IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH : BANGALORE

BEFORE SMT. ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER
AND SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

IT(TP)A No.1375/Bang/2014
Assessment year : 2009-10

The Income Tax Officer, Ward 11(1), Bangalore.	Vs.	M/s. Aon Specialist Services Pvt. Ltd., 4th Floor, Tower 2, SJRI Park, 13/14/15 EPIP Industrial Area, 1st Phase, Whitefield, Bangalore – 560 004 **PAN: AAFCA 9306H**
APPELLANT		RESPONDENT

IT(TP)A No.1530/Bang/2014
Assessment year : 2009-10

M/s. Aon Specialist Services Pvt. Ltd., Bangalore – 560 004 **PAN: AAFCA 9306H**	Vs.	The Income Tax Officer, Ward 11(1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Dr. D.V. Pradeep Kumar, Addl. CIT(DR)
Respondent by	:	Shri P. Dinesh, Advocate

Date of hearing	:	15.10.2015
Date of Pronouncement	:	16.10.2015

O R D E R

Per Asha Vijayaraghavan, Judicial Member

These are cross appeals by the Revenue and the assessee against the order dated 01.08.2014 of the CIT(Appeals)-I, Bangalore relating to assessment year 2009-10.

2. The assessee is a company engaged in providing technology enabled analytical services as well as product research and support services. It filed its return of income for the AY 2009-10 on 3/9/2009, declaring the total income at Rs.86,060 after claiming a deduction u/s 10A of the Act amounting to Rs.7,90,17,736. Initially the return was processed u/s 143(1) and then selected. In the assessment concluded u/s 143(3) vide order dated 15/3/2013, the total income has been determined at Rs.1,59,32,981 under the normal provisions and the book profits have been adopted at Rs.7,73,85,681 u/s 115JB of the Act.

3. With respect to the first issue regarding deduction u/s. 10A, in the return of income, the assessee had claimed deduction u/s 10A of the Act at Rs.7,90,17,736 out of which the AO reduced a sum of Rs.20,51,418. The assessee had reduced the amounts of Rs.5,94,908, Rs.87,91,121 and Rs.2,16,652 from both export turnover and total turnover while calculating the deduction u/s 10A of the Act. But the AO treated the amount of Rs.5,94,908 as attributable to the delivery of articles or things or computer

software outside India, Rs.87,91,121 as attributable to providing technical services outside India in respect of export and Rs.2,16,652 as attributable to the delivery of articles or things or computer software outside India. The AO, therefore, reduced the aggregate amount of Rs.96,02,681 only from the export turnover, without making a corresponding reduction from the total turnover, resulting in reducing the allowance u/s 10A by Rs.20,51,418.

4. The CIT(Appeals) held that the law is now well-settled in favour of the tax-payer in regard to the deduction of expenses from export turnover vis-a-vis total turnover for purposes of calculating the deduction u/s l0B of the Act. The Hon'ble High Court of Karnataka in *Tata Elxsi Ltd. v. ACIT (349 ITR 98)* has held that, where certain expenses are excluded from the export turnover for purposes of calculating deductions admissible under the Act, such expenses should also be excluded from the total turnover as the export turnover forms part of the total turnover. In the light of the decision of the jurisdictional High Court referred to above, the AO was directed to exclude the said expenses from the total turnover also if they are sought to be excluded from the export turnover.

5. Aggrieved, the Revenue is in appeal before us raising grounds No.2 & 3 which read as follows:-

> "2. The CIT(A) erred in following the ratio laid down by the Hon'ble Court in the case of Tata Elxsi Limited 349 ITR 98 and in directing the AO to exclude leaseline charges of Rs. 5,94,908/- and foreign travel expenses of Rs. 87,91,121/- and other expenses of Rs.2,16,652/- from the total turnover also while computing the

deduction u/s 10A of the I.T. Act as the decision of the High Court is binding, without appreciating the fact that there is no provision in section 10A that such expenses should be reduced from the total turnover also, as clause (iv) of the explanation to section 10A provides that such expenses are to be reduced only from the export turnover.

3. The CIT(A) erred in not appreciating the fact that the jurisdictional High Court's decision in the case of Tata Elxsi Limited 349 ITR 98 has not been accepted by the department and an appeal has been filed before the Hon'ble Supreme Court."

6. We have heard both the parties. We are in conformity with the order of the CIT(Appeals) since the CIT(Appeals) has only followed the decision of the Hon'ble High Court of Karnataka in the case of *Tata Elxsi Ltd. (349 ITR 98)* and we are bound to follow the decision of Hon'ble jurisdictional High Court. Grounds No.2 & 3 by the Revenue are thus dismissed.

7. The next issue is with respect to disallowance u/s 40(a)(ia) of Rs.1,37,95,503. The AO noted that the assessee had remitted salary amounting to Rs.1,37,95,503 to an employee of the assessee and cross-charged to the assessee. Though the assessee claimed that it had deducted tax at source on this amount and deposited the same u/s 192 of the Act, the AO treated the cross-charging of salary payment to M/s Aon Limited of UK as fees for technical services and disallowed the amount u/s 40(a)(ia) on the ground that no tax had been deducted at source from the said payment treated as technical fees.

8. Before the CIT(Appeals), the assessee vide its written submission dated 09th July 2014, in para 2.4 submitted that during the financial year 2008-09, AON Limited, UK has remitted salary to the extent of Rs. 1,37,95,503 to an employee of the Appellant and has cross charged the same to the appellant. The appellant has deducted and deposited tax deducted at source ('TDS') on salary remitted by AON Limited, UK, under section 192 of the Act. The AO has treated cross-charge of salary payment of Rs. 1,37,95,503 to AON Limited, UK as fees for technical services ('FTS') under the Act. The AO has disallowed the above amount under Section 40(a)(i) of the Act as no tax had been deducted at source ('TDS') under Section 195 of the Act.

9. The CIT(Appeals) observed that similar issue has been decided by the ITAT, Bangalore in assessee's own case for A.Y. 2008-09 in ITA No. 1640/Bang/2012 dated 30.06.2014, and reproduced the relevant paras as follows: -

> "7.2 As the facts of the case as hand are similar, we are of the view that the decision of the co-ordinate bench in the case of IDS Software Solutions India P. Ltd. (supra) squarely applies to the assessee in the case on hand. On consideration and appreciation of the facts of the case on hand, the material on record and the discussion in 6.1 to 7.1 of the order (supra), we are of the considered opinion that the assessee should be considered as the real and economic employer of the persons, seconded by the UK Company and working for the assessee. It, therefore, follows that the assessee is responsible for the payment related to services rendered by the employees to the assessee necessitating the reimbursement of charges.

8.0 The issue at (ii) is of whether the payments made by the assessee to the UK Company were pure reimbursement of expenses and whether the said reimbursements constituted income in the hands of the UK Company. On this issue, which was considered by the Special Bench of the, Mumbai Tribunal in the case of Mahindra & Mahindra Ltd. (2009) 313 ITR (AT) 263 the Bench 'held that reimbursements made to foreign company were not liable for deduction of tax at source. This decision was followed by the coordinate bench of this Tribunal in the case of Abbey Business Services (India) (P) Ltd. (supra) wherein at para 14.6 thereof, it has been held as under:

> "14.6 The Special Bench of the ITA T Mumbai in the case of Mahindra & Mahindra Ltd Vs. DC'IT(2009) 313 ITR (AT) 263 held "when a particular amount of expenditure is incurred and that sum is reimbursed as such, that cannot be considered as having any part of it in the nature of income. Any payment, in order to be brought within the scope of income by way of fees for technical services under section 9(1) (vii), should be or have at least some element of income in it. Such payment should involve some compensation for the rendering of any services, which can be described as income in the hands of the recipient. In other words the component of income must be present in the total amount of fees paid for technical services to constitute as an item falling under section 9(1)(vii). When the expenditure incurred is reimbursed as such without having any element of income in the hands of the recipient, it cannot assume the character of income deemed to accrue or arise in India."

In view of the above, we are of the considered opinion that reimbursements made by the assessee to the UK Company do not constitute income in the hands of the UK Company."

10. Following the decision of the ITAT Bangalore in assessee's own case for the A.Y. 2008-09, the CIT(Appeals) directed the AO to allow the expenses of Rs.1,37,95,503.

11. Aggrieved, the Revenue is in appeal before us on the following grounds:-

> "4. The CIT(A) erred in deleting the addition of Rs. 1,37,95,503 made by invoking the provision of section .40(a)(i) of the act for non deduction of tax u/s 195 by relying on the Judgement of Hon'ble ITAT in assessee's own case for the AY 2008-09 in ITA No. 1640/Bang/2012 dated 30-06-2014, without appreciating the fact that the payment made to the AON Limited, UK is Fees for Technical Services for the services rendered by the employees which is considered as technical services and the provisions of section 40(a)(i) are applicable.
>
> 5. The CIT(A) erred in not appreciating the fact that the decision of ITAT in assessee's own case for the AY 2008-09 in ITA No.1640/Bang/2012 dated 30.1.2014 has not been accepted by the department and an appeal has been filed before the High Court."

12. We have heard both the parties. The coordinate Bench of this Tribunal in the assessee's own case for the A.Y. 2008-09 in ITA No.1640/Bang/2012 dated 30.6.2014 has held that when expenditure incurred is reimbursed as such without having any element of income in the hands of the recipient, it cannot assume the character of income deemed to accrue or arise in India. Respectfully following the decision of the coordinate Bench of this Tribunal, we dismiss grounds No.4 & 5 raised by the Revenue.

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

14. The assessee's appeal in ITA No.1503/Bang/2014 is only supportive of the order of CIT(Appeals) and since we have already decided the departmental appeal in ITA No.1375/Bang/2014 hereinabove, the assessee's appeal has become infructuous and the same is therefore dismissed.

15. In the result, the appeals by the Revenue and the assessee are dismissed.

Pronounced in the open court on this 16th day of October, 2015.

Sd/-	Sd/-
(ABRAHAM P. GEORGE)	(ASHA VIJAYARAGHAVAN)
Accountant Member	Judicial Member

Bangalore,
Dated, the 16th October, 2015.

/D S/

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

By order

Assistant Registrar,
ITAT, Bangalore.