

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
and
SHRI G.MANJUNATHA, ACCOUNTANT MEMBER**

**IT(TP)A No.1318/Bang/2011
(Assessment year: 2007-08)**

M/s.Ocwen Financial Solution Pvt. Ltd.
4th & 6th floors, Salarpuria Arena,
No.24, Hosur Road,
Bangalore-560030. ... Appellant
PAN:AAACO3764E

Vs.

Deputy Commissioner of Income-tax,
Circle 12 (2),
Bangalore. ... Respondent

Appellant by: Shri Manoj M Shenoy, CA.
Respondent by: Shri Harinder Kumar, CIT(DR).

Date of hearing : 14/10/2015.
Date of pronouncement: 02/11/2015.

O R D E R

Per VIJAY PAL RAO, JM :

This appeal by the assessee is directed against the assessment order dated 11/10/2011 passed u/s 143(3) r.w.s. 144C of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short] in pursuance to the directions of the DRP dated 29/9/2011 for the assessment year 2007-08.

Page 2 of 7

2. The assessee has raised the following grounds:

"The grounds mentioned herein are without prejudice to one another.

1. *"That the order of the learned Deputy Commissioner of Income Tax, Circle 12(2), Bangalore ('Assessing Officer' or 'AO') to the extent prejudicial to the Appellant, is bad in law, contrary to facts and circumstances of the case and liable to be quashed.*
2. *That the learned AO and the learned Dispute Resolution Panel ('Panel') erred in upholding the rejection of Transfer Pricing (TP) documentation by the learned Additional Commissioner of Income - tax (Transfer Pricing) - II , Bangalore ('Transfer Pricing Officer' or 'TPO').*
3. *That the learned AO and the learned Panel erred both in facts and law in confirming the action of the learned TPO of making an adjustment to the transfer price of the Appellant by Rs. 26,287,632 in respect of its contract software development services and by Rs. 155,227,253 in respect of its Information Technology enabled Services segment, holding that the international transactions in these segments do not satisfy the arm's length principle envisaged under the Income Tax Act, 1961 (the 'Act').*
4. *That the learned AO and the learned Panel erred in:*
 - 4.1. *Upholding the rejection of comparability analysis of the Appellant in the TP documentation and in submissions provided during the assessment proceedings, and confirming the comparability analysis as adopted by the learned TPO in the TP Order.*
 - 4.2. *Upholding the act of the learned TPO of collecting information of the companies by exercising power granted to him under section 133(6) of the Act.*
 - 4.3. *Disregarding application of multiple year/ prior year data as used by the Appellant in the TP documentation and holding that current year (i.e. Financial Year 2006-07) data for comparable companies should be used.*
 - 4.4. *Ignoring the limited risk nature of the services provided by the Appellant as detailed in the TP documentation and in upholding the conclusion of the learned TPO that no adjustment on*

Page 3 of 7

account of risk differential is required while determining the Arm's Length Price of the international transactions of the Appellant, but for an adjustment towards differences in the working capital position between the Appellant and the entrepreneurial comparable companies.

5. *The learned AO and the learned Panel erred in not granting the benefit of lower range of +/-5% in determination of arm's length price.*
6. *That the learned AO and the learned Panel, erred in law and facts in reducing the travel and accommodation expenses incurred in foreign currency of INR 4,72,72,970 from 'export turnover' while computing the deduction under section 10A of the Act by assuming that the same has been incurred for rendering technical services outside India.*
7. *That the learned AO and the learned Panel, erred in law and facts in reducing the lease line charges of INR 2,35,38,517 from 'export turnover' while computing the deduction under section 10A of the Act by assuming that the same has been incurred for delivery of software outside India.*
8. *The learned AO and the learned Panel, have erred in not appreciating that the Appellant is in the business of software development as distinct from rendering technical services outside India and accordingly erred in not following the decisions of the jurisdictional Income Tax Appellate Tribunal in adjusting the expenses incurred in foreign currency, while computing the deduction under section 10A of the Act.*
9. *Without prejudice to the above, the learned AO and the learned Panel, erred in not reducing the said travel and accommodation expenses incurred in foreign currency of INR 4,72,72,970 and lease line charges of INR 2,35,38,517 from the 'total turnover' and not following the ruling of the Hon'ble Karnataka High Court.*
10. *That the learned AO and the learned Panel erred in consequently levying interest under section 234B of the Act."*

Ground Nos.1 to 5 regarding transfer pricing adjustment:

3. At the time of hearing, learned AR of the assessee has submitted that there were MAP proceedings in respect of these

Page 4 of 7

issues and finally the competent authorities of India and USA in regard to these transfer pricing adjustment made to the income of the assessee for the assessment year under consideration, has reached a mutual agreement. The assessee has accepted the resolution reached by the USA and Indian competent authorities in accordance with the provisions of rule 44H(iv) of the Income-tax Rules, 1962. Thus, learned AR of the assessee has submitted that that these grounds relating to transfer pricing issue become infructuous and the assessee does not press the same.

