

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

**BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER AND
SHRI S JAYARAMAN, ACCOUNTANT MEMBER**

IT(TP)A No.1108//Bang/2011
(Asst. Year 2005-06)

The Dy. Commissioner of Income-tax,
Circle-12(3),
Bengaluru. . Appellant

Vs.

M/s Sykes Enterprises (India) Pvt. Ltd.,
802, 2nd Floor, 14th Main, 7th Cross,
MICO Layout, BTM 2nd Stage,
Bangalore-560 076. . Respondent

IT(TP)A No.1034//Bang/2011
(Asst. Year 2005-06)

M/s Sykes Enterprises (India) Pvt. Ltd.,
802, 2nd Floor, 14th Main, 7th Cross,
MICO Layout, BTM 2nd Stage,
Bangalore-560 076. . Appellant

Vs.

The Dy. Commissioner of Income-tax,
Circle-12(3),
Bengaluru. . Respondent

Revenue by : Shri S.K Singh, CIT

Assessee by : Shri G.C Srivastava, Advocate

Date of Hearing : 30-01-2017

Date of Pronouncement : 28-04-2017

ORDER

PER LALIET KUMAR, JUDICIAL MEMBER

These appeals filed by the Revenue as well as the assessee arising out of the order passed by the Commissioner of Income-tax (Appeals) - IV, Bangalore dated 12/9/2011 for the assessment year 2005-06.

2. The grounds of appeal raised by the Revenue are as under:

“1.The order of the Learned CIT(A) in so far as it relates to the following grounds is opposed to law and facts of the case.

2. The CIT(A) erred in holding that expenditure of excluded lease line expenses of Rs.2,84,34,113/-, insurance expenses of Rs.44,02,504/- and expenditure incurred in foreign currency of Rs.37,73,893/- aggregating to Rs.3,66,10,510/- are to be excluded from total turnover as well for the purpose of computation of deduction u/s 10A while such exclusion is permitted to arrive at the export turnover only as per the

definitions given in Sec.10A of the I.T. Act, 1961 and total turnover has not been defined in the section.

3. In the facts and circumstances of the case, the learned CIT(A) erred in holding that the TPO erred in not excluding comparables having any related party transactions, even if the related party transactions are less than 25% of the revenues.

4. The learned CIT(A) erred in holding that profit on cost of more than 50% of the comparable company(ies) is abnormal without giving reasons how functions discharged, assets deployed and risks assumed of such companies were different from the appellant company.

5. The learned CIT(A) erred in holding that the assessee is eligible for a standard deduction of 5% from the Arm's Length Price (ALP) under the proviso to Section 92C(2) of the Income Tax Act.

6. 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.

7. The appellant craves leave to add, alter, amend and/or delete any of the grounds mentioned above.”

3. The grounds of appeal raised by assessee are as under:

“The grounds hereinafter taken by the Appellant are without prejudice to one another.

1. That the order passed by the learned Commissioner of Income Tax (Appeals) - IV, Bangalore, ('CIT (Appeals)'), to the extent prejudicial to the Appellant, is bad in law and liable to be quashed.

2. That the learned CIT (Appeals) erred in upholding the rejection of Transfer Pricing (TP) documentation by the learned Transfer Pricing Officer ('TPO') / Assessing Officer ('AO') and there by erred in not appreciating that the Appellant had prepared the TP documentation bonafide and in good faith and conducted the comparable analysis based on the detailed Functional Asset and Risk (FAR) analysis performed with due diligence and the data

available at the time of conducting the comparability analysis.

3. That on the facts and in the circumstances of the case, the learned CIT (Appeals) erred in determining upward adjustment to the transfer price of the Appellant by Rs. 34,634,542 under Section 92CA of the Income Tax Act, 1961 (the 'Act'), in respect of its international transactions and in doing so grossly erred in;

(a) Upholding the rejection of comparability analysis of the Appellant in the TP documentation and accepting the comparability analysis performed by the learned TPO in the TP Order

(b) Performing his own comparability analysis by modifying the filters applied by the learned TPO to select only high mark up companies as comparables and rejecting low mark up/loss making companies despite these companies being functionally comparable.

(c) Including companies as comparables that fail the filter applied by the learned

CIT(Appeals)himself in arriving at the final set of comparable companies

(d) Including Vishal Information Technologies Ltd as a comparable ignoring the fact that the business model of the company is completely different from that of the Appellant.

(e)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 2003-04) data for comparable companies should be used.

f. 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 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.

(g) Considering cost of impairment of assets charged to the Profit and Loss account as operative in nature even after specifically observing in the order that such expenses should not be considered as part of the operating expenses.

4.The learned CIT (Appeals) erred in upholding the charging of interest under section 2348 and 234D of the Act.

5. That the Appellant craves leave to add to and I or alter, amend, rescind or modify the grounds taken hereinabove before or at the time of hearing of this appeal.

4. The assessee company is engaged in the business of call center operations and also providing IT enabled services. The profile of the company at page no. 148 of the paper book is as under:-

Sykes India was incorporated in 2002 as a private limited company under the provisions of the Companies Act, 1956. Sykes India is registered with the software technology parks of India and is eligible for a tax holiday up to the year ended 31 March 2009.

Sykes India is a provider of Customer Relations Management ('CRM') services to clients of Sykes Group. Sykes India provides services by answering queries relating to finance, airlines, and technical support. The services require responding to queries of clients of the principal customer, within the stipulated time.

5. The assessee originally computed deduction u/s 10A at Rs.6,66,67,804/-. However, during the course of asst. proceedings, the assessee agreed to resubmit the computation of deduction at Rs.5,16,70,450/-.

6. The assessee has reported the international transaction. During the financial year 2004-05, the assessee has reported the following transactions:-

Name of AE	Nature of transaction	Amount paid (IN~)	Amount (IN~)
Sykes Enterprises Inc., US	IT- enabled back office services		345,452,587
	Import of Capital goods	132,382	
	Reimbursement of expenses paid	3,469,066	
Sykes Asia Inc., Philippines	IT - enabled back office services		325,620
	Reimbursement of expenses paid	137,352	
	Reimbursement of expenses received		1,454,943
	Export of capital goods		6,412,003
Sykes Global Services Limited, UK	Reimbursement of expenses received		734,500
	IT - enabled back office services		573,221

7. The assessee company filed the return of income and the case was selected for scrutiny assessment and thereafter the AO referred the case to Jt. Director of Income-tax (Transfer Pricing) u/s 92CA of the Act for determining the Arms Length Price in respect of international transactions entered into by the assessee.

8. The assessee before the TPO stated that the TNMM is the most appropriate method for determining the Arms Length Price for the services rendered and considering the operating mark up on the total cost (i.e operating profit of the total cost as the relevant profit level indicator). For the purpose of benchmark analysis, the assessee considered the financial information of the comparable companies pertaining to the financial years

2002-03,2003-04 and 2004-05 and selected 22 comparable companies with a markup cost of 8%. The TPO issued a show cause notice as the assessee used the data of financial year 2002-03, 2003-04 and 2004-05 instead of current year's data in accordance with TP regulations. It was pointed out that the current year data was available at the time of filing of return and audit reports were also available well in time i.e before October 2005. It was held by the TPO that the use of current year data was mandatory.

9. The TPO in view of the regulations has retained only 5 comparables and has sought to include more comparables and further for this purposes issued show cause notice to the assessee.

10. After receipt of the show cause notice, the assessee filed reply and also filled objections in respect of four new comparables. However, the AO has retained 9 comparables and the operating mark up on the cost at 9.95% with an arithmetic mean operating mark up on the cost of comparable companies as 14% submitted by the assessee.

11. On the basis of this, the TPO proposed an adjustment u/s 92CA and determined the arm's length price at Rs.38,75,40,137/-.

12. On appeal, the Id CIT(A) has rejected the 5 comparables from the said 9 comparable by applying the filter of 0% related party transactions(RPT) as against 25% of RPT applied by the TPO.

13. The assessee is in appeal against the inclusion of Vishal Information Technology Ltd., as it is the case of the assessee that it is functionally dissimilar to that of the assessee and, therefore, is required to be excluded.

14. On the other hand, the Revenue is in appeal in respect of Vishal Information Technology Ltd., Transworks Information Services Ltd., Wipro BPO Solutions Ltd., Aces Software Exports Ltd., as the Id CIT(A) had wrongly applied 0% filter in respect related party transaction instead of 25% applied by the TPO.

15. We shall first take the case of the assessee in respect of Vishal Information Technology Ltd.

Vishal Information Technology Ltd.

16. It is the case of the assessee that M/s Vishal Information Technology Ltd., is providing agency services by way of outsourcing the services to third party vendors and acting as an intermediary between the final customer and the vendors and does not provide IT enabled services by itself. On account of that the intermediary functions of Vishal Information Technology is not comparable to the IT enabled service performed by the assessee. Therefore, Vishal Information Technology, has wrongly been retained by the CIT(A) and it was the submissions of the

assessee that the Vishal Information Technology is required to be excluded from the list of comparable.

17. It was further stated by the assessee that the case of Vishal Information Technology has already been considered by the co-ordinate benches in the following cases:-

- 1) M/s Mearsk Global Service Centers (India) Pvt. Ltd., in ITA No.3774/M/2011 & CO.111/M/2011
- 2) M/s Hapag Lloyd Global Services Pvt. Ltd., in ITA No.8499/Mum/2010
- 3) M/s BA Continuum India Pvt. Ltd. in ITA No.1154/Hyd/2011
- 4) M/s Thomson Reuters India Services Pvt. Ltd., in IT(TP)A No.1097/Bang/2-11

18. It was submitted by the assessee that based on the findings in the above cases Vishal Information Technology is required to be excluded.

19. On the other hand, the Id DR has relied upon the orders of the authorities below and submitted that functionally Vishal Information Technology is comparable with the assessee as the activity of the said company is similar to that of the assessee.

20. We have heard the rival contentions of the parties and perused the material on record. The Co-ordinate Bench of the Tribunal in the case of M/s Thomson Reuters India Services Pvt. Ltd., (Supra) in para 13.3 has held as under:-

“We have considered the rival submissions as well as the relevant material on record. At the outset, we note that the co-ordinate bench of this Tribunal in the case of Telelogic India (P) Ltd. Vs. ACIT (supra) has examined the comparability of this company in paras 8.2 and 8.3 as under:

8.2 We heard the rival submissions and perused material on record. This comparable is selected by the TPO. The assessee-company objected for inclusion of this company on the ground that the business model is different as it outsourced major portion of the work and

the employees cost is merely 0.9% of the revenue and showing abnormal profit of 45.62%. The Id.CIT(A) had not concurred with the views of the assessee-company and therefore, confirmed the action of the TPO in including this company in the list of comparables. The Mumbai bench of Tribunal in the case of ACIT vs. Maersk Global Service Center (India) P Ltd.(133 ITO 543)(Mum) held that this company cannot be considered as a comparable as it outsourced major portion of the business. This decision was subsequently followed by the same bench in the case of ACIT Vs. Hapag Lloyd Global Services Pvt. Ltd. (TS-47-ITAT-2013)(Mum); Nomura Fin Services (India) (P.) Ltd. Vs. ACIT (2013) 33 taxmann.com 4 (Mum-Trib); Hyderabad Bench in the cases of Brigade Global Services vs. ITO 33 taxmann.618(Hyd-Trib) and Capital IQ Information Systems (India) P.Ltd. vs. DCIT (25 ITR (Trib) 185}(Hyd) and Bangalore bench of Tribunal in the case of ITa vs. Netlinx India Pvt. Ltd.(TS-722-ITAT-2012(Bang). This comparable has been considered by the Hon'ble Delhi High Court in the case of Rampgreen Solutions P. Ltd. Vs. CIT (377 ITR 533) wherein the Hon'ble High Court, after considering the decisions of the Tribunal cited supra, held that this company cannot be considered as a

comparable with ITeS company as it is engaged in the Knowledge Process Outsourcing Service. It was further held that the business model of this company was different and therefore cannot be considered as a comparable with ITES company. The relevant paragraphs viz. 37 & 38 are reproduced hereunder:

37. Applying the aforesaid principles to the facts of the present case, it is once again clear that both Vishal and eClerx could not be taken as comparables for determining the arm's length price. Vishal and eClerx, both are into knowledge process outsourcing services. In Maersk Global Centers (India) Pvt. Ltd. (supra), the Special Bench of the Tribunal had noted that eClerx is engaged in data analytics, data processing services, pricing analytics, bundling optimisation, content operation, sales and marketing support, product data management, revenue management. In addition, eClerx also offered financial services such as real-time capital markets, middle and back-office support, portfolio risk management services and various critical data management services. Clearly, the aforesaid services are not comparable with the services rendered by the assessee. Further, the functions undertaken (i.e., the activities performed) are also not comparable with the assessee. In our view, the Tribunal

erred in holding that the functions performed by the assessee were broadly similar to that of eClerx or Vishal. The operating margin of eClerx, thus, could not be included to arrive at an arm's length price of controlled transactions, which were materially different in its content and value. In Maersk Global Centers (India) Pvt. Ltd. (supra), the Special Bench of the Tribunal had noted the same and had, thus, excluded eClerx as a comparable. It is further observed that the comparability of eClerx had also been examined by the Hyderabad Bench of the Tribunal in Capital Iq Information Systems (India) (P.) Ltd. v. Addl. CIT (supra), where in the Tribunal directed the exclusion of eClerx as a comparable for there as on that it was engaged in providing knowledge process outsourcing services and further that it had also returned supernormal profits.

38. In our view, even Vishal could not be considered as a comparable, as admittedly, its business model was completely different. Admittedly, Vishal's expenditure on employment cost during the relevant period was a small fraction of the proportionate cost incurred by the assessee, apparently, for the reason that most of its work was outsourced too the vendors/service providers. The Dispute

Resolution Panel and the Tribunal erred in brushing aside this vital difference by observing that outsourcing was common in ITeS industry and the same would not have a bearing on profitability. Plainly, a business model where services are rendered by employing own employees and using one's own infrastructure would have a different cost structure as compared to a business model where services are outsourced. There was no material for the Tribunal to conclude that the outsourcing of services by Vishal would have no bearing on the profitability of the said entity."

8.3 Respectfully following the decision of the Hon'ble High Court and co-ordinate benches of Tribunal, we hold that Vishal Information Technologies cannot be considered as a comparable with the assessee-company. Hence, we direct the AO/TPO to exclude this company from the list of comparables for the purpose of bench marking the international transactions with its AE."

Thus it is clear that the cost of this company is only 0.9% of the revenue which shows that this company is outsourcing its major portion of business. This fact has not been controverted by the revenue. Therefore following the earlier decisions of this Tribunal, we direct the

Assessing Officer to exclude this company form the set of comparables.”

21. Thus, M/s Vishal Information Technology was not to be included as comparable as it is KPO and its business model was materially different from the assessee.

22. However, it is the case of the assessee, as mentioned in TP study under section 92 E before the TPO that M/s Vishal Information Technology is ITES company and is materially similar to that of Assessee on the parameters laid down under Rule 10B(2)(a-d). Therefore, the assessee has included the said company as comparable while filing its TP study. For that purpose paragraph 1.4 of show cause notice issued by the TPO at page 331 of the paper book postulates as under:-

“1.4 The following comparables were found acceptable out of the 22 comparables originally considered by you.

<i>SN</i>	<i>Name of the firm</i>

1	<i>Allsec Technologies Ltd.,</i>
2	<i>Saffron Global Ltd.</i>
3	<i>Vishal Information Tech. Ltd.,</i>
4	<i>Cosmic Global Ltd.,</i>
5	<i>Ultramarine & Pigments Ltd.,</i>

23. The TPO dealt with the objection raised by the assessee during the proceedings in the following manner:

“Vishal Information Technologies Ltd. The company is a 100% export oriented service provider. Your contention that the India company has a stake in the company will result in influencing the pricing decision is not understandable by any means of imagination. You have not given any proof regarding the company having any related party transactions as such, hence the company has been retained as a comparable. Your contention is a mere assumption.”

24. In view of the above facts and circumstances , we deem it appropriate to remand the matter back to the TPO/AO with a direction to decide this issue afresh after giving liberty to the assessee to furnish the record to prove that data entry charges and vendor payments are not related to cost of employees and further prove that its prices were influenced by Indian company.

RPT filter

25. Since the CIT(A) has rejected the comparable companies by applying 0% RPT filter as well as by applying the other criteria which are not acceptable to the revenue, as this Tribunal in series of decisions have held that the tolerance range of RPT in normal circumstances is 15% and in extreme circumstances it can be extended up to 25%. Therefore, respectfully following the judgment of the coordinate bench in the case of M/s Thomson Reuters India Services Pvt. Ltd., (Supra) we modify the impugned order of the CIT(A) on the issue of related party filter at 15% instead of 0%

offered by the CIT(A) and the relevant portion of the order extracted below:

“15. Since the CIT (Appeals) has rejected the comparable companies by applying 0% RPT filter as well as other criteria which are not acceptable to the revenue as this Tribunal in a series of decisions have held that the tolerance range of RPT in normal circumstances is 15% and in extreme circumstances it can be relaxed up to 25%. Since in the case of the assessee there is nothing to suggest that sufficient comparable companies are not available therefore, we are of the view that the tolerance range of RPT at 15% is considered to be proper and reasonable as held by the coordinate bench of this Tribunal vide order dt.25.5.2016 in the case of ITO Vs. Net Devices India Pvt. Ltd. in IT(TP)A No.1099/Bang/2011 in para 7.3 as under:

“7.3 We have considered the rival submissions as well as the relevant material on record. At

the outset we note that in strict sense, the ALP has to be determined by considering uncontrolled comparable prices which means unrelated comparable prices has to be taken into account to bench mark the international transactions which are the control and RPTs. However, 0% RPTs of the comparable price is an impossible situation and therefore a reasonable tolerance range of the revenue from RPT can be considered for selecting the uncontrolled comparables. There cannot be a single criteria I parameter which can be applied as a general rule in all cases. Therefore, this tolerance range varies from case to case and depending upon the availability of the comparables. If the comparables of international transactions are easily available, then, this tolerance of RPT should be restricted to minimum. There is no specified tolerance range in the Act or Rules under the Transfer Pricing provisions, however, in due course of discussion and adjudication of this issue in a series of decisions of this Tribunal,

commonly accepted tolerance range of 5% to 25% of the total revenue from RPT has been considered as reasonable depending upon the facts and circumstances of each case. In the case on hand, the availability of the comparables is abundant in number as the TPO selected 17 comparables by applying the filter of 25% of revenue from related parties. Therefore, in this case, good number of comparables are available and there is no difficulty in searching the comparables. Accordingly, in order to determine the ALP by considering the comparable uncontrolled transactions, it should be kept in mind that the uncontrolled transactions should be least influenced by the RPT in the case of DCIT Vs. Textron Global Technology Centre Pvt. Ltd. in IT(TP)A No. 291Bang12012 & C.O.No: 401Bang12012Ot.20.3.2015 for the Assessment Year 2005-06 the Tribunal has held in para 17 as under :-

17. In view of the conclusion above that exclusion of comparable companies

with RPT of less than zero percent is not valid, and that companies where RPT is less than 15% alone can be considered, then the comparable rejected by the CIT (Appeals) on the basis of the said filter will have to be included along with the four comparable retained by the CIT (Appeals). Although 12 comparable which were rejected on the basis of RPT being more than zero percent, one comparable viz., Four Soft Ltd, will have to be excluded since the RPT is at 19.89% and thus in excess of 15%. Sathyam Computers Ltd. And Infosys Technologies Ltd. will get excluded for the reason that the financial results are not reliable in the case of Sathyam Computers Ltd. and for the reason that the high turnover, brand value, high risks etc. The remaining 9 comparable companies which were excluded by the CIT (Appeals) by applying the RPT filter of 0% related party transaction will not have to be included. Their comparability with the assessee in terms of other filters will be discussed in the following paragraphs.

We further note that in the assessee's own case for the Assessment Year 2006-07, the Tribunal has taken a similar view has been taken in assessee's own case for the Assessment Year 2006-07 in para 14 asunder:

14. Further, as regards Mega Soft Ltd., Aztec Software Ltd., and Geometric Software Ltd. (segment) are concerned, it is stated by the learned counsel for the assessee that RPT of these companies is 17.08%, 17.78% and 19.34% respectively. He stated that this Tribunal, in a number of cases has been holding that if the RPT are more than 15%, then such comparable companies have to be excluded from the final list of comparables. In support of this contention also, the learned counsel for the assessee has placed reliance upon the decision of the co-ordinate bench of the Tribunal in the case of M/s. A rib a Technologies India Pvt. Ltd.

In view of the facts and circumstances of the case when there is good number of comparables available then, we concur with the view of the co-ordinate bench that the RPT filter of 15% is proper in the case of the assessee. Accordingly we direct the Assessing Officer TPO to exclude the comparable companies having the revenue of more than 15% from related parties. The learned Authorised Representative of the assessee has referred Annexure A to TPO order which mentions the percentage of RPTs. Thus as per the Annexure A of the TPO's order, the following companies having more than 15% of RPT are directed to be excluded.

<i>Sl.No.</i>	<i>Comparable Company Name</i>	<i>% of RPT Over</i>
<i>1.</i>	<i>Aztech S</i>	<i>19.34</i>
<i>2.</i>	<i>Geometric Software Lintied</i>	<i>19.34</i>

3.	<i>Megasoft Limited</i>	17.08
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The order of the CIT (Appeals) stands modified on this issue. Accordingly, we modify the impugned order of the CIT (Appeals) on the issue of applying the Related Party filter at 15% instead of 25% applied by the TPO and 0% offered by CIT (Appeals).

26. As we have modified the RPT filter to 15% instead of 0% by the CIT(A) and 25% by the TPO, therefore, new comparables which were rejected by the CIT(A) will now be available/applicable for the comparing and for arriving at the ALP of the assessee. Therefore, we remand the matter to the TPO/AO for re-calculation. It may be pointed out that though in respect of Wipro BPO Solution Ltd, the CO has not been filed by the assessee to support the order passed by the CIT(A). Therefore, we deem it appropriate to direct the learned TPO/AO to consider the turnover filter while rejecting the comparables and also more particularly Wipro BPO Solution Ltd., as

it was pointed out by the learned AR that the turnover of the Wipro is 18 times more than that of the assessee. It is of the consistent view that the turnover is within the range of 1/10th of the turnover or up to 10 times, then the comparable is considered to be good comparable. However, if the comparable turnover is more than 10 times, it is held not to be an appropriate or a good comparable. The learned TPO will keep the consistent view of the Tribunal while applying RPT filter of 15% as well as simultaneously consider the turnover filter in the light of the consistent view of the Tribunal as stated herein above. To the above extent, the Revenue's appeal are allowed.

27. The Revenue has raised exclusion of telecommunication charges and travel expenses from the export turnover as well as total turnover while computing the deduction u/s 10A of the Act. The case of the Revenue is that the same should be excluded from the export turnover but should not be excluded from total turnover.

28. At the outset, we note that this issue of exclusion of the expenses incurred in foreign exchange from the export turnover as well as from the total turnover is settled by the judgment of Hon'ble Jurisdictional High Court in the case of Tata Elxsi, 349 ITR 98 where in the Hon'ble High Court has held in para 17 and 18 as under :

“17. 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. Section 10A is a beneficial section. It is intended to provide incentives to promote exports. The incentive is to exempt profits relatable 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 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 10A, 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. 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 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. 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 10A, would be as under:

$$\begin{array}{l} \text{Profits of the business} \quad \text{Export turnover} \\ \text{Of the undertaking} \quad x, \frac{\text{-----}}{(\text{Export turnover} + \text{domestic turnover})} \end{array}$$

Total turnover

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 section 80HHC in interpreting section 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.”

29. Thus, the Hon'ble Karnataka High Court that the total turnover is sum total of export turnover and domestic turnover and, therefore, if an amount is excluded from export turnover, the total turnover is also reduced by the same amount as a consequence of deduction from export turnover. In this view of the matter, we direct the AO to exclude the above expenses from total turnover as well while computing the deduction u/s 10A of IT Act.

30. Respectfully following the judgment of Hon'ble Jurisdictional High Court, we dismiss this ground of the Revenue.

31. In the result, the appeal of the assessee as well as the Revenue are partly allowed for statistical purposes.

Order pronounced in the open court on **28th April, 2017.**

Sd/-
(S JAYARAMAN)
ACCOUNTANT MEMBER

Sd/-
(LALIET KUMAR)
JUDICIAL MEMBER

Bangalore
Dated : 28/04/2017

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.