

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER
AND SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

ITA No.604/Bang/2015
Assessment year : 2010-11

SLK Software Services Pvt. Ltd., No.563/564, Niran Arcade, New BEL Road, Sanjay Nagar, Bangalore – 560 047. PAN: AA ECS 7548E	Vs.	The Deputy Commissioner of Income Tax, Circle 6(1)(1) [formerly 12(3)], Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri K.R. Vasudevan, Advocate
Respondent by	:	Shri Sunil Kumar Agarwal, Jt. CIT(DR)

Date of hearing	:	30.07.2015
Date of Pronouncement	:	07.08.2015

ORDER

Per N.V. Vasudevan, Judicial Member

This appeal by the assessee is against the order dated 25.8.2014 of the CIT(Appeals)-III, Bangalore relating to assessment year 2010-11.

2. Ground No.1 raised by the assessee reads as follows:-

“1. Claim of foreign tax credit — Rs. 21,32,548

1.1. The learned Commissioner of Income-tax (Appeals) [“CIT(A)”] has erred in not granting the claim of foreign tax credit amounting to Rs.2,132,548.”

3. The assessee is a company. It provides software development services to its customers. It is a Software Technology Park of India (STPI) unit entitled to claim deduction u/s.10A of the Act. It filed the original return of income on 28.9.2010 declaring a total income of Rs 2,386,058/-for the AY 2010-11. Subsequently, a revised return was filed on 29.03.2012 for the purpose of claiming Foreign Tax Credit (‘FTC’) of Rs.21,32,548. The assessee was liable to pay taxes as per the provisions of Minimum Alternate Tax (MAT).

4. The Assessing Officer did not allow the claim of assessee for grant of FTC of Rs.21,32,548. However, during the assessment proceedings, the assessee inadvertently submitted that it missed claiming the credit for such taxes in its return of income as FTC. It was also submitted that as the time limit for filing the revised return had expired on 31 March 2012, it is submitting the revised statement of income and taxes requesting the credit for such foreign taxes paid.

5. The AO without considering the revised return of income passed the assessment order based on the revised statement of income and taxes filed by the assessee and did not grant credit for foreign taxes paid.

6. On appeal before the CIT(Appeals), the same facts were reiterated as was submitted before the AO. The CIT(A) did not grant the claim for foreign taxes on the ground that the same is not claimed in return of income. The assessee submitted the fact of not claiming credit for foreign taxes based on ITR-V (acknowledgement of filing the return of income), which does not disclose credit for foreign taxes separately. The assessee now on perusal of the Income-tax return (ITR-6), submitted that it had claimed the credit for foreign taxes in the revised return. It was therefore submitted that it is eligible to claim credit for foreign taxes as the same was claimed in the revised return of income.

7. The Id. DR submitted that the matter requires verification by the AO.

8. We have considered the rival submissions. From a perusal of the annexures filed by the assessee along with the written submissions for A.Y. 2010-11, it is observed that the assessee had electronically filed its return on 28.9.2010. In the said return, in col. No.10, no tax relief u/s. 90 or 91 has been claimed. The assessee filed a revised return on 29.3.2012 electronically. In Col. 10 of this return, the assessee had claimed relief u/s. 90 of Rs.21,32,548. The return has been filed by the assessee within the time contemplated u/s. 139(1) of the Act. Neither the AO nor the

CIT(Appeals) considered the claim of assessee in the revised return of income filed. We are therefore of the view that the claim of assessee for FTC has been made in the return of income and had been omitted to be considered by the AO and CIT(Appeals). We therefore deem it fit and proper to set aside the order of the CIT(Appeals) on this issue and remand the same to the Assessing Officer for fresh consideration in the light of our observations hereinabove. Ground No.1 is accordingly allowed.

9. Ground No.2 is with regard to levy of interest u/s. 234C of the Act. It is the plea of the assessee that levy of interest u/s. 234C is on the returned income and not on the assessed income. The provisions of section 234C are as follows:-

“ Interest for deferment of advance tax.

234C. (1) Where in any financial year,—

(a) the company which is liable to pay advance tax under section 208 has failed to pay such tax or —

(i) the advance tax paid by the company on its current income on or before the 15th day of June is less than fifteen per cent of the tax due on the returned income or the amount of such advance tax paid on or before the 15th day of September is less than forty-five per cent of the tax due on the returned income or the amount of such advance tax paid on or before the 15th day of December is less than seventy-five per cent of the tax due on the returned income, then, the company shall be liable to pay simple interest at the rate of one per cent per month for a period of three months on the amount of the shortfall from fifteen per cent or forty-five per cent or seventy-five per cent, as the case may be, of the tax due on the returned income;

(ii) the advance tax paid by the company on its current income on or before the 15th day of March is less than the tax due on the returned income, then, the company shall be liable to pay simple interest