

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'B', BANGALORE

BEFORE SHRI. N. V. VASUDEVAN, JUDICIAL MEMBER

AND

SHRI. ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

I.T(TP).A No.1053/Bang/2013
(Assessment Year : 2004-05)

Deputy Commissioner of Income-tax,
Circle -12 (3), Bangalore

..Appellant

v.

M/s. Vmoksha Technologies P. Ltd,
No.2799 & 2800, Srinidhi Sector –I, 27th Main,
HSR Layout, Bangalore 560 102
PAN : AABCK2021R

..Respondent

Assessee by : Shri. Srinivas Bharath. K. N, CA
Revenue by : Dr. P. K. Srihari, Addl. CIT

Heard on : 23.09.2015

Pronounced on : 30.09.2015

ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER :

In this appeal filed by Revenue directed against an order dt.25.04.2013 of CIT (A) –IV, Bangalore, it has altogether raised eight grounds of which grounds 1, 7 and 8 are general needing no adjudication.

02. Grounds 2 and 3 read as under :

2. On the facts and in the circumstances of the case the learned CIT(A) erred in directing the AO to compute deduction u/s 10A without setting off of losses pertaining to

one unit against the profit of another by placing reliance on the decision of Hon'ble High Court of Karnataka in the case of M/s Yokogawa India Ltd., but without appreciating the fact that as per amended provisions of Section 10A, deduction u/s 10A has to be allowed from the total income of the assessee, and as per Section 2(45) of the IT Act, the total income should be computed from various sources after set off of losses from one source against income from other sources under the same head of income in terms of Section 70(1).

3. On the facts and in the circumstances of the case the learned CIT(A) erred in placing reliance on the decision of Hon'ble High Court of Karnataka in the case of M/s Yokogawa India Ltd., without noticing the fact that Department has not accepted the decision and filed further appeal before the Hon'ble Supreme Court, which is pending for disposal as on date.

03. As is clear from the ground, Revenue is challenging the order of CIT (A) on the issues of computation of deduction u/s.10A of the Income-tax Act, 1961 ('the Act' in short), without setting off the losses of units on which 10A has not been claimed. CIT (A) had followed the jurisdictional High Court judgment in the case of CIT v. Yokogawa India Ltd [(2013) 341 ITR 0385]. Revenue's decision to move an appeal before Hon'ble Apex Court against this judgment will not be a reason not to follow this judgment. Similarly acceptance of a judgment of the High Courts or orders of this Tribunal are irrelevant since all parties are under law obliged and duty-bound to follow them. Accordingly we dismiss grounds 2 and 3.

04. Grounds 4, 5 and 6 are reproduced hereunder :

4. On the facts and in the circumstances of the case the learned CIT(A) erred in directing the AO to re-compute mean margin and work out the quantum of TP adjustment, if required.

5. On the facts and in the circumstances of the case the learned CIT(A) erred in directing the AO to consider current year data

for comparable M/s Net Axis Software Services Ltd when such data has neither been furnished by the assessee, nor is it available in the public domain.

6. On the facts and in the circumstances of the case the learned CIT(A) erred in directing the AO to consider M/s. Dynacons Solutions & Systems Ltd as comparable in the absence of any data available for the software services segment of the company in public domain.

05. On a reading of these grounds it is clear that grievance raised by the Revenue is on the direction of CIT (A) to consider M/s. Net Axis Software Services Ltd and M/s. Dynacons Solutions & Systems Ltd, as good comparables, for analysing the value of international transactions of the assessee, with its AE. Relevant directions of CIT (A), as it appear at para 42 is reproduced hereunder :

42. I have carefully considered the appellant's submissions. Its only prayer is that M/s Net Axis Software Services Ltd. and M/s Dynacons Systems & Solutions Ltd. must also be considered for computation of the mean operating margin, as their financial data for the FY ended 31.03.2004 was since available on the Prowess and Capitaline databases. As the only reason mentioned by the TPO for rejecting these companies as comparables was non availability of financial data in the databases for the relevant period, it would be in the interest of fairness to include them as comparables, now that the relevant data are claimed to be available. I therefore direct the appellant to furnish such data to the AO and thereupon, direct the AO to re-compute mean margin of the five comparables including M/s Net Axis and M/s Dynacons and work out the quantum of TP adjustment, if required, in accordance with law. This ground of appeal is treated as allowed.

06. Ld. DR submitted that assessee had not demonstrated that financial data of these two companies were available in public domain. As per Ld. DR, CIT (A) had simply went by the submissions of the assessee.

07. We have perused the orders and heard the rival contentions. Reason given by the TPO for rejecting M/s. Net Axis Software Services Ltd and M/s. Dynacons Systems & Solutions Ltd appear at para 11 of his order dt.22.12.2006 and this is reproduced hereunder :

11 It was also noticed that the assessee has selected certain comparables in the TP document, which do not qualify for being considered for comparative analysis for the reasons mentioned against their names below:

1. *R. S. Software India Ltd., - perusal of the financial data indicates that This company has incurred losses for the Year 2001-02 to 2003-04*
2. *Net Access Software Services Ltd.,-No financial data of this company is Available in the data bases.*
3. *Dynacons Systems & Sales Ltd., - No financial data of this company is available in the data bases.*

In other words if financial data for relevant previous years were available in public domain, it could be considered as good comparables. CIT (A)'s direction was only to verify this aspect. He did not limit the power of the AO / TPO to consider their comparability on their yardsticks. We are of the opinion that order of CIT (A) does not suffer from any ambiguity and was fair and appropriate in the circumstances of the case. Grounds 4 to 6 of the Revenue are dismissed.

08. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on ____ day of September, 2015.

(N. V. VASUDEVAN)
JUDICIAL MEMBER

(ABRAHAM P GEORGE)
ACCOUNTANT MEMBER

MCN

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax
4. Commissioner of Income-tax(A)
5. DR
6. GF, ITAT, Bangalore

By Order

Assistant Registrar

