being expenditure in nature of revenue.

9. Ld. DR appearing from the side of the Revenue relied on the order passed by Assessing Officer and accordingly requested to confirm the same. Ld. DR also furnished paper book containing various case laws in support of case of the Revenue.

10. We have heard Ld. Counsels from both the sides and perused the material available on record including the paper books furnished by both the parties. We find that the assessee company has challenged the order passed by Ld. CIT(A) only on one ground

i.e. the confirmation of addition of Rs.4,40,88,288/- on account of disallowance of expenses claimed for leasehold improvements of Rs.4,64,08,661/- treating the same as capital expenditure. In this regard, we find that Ld. Counsel of the assessee furnished copy of final exit order regarding leaving of the leasehold premises on which the impugned improvement expenditure was incurred. It was fairly admitted by Ld. Counsel of the assessee that this document was not produced before Ld. CIT(A) and accordingly, it was requested before the Bench to admit the same as an additional evidence. In this regard, we find that the final exit order is related to impugned addition and accordingly the same is admitted for consideration. Since the above relevant additional evidences is relied on by the assessee, we deem it proper to set-aside the order of Ld. CIT(A) on this specific ground i.e. addition on account of disallowance of expenditure of Rs.4,64,08,661/- being capital in nature. Accordingly, without going into merits of the case of the assessee, we set-aside the impugned order of Ld. CIT(A) on this limited issue with a direction to decide this ground of appeal afresh as per fact and law after providing reasonable opportunity of hearing to the assessee. The assessee is also directed to produce the necessary documents/additional evidences/other relevant

documents, if any, in support of its contention. Thus, this ground of appeal is partly allowed.

11. In the result, the appeal filed by the assessee in ITA No.133/PUN/2024 is allowed for statistical purposes.

12. Now, we shall take up the appeal of the Revenue in ITA No.66/PUN/2024 for adjudication.

ITA No.66/PUN/2024 – By Revenue :

13. The Revenue has raised the following grounds of appeal :-

"i. On the facts and the circumstances and in law, the Ld. CIT(A) erred in deleting the addition on account of disallowance u/s 10AA of the Income Tax Act, 1961 amounting to Rs.2,13,87,394/-.

ii. On the facts and the circumstances of the case and in law, the Ld. CIT(A) erred in directing the AO to compute deduction u/s 10AA of the Income Tax Act without setting off of brought forward unabsorbed depreciation of Rs. 38,68,211 /-.

iii. On the facts and the circumstances of the case and in law, the Ld. CIT(A) was not justified in interpreting the words "so arranged" used in section 80IA(10) to impose burden on AO to prove tax avoidance before invoking section 801A(10), of the Act when bare reading of the provision does not impose such burden of proving tax avoidance on AO.

iv. Oh the facts and the circumstances of the case and in law, the Ld. CIT(A) was not justified in imposing burden of proving tax avoidance ignoring the fact that section 801A(10) of the Act is a "domestic transfer pricing" provision and proving tax avoidance is not one of the pre-condition for invoking transfer pricing provisions.

v. On the facts and the circumstances of the case and in law, the Ld. CIT(A) was not justified in concluding that net profit percentage of the assessee could not be considered "more than ordinary" in the I.T industry and disregarding the fact that tax

avoidance is resulted because of claiming excessive deduction u/s 10A on net profit component of "more than ordinary profit."

14. Ground nos.1, 3, 4 and 5 relates to the deletion of addition on account of disallowance u/s 10AA amounting to Rs.2,13,87,394/-. In this regard, Ld. DR appearing from the side of the Revenue submitted before us that the order passed by Ld. CIT(A) is not justified. It was submitted by Ld. DR that being domestic transfer, it is not the duty of the Assessing Officer to prove the tax avoidance. Ld. DR also submitted before us that the tax avoidance is resulted due to the reason of claiming excess deduction u/s 10AA on net profit component which is more than ordinary profit. Accordingly, it was submitted that Ld. CIT(A) was not justified in concluding that net profit percentage of the assessee could not be considered more than ordinary in the information technology industries and therefore requested to confirm the order of AO on this issue.

15. Ld. AR appearing from the side of the assessee submitted before us that the first appeal order passed by Ld. CIT(A) is correct wherein the addition on account of disallowance u/s 10AA amounting to Rs.2,13,87,394/- was deleted by observing as under :-

"5.3 I have carefully considered the submission of the appellant in light of the facts of the case. During the scrutiny proceeding, the learned AO observed that the operating margin earned by appellant is 25.34% and that of comparable is 11.58%. He felt that profit margins shown by the assessee company is substantially higher than the ordinary profits of the comparable entities and proposed to invoke provisions of section 10AA(9) r.w.s. 801A(10). He held that the assessce company in its transactions with its overseas group companies, has earned more than ordinary profits, beyond the inter-quartile range and inferred the existence of "arrangement" between the parties to the transaction. The expression "Ordinary profits used in sec. 801A(10) connotes reasonable profit from eligible business which can be ascertained only by analyzing the cases of comparable companies. Having regard to the profit margins declared by comparable cases identified by the assessee itself in its Transfer Pricing study report, he invoked section 10AA(9) read with section 801A(10) and re-computed the ordinary profits of the assessee company based on the arithmetic mean of the profits of comparable entities in the TP study.