On the other hand, learned Departmental Representative has not disputed the MAP in respect of the transfer pricing adjustment in question and accordingly has not raised any objections, if the ground Nos.1 to 5 are dismissed as not pressed.

4. Having considered the rival submissions as well as relevant material on record, we note that the assessee vide its letter dated 07/09/2015 has pointed out that mutual agreement has been reached between the competent authority of India and USA in regard to the transfer pricing adjustment made to the income of the assessee for the year under consideration. The assessee has also annexed the letter issued by the AO and the CBDT in this respect. When the assessee has accepted the mutual agreement arrived between the competent authorities of India and USA in respect of the transfer pricing adjustments then the issue raised

Page 5 of 7

in ground Nos.1 to 5 becomes infructuous and accordingly the same are dismissed being not pressed as prayed by the assessee.

5. Ground Nos.6 to 9 are regarding exclusion of travelling and lease line expenses incurred in foreign currency from the export turnover.

6. We have heard the learned AR of the assessee as well as the learned Departmental Representative and considered the relevant material on record. At the outset, we note that this issue is now covered by the judgment of the Hon'ble jurisdictional High Court in the case of *ACIT vs. Tata Elxsi* (349 ITR 98). The learned AR of the assessee has fairly conceded that in view of the judgment of the Hon'ble jurisdictional High Court in the case of *Tata Elxsi* (supra), this amount is required to be excluded both from the export turnover as well as total turnover. The Hon'ble jurisdictional High Court in the case of *Tata Elxsi* (supra) has held as under:

"From the aforesaid judgments, what emerges is that. there should be uniformity in the ingredients of both the numerator and the denominator of the formula, since otherwise it would produce anomalies or absurd results. Sec. 10A is a beneficial section. It is intended to provide incentives to promote exports. The incentive is to exempt profits relating to exports. In the case of combined business of an assessee, having export business and domestic business, the legislature intended to have a formula to ascertain the profits from export business by apportioning the total profits of the business on the basis of turnovers. Apportionment of profits on the basis of turnover was accepted as a method of arriving at export profits. In the case of s. 80HHC, the export profit is to be derived from the total business income of the assessee, whereas in s. 10A, the export profit is to be derived from the total business of the undertaking.

Page 6 of 7

Even in the case of business of an undertaking, it may include export business and domestic business, in other words, export turnover and domestic turnover. The export turnover would be a component, or part of a denominator, the other component being the domestic turnover. In other words, to the extent of export turnover, there would be a commonality between the numerator and the denominator of the formula. In view of the commonality, the understanding should also be the same. In other words, if the export turnover in the numerator is to be arrived at after excluding certain expenses, the same should also be excluded in computing the export turnover as a component of total turnover in the denominator. The reason being the total turnover includes export turnover. 'The components of the export turnover in the numerator and the denominator cannot be different. Therefore, though there is no definition of the term 'total turnover' in s. 10A, there is nothing in the said section to mandate that, what is excluded from the numerator that is export turnover would nevertheless form part of the denominator. Though when a particular word is not defined by the legislature and an ordinary meaning is to be attributed to the same, the said ordinary meaning to be attributed to such word is to be in conformity with the context in which it is used. When the statute prescribes a formula and in the said formula, 'export turnover' is defined, and when the 'total turnover' includes export turnover, the very same meaning given to the export turnover by the legislature is to be adopted while understanding the meaning of the total turnover, when the total turnover includes export turnover. If what is excluded in computing the export turnover is included while arriving at the total turnover, when the export turnover is a 'component of total turnover, such an interpretation would run counter to the legislative intent and impermissible. If that were the intention of the legislature, they would have expressly stated so. If they have not chosen to expressly define what the total turnover means then, when the total turnover includes export turnover, the meaning assigned by the legislature to the export turnover is to be respected and given effect to, while interpreting the total turnover which is inclusive of the export turnover. Therefore, the formula for computation of the deduction under s. 10A, would be as under :

$$\frac{\text{Profits of the business of the undertaking} \times \text{Export turnover}}{(\text{Export turnover} + \text{domestic turnover}) \text{ total turnover}}$$

11. In that view of the matter, we do not see any error committed by the Tribunal in following the judgments rendered in the context of s. 80HHC in interpreting s. 10A when the principle underlying both these provisions is one and the same. Therefore, we do not see any merit in these appeals. The substantial question of law framed is answered in favour of the assessee and against the Revenue."

Page 7 of 7

Following the decision of the Hon'ble jurisdictional High Court we direct the AO/TPO to exclude this amount of expenditure from total turnover as well. These grounds of the assessee are allowed in part.

7. Ground No.10 regarding levy of interest u/s 234B of the Act is consequential and mandatory.

8. In the result, the appeal of the assessee is partly allowed.

Pronounced in the open court on 02nd November, 2015.

sd/-
(G.Manjunatha)
ACCOUNTANT MEMBER
eksrinivasulu,sps

sd/-
(Vijay Pal Rao)
JUDICIAL MEMBER

Copy to:

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

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore