

**IN THE INCOME TAX APPELLATE TRIBUNAL,
BANGALORE BENCH 'A'**

**BEFORE SHRI VIJAYPAL RAO, JUDICIAL MEMBER
AND
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

ITA No.1618/Bang/2016
(Asst. Year 2010-11)

The Asst. Commissioner of Income-tax,
Circle – 4(1)(1),
Bengaluru.

. Appellant

Vs.

M/s KPMG Global Delivery Centre Pvt. Ltd.,
4th Floor, Tower 2D, Phase-1, Vrindavan Tech Village,
Devarabeesanahalli, Outer Ring Road,
Bengaluru.

. Respondent

PAN No.AAACO5735D.

C.O No.48/Bang/2017
(by assessee)

Revenue by : Smt. Swapna Das, JCIT

Assessee by : Shri Rony Antony, C.A

Date of Hearing : 1-6-2017

Date of Pronouncement : 2-6-2017

ORDER

PER SHRI JASON P BOAZ, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of the Commissioner of Income-tax (Appeals) – 4, Bangalore dated 21/6/2016 for the Assessment Year 2010-11. The assessee has also preferred cross objection ('CO') in respect of the impugned order.

2. Briefly stated, the facts of the case are as under:-

2.1 The assessee, a company engaged in the business of providing ITES and consultancy services, filed its return of income for asst. year 2010-11 on 23/9/2010 declaring Nil income after claiming Rs.3,33,70,100/- as deduction u/s 10AA of the Income-tax Act, 1961 (in short 'the Act'). The case was taken up for scrutiny and the assessment was completed u/s 143(3) of the Act vide order dated 24/3/2014, wherein the assessee's income was determined at Rs.39,75,105/- in view of the AO disallowing the assessee's claim for deduction u/s 10AA of the Act to the extent of Rs.39,75,105/-. On appeal, the Id CIT(A)-4, Bangalore allowed the assessee's appeal vide the impugned order dated 21/6/2016, allowing the assessee's claim for deduction u/s 10AA of the Act, by following the decision of the

Hon'ble Karnataka High Court in the case of CIT Vs. Tata Elxsi Ltd.,
(349 ITR 98) (Kar).

3. Revenue being aggrieved by the order of the CIT(A), Bangalore dated 21/6/2016 for asst. year 2010-11, has filed an appeal before the Tribunal and the assessee has also filed a C.O in respect of the aforesaid order of the CIT(A)-4, Bangalore. The appeal of Revenue and the assessee's C.O will be disposed off in seriatum hereunder.

Revenue's appeal in ITA No.1618/Bang/2016 for A.Y 2010-11

4.1 In this appeal, Revenue has raised the following grounds:-

1. The Order of the Ld.CIT (A) is opposed to the law and facts of the case.
2. The CIT (A) was not justified in directing the AO to recompute the deduction allowable u/s 10A of the Act after reducing certain expenses incurred in foreign currency from the export turnover.
3. The Ld.CIT (A) ought to have appreciated that there is no provision in Sec.10A which requires the concerned expenses, which are required to be reduced from the export turnover as per clause (iv) of the Explanation to Section 10A to be reduced from the total turnover also.
4. On the facts and circumstances of the case, the Ld.CIT (A) has erred in directing to follow the ratio laid down by the Hon'ble HC in the case of CIT Vs. Tata Elxsi Ltd while computing the deduction u/s 10A, when the Department has filed a SLP before the Hon'ble SC on this issue which is pending adjudication.
5. For these and other grounds that may be urged at the time of hearing, it is prayed that the order of the CIT (A) in so far as it relates to the above grounds may be reversed and that of the Assessing Officer may be restored.
6. The appellant craves leave to add, alter, amend and/or delete any of the grounds that may be urged.

4.2 In the grounds of appeal raised (Supra), Revenue contends that the Id CIT(A) has erred in directing the Assessing Officer ('AO') to exclude the reimbursement of expenditure incurred in foreign currency amounting to Rs.2,82,28,806/- from both export turnover as well as from total turnover while computing deduction u/s 10AA of the Act, following the decision of the Hon'ble Karnataka High Court in the case of Tata Elxsi Ltd., (349 ITR 98). It is contended that in doing so, the Id CIT(A) did not appreciate that there is no provision in sec. 10A of the Act that mandates that such expenses should be reduced from the total turnover and that sub clause (iv) of the Explanation to Sec. 10A provides that such expenses are to be reduced from total turnover also. It is submitted that provisions of sec. 10A are analogous to sec. 10AA of the Act.

4.3 Per contra, the Id AR for the assessee submitted that the issue in dispute in this appeal i.e of the computation of deduction u/s 10A of the Act is squarely covered in favour of the assessee by the decision of the Hon'ble Karnataka High Court in the case of Tata Elxsi Ltd. (349 ITR 98) which holds the ground and is binding.

4.4 We have heard the contentions of the Id DR for the Revenue and have perused and carefully considered the material on record: As regards the issue of reduction of the reimbursement of expenditure incurred in foreign currency as are attributable to the delivery of software outside India and in rendering of technical services outside India, the jurisdictional High Court of Karnataka in the case of Tata Elxsi Ltd., (349 ITR 98) has held that when certain expenses are excluded from the export turnover for the purposes of claiming deduction admissible under the Act, like u/s. 10A of the Act, such expenses are also to be excluded from total turnover, as export turnover forms part of total turnover. Section 10AA of the Act being analogous to sec. 10A of the Act, the aforesaid decision of Hon'ble Karnataka High Court in the case of Tata Elxsi Ltd., (Supra) would equally apply in favour of the assessee in the case on hand for computing eligible deduction u/ s 10AA of the Act. The decision in the case of Tata Elxsi Ltd., (Supra) has also been followed by the Hon'ble Court in the case of DCIT Vs. Motor Industries Co. Ltd; (ITA No.776/2006, 744/2007 and 1155/2006 dated 13/6/2014), holding that if any expenditure is sought to be reduced from export

turnover, then it should also be reduced from total turnover for the purposes of computing the eligible deduction u/s 10A of the Act. In this legal and factual matrix of the case, as discussed above, we find no reason/requirement to interfere with or deviate from the finding rendered by the Id CIT(A) on this issue and, therefore, uphold the same. Consequently, finding no merit in the grounds raised by Revenue (Supra) we dismiss the same.

5. In the result, Revenue's appeal for the Assessment Year 2010-11 is dismissed.

Assessee's Cross Objection in C.O No.48/Bang/2017 for A.Y 2010-11

6. In view of Revenue's appeal in ITA No.1618/Bang/2016 for asst. year 2010-11 being dismissed, the assessee's C.O is rendered infructuous and is accordingly dismissed as infructuous.

7. In the result, Revenue's appeal as well as the assessee's cross objection for asst. year 2010-11 are dismissed.

Order pronounced in the open court on **2nd June, 2017.**

**Sd/-
(VIJAYPAL RAO)
JUDICIAL MEMBER**

**Sd/-
(JASON P BOAZ)
ACCOUNTANT MEMBER**

Bangalore

Dated : 2/6/2017

Vms

Copy to :1. The Assessee
2. The Revenue
3.The CIT concerned.
4.The CIT(A) concerned.
5.DR
6.GF

By order

Asst. Registrar, ITAT, Bangalore.