5.3.1 However I feel that AO has to establish the arrangement before proceeding to disregard the profits declared by the assessee and determine the amount of profits which may reasonably deemed to have been derived from such business. There are two pre-requisites to invoke section 80-1A(10) Viz

(i) existence of a close connection between the assessee carrying on eligible business and any other person; and,

(ii) that the course of business is so arranged that the business transacted produces to the assessee more than the ordinary profits.

There is no doubt regarding the close connection between the appellant and its AE. But The basic condition, which is to be satisfied for invoking the provisions of Section 80-1A(10) is that the business transactions are so arranged so as to produce to the assessee more than the ordinary profits, which might be expected to arise in such eligible business. The Assessing Officer has to indicate any material or evidence to disclose any such arrangement between the assessee and the other person. This view has been held in various decisions including jurisdictional honourable ITAT and High court. The Honourable ITAT, Pune in the case of Honeywell automation referred to the judgement of the Hon'ble Bombay High Court in the case of CIT v Schmetz India (P) Ltd [2012] 211 Taxman 59/26 taxmann.com 336. and held that the Assessing Officer has not been able to prove that any arrangement had been arrived between the parties which resulted in extraordinary profits to the respondent assessee's manufacturing division at Kandla. Further, the ITAT also referred to the Bangalore Bench of the Tribunal in the case of Digital Equipment India Ltd v Dy

CIT [2006] 103 TTJ 329 that has also held that the conditions of the section have to be objectively satisfied by the Assessing Officer, based on cogent reasoning and evidence.

5.3.2 The appellant has brought my attention to the service agreement between the appellant and its AE for the relevant period. It is seen that the appellant has been remunerated at cost plus 15% markup. So its PLI should be around 15%. The appellant has given a chart in its submission above depicting PLIs for AYs 2012-13 to AY 2016-17. It is seen that the high PLI during the present AY is due to treatment of foreign exchange gain of Rs 1.95 crores as operational revenue. The appellant has demonstrated that by following the guidance given in rule 10TA of safe harbour rules, the appellant's PLI is 15.81% in comparison to its comparables' mean margin of 14.81%. Therefore factually also there is no ground for holding that the appellant in order to get deduction u/s 10AA has generated extraordinary profits. Reliance is also placed on following latest Jurisdictional ITAT decisions on this matter.

i) DCIT Vs. Halliburton Technology Industries (P.) Ltd [2023] 147 taxmann.com 318 (Pune - Trib.)/[2022] 99 ITR(T) 699 (Pune - Trib.)

ii) Faurecia Interior Systems India (P.) Ltd v. ACIT, Pune. [2020] 116 taxmann.com 973 (Pune - Trib.)

Respectfully following such decisions, the AO is directed to delete the disallowance u/s 10AA of the ITA, 1961 amounting to Rs.2,13,87,394/-. Appeal is allowed on this ground."

16. Apart from above order of Ld. CIT(A), LD AR also relied on the decision of Jurisdictional Tribunal passed in the case of DCIT vs. Calsoft Pvt. Ltd. in ITA No.331/PUN/2013 order dated 28-04-2014, wherein similar issue was decided in favour of the assessee. Accordingly, Ld. AR requested before the Bench to confirm the order of Ld. CIT(A).

17. We have heard Ld. Counsels from both the sides and perused the material available on record as well as case laws relied on by

both the parties. We find that the decision of the Jurisdictional Tribunal in the case Calsoft Pvt. Ltd. (supra) wherein deletion of similar addition was approved by the Tribunal by observing as under :-

