

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH “ B ”**

**BEFORE SHRI ABRAHAM P GEORGE, ACCOUNTANT MEMBER AND
SHRI VIJAY PAL RAO, JUDICIAL MEMBER**

I.T.(T.P) A. No.391/Bang/2013 (Assessment Year : 2006-07)		
Dy. Commissioner of Income Tax, Cir.12(1), Bangalore.	Vs.	M/s. McAfee Software (India) Pvt. Ltd., Embassy Golf Links Business Park, Pine Valley, 2 nd Floor, Off Indiranagar, Koramangala, IRR, Bangalore. PAN AABCN 3175H
Appellant		Respondent.

Appellant By : Shri G. Manoj Kumar, Addl. CIT (D.R) Respondent By : Shri Ujwal Tiwari, C. A.

Date of Hearing : 16.02.2016.

Date of Pronouncement : 24.02.2016.

ORDER

Per Shri Vijay Pal Rao, J.M. :

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-III, Bangalore Dt.20.12.2012 for the Assessment Year 2008-09.

2. The revenue has raised the following grounds :

- “1. The order of the learned CIT (Appeals) is opposed to law and facts of the case.*
- 2. On the facts and in the circumstances of the case the learned CIT (Appeals) erred in law in directing the Assessing Officer to exclude the reimbursement of expenses incurred in foreign currency both from the export turnover as well as total turnover for the purpose of computation of deduction under Section 10A without appreciating the fact that the statute allows exclusion of such of expenditure only from export turnover by way of specific definition of export turnover as envisaged by sub-clause (4) of Explanation 2 below sub-section (8) of Section 10A and the total turnover has not been defined in this section.*
- 3. For these and other grounds that may be urged at the time of hearing, it is prayed that the order of the CIT (Appeals) in so far as it relates to the above grounds may be reversed and that of the Assessing Officer may be restored.*
- 4. The appellant craves leave to add, alter, amend and / or delete any of the grounds mentioned above.”*

3. The main issue in this appeal by the Revenue is whether the CIT (Appeals) has erred in law in directing the Assessing Officer to exclude the reimbursement of expenses incurred in foreign currency both from the export turnover as well as total turnover for the purpose of computation of deduction under Section 10A.

4. We have heard the learned Authorised Representative and learned Departmental Representative and considered the relevant material on record. At the outset we note that this issue is covered in favour of the assessee by the decision of the Hon'ble jurisdictional High Court of Karnataka in the case of CIT V Tata Elxsi Ltd & Others (2011) 247 CTR 334 (Karnataka) wherein it has been

held that while computing the exemption u/s 10A, if the export turnover in the numerator is to be arrived at after excluding certain expenses, the same should also be excluded from the total turnover in the denominator. The relevant finding of the Hon'ble jurisdictional High Court reads as follows:-

".....Section 10A is enacted as an incentive to exporters to enable their products to be competitive in the global market and consequently earn precious foreign exchange for the country. This aspect has to be borne in mind. While computing the consideration received from such export turnover, the expenses incurred towards freight, telecommunication charges, or insurance attributable to the delivery of the articles or things or computer software outside India, or expenses if any incurred in foreign exchange, in providing the technical services outside India should not be included. However, the word total turnover is not defined for the purpose of this section. It is because of this omission to define 'total turnover', the word 'total turnover' falls for interpretation by this Court;

.....In section 10A, not only the word 'total turnover' is not defined, there is no clue regarding what is to be excluded while arriving at the total turnover. However, while interpreting the provisions of section 80HHC, the courts have laid down various principles, which are independent of the statutory provisions. 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. Section 10A is a beneficial section which intends to provide incentives to promote 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 section 80HHC, the export profit is to be derived from the total business income of the assessee, whereas in section 10-A, the export profit is to be derived from the total business of the undertaking. 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. To the extent of export turnover, there would be a commonality between the numerator and the denominator of the formula. 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 section 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. When the statute prescribed 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. Thus, there is no error committed by the Tribunal in following the judgments rendered in the context of section 80HHC in interpreting section 10A when the principle underlying both these provisions is one and the same".

Respectfully following the judgment of Hon'ble jurisdictional High Court, we do not find any error or illegality in the impugned order of CIT (Appeals).

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

Order pronounced in the open court on 24.02.2016.

Sd/-
(ABRAHAM P GEORGE)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

*Reddy gp