> *"4.3 We find that the Hon'ble Karnataka High Court in the case of CIT & Another Vs. H.P. Global Soft Ltd. (2012) 342 ITR 263 (Kar), wherein, it was found that the profit margin as revealed by the assessee is a reasonable profit in comparison to other similar units. The Assessing Officer having failed to show that is it a course of business, so arranged as to result in inflated profit provisions of section 10I(9) could not be to reduce the deduction under the provisions of section 10A. We also found that ITAT Mumbai 'D' Bench in the case of ITO Vs. Novel Consumer Products (P) Ltd. (2006) 7 SOT 615 (Mumbai), wherein the Bench held that in the absence of any efforts by the Assessing Officer to ascertain the exact profit rate from comparable case, sub-section of section 80IA, has not justified. We also found that ITAT, Chennai 'A' Bench in the case of Tweezerman (India) (P) Ltd. Vs. Addl. CIT (2010) 133 TTJ (Chennai) 308, held that the Assessing Officer was not justified in invoking the provisions of section 80IA.*
>
> *4.4 In view of above discussion, we are not inclined to interfere with the finding of CIT(A) who has deleted the addition which has been made by the Assessing Officer on the ground that profit shown from eligible unit is more than normal. Accordingly, the order of CIT(A) needs no interference from our side. We uphold the same.*
>
> *5. In the result, appeal filed by the revenue is dismissed."*

18. From perusal of order passed by Ld. CIT(A) on this issue as well as decision of the Jurisdictional Tribunal in the case Calsoft Pvt. Ltd. (supra), we are of the considered opinion that there is no infirmity in the order passed by Ld. CIT(A) on this issue and accordingly does not call for any interference from our side.

Accordingly, the order passed by Ld. CIT(A) deleting the addition of Rs.2,13,87,394/- is hereby confirmed. Thus, the ground nos.1, 3, 4 and 5 raised by the Revenue are dismissed.

19. In ground no.2, Ld. DR appearing from the side of the Revenue, challenged the order passed by Ld. CIT(A) wherein he directed the Assessing Officer to compute the deduction u/s 10AA without setting off of brought forward unabsorbed depreciation of Rs.38,68,211/-. Ld. DR also submitted that CBDT has issued a circular in this regard.

20. Ld. AR appearing from the side of the assessee submitted before us that the order passed by Ld. CIT(A) is based on the judgement passed by Hon'ble Supreme Court in the case of CIT vs. Yokogawa India Ltd., 391 ITR 274 (SC) and the decision of Jurisdictional Tribunal passed in the case of KPIT Cummins Infosystems Ltd. vs. DCIT, ITA No.1736/PUN/2012 order dated 30.11.2015, and therefore, it was held by Ld. CIT(A) that deduction u/s 10AA is to be computed without setting off of brought forward unabsorbed deprecation of Rs.38,68,211/- by observing as under :-

> *"4.3 I have carefully considered the submission of the appellant in light of the facts of the case. The issue is "setting off of unabsorbed depreciation against the present year business profits" before*

computing deduction u/s 10AA. I agree with the appellant's submission that the present Assessment Year 2013-14 is covered by the decision of the Honourable Supreme Court in the case of CIT Vs. Yokogawa India Ltd. 391 ITR 274. In the said decision, it has been held that after amendment to section 10A by the Finance Act, 2000 w.c.f. 01/04/2001, said section has become a provision for deduction but stage of deduction would be while computing gross total income of eligible undertaking under Chapter-IV and not at stage of computation of total income under Chapter VI of the Income Tax Act, 1961. This has been followed by jurisdictional Pune ITAT in the case of DCIT Vs. iGate Global Solutions Ltd. - 109 taxmann.com 48 (Pune ITAT). It is true that the legislature has amended the section 10AA by finance act, 2017 to overcome the apex court's decision by inserting the explanation extracted above. However, the honourable Delhi High Court in the case of Cosmo Films Ltd. Vs. CBDT 108 taxmann.com 49 has held that amendment to section 10AA of the ITA, 1961 is effective only from 01/04/2018 i.e. AY 2018-19. Accordingly, appeal is allowed on this ground and AO is directed to compute deduction u/s 10AA without setting off of brought forward unabsorbed depreciation of Rs.38,68,211/-."

21. From a perusal of above findings of Ld. CIT(A), we are of the considered opinion that there is no infirmity in the order passed by Ld. CIT(A) on this issue and accordingly does not call for any interference from our side. The order passed by Ld. CIT(A) wherein he directed the AO to compute deduction u/s 10AA without setting off of brought forward unabsorbed depreciation of Rs.38,68,211/- is hereby confirmed. Thus, the ground no.2 raised by the Revenue is dismissed.

22. In the result, the appeal filed by the Revenue in ITA No.66/PUN/2024 is dismissed.

23. To sum up, the appeal filed by the assessee in ITA No.133/PUN/2024 is allowed for statistical purposes and cross appeal filed by the Revenue in ITA No.66/PUN/2024 is dismissed.

Order pronounced on this 24th day of December, 2024.

Sd/-	Sd/-
(R. K. PANDA)	**(VINAY BHAMORE)**
VICE PRESIDENT	**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 24th December, 2024.
Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-13, Pune.
4. The Pr. CIT/CIT concerned.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "**A**" बेंच, पुणे / DR, ITAT, "**A**" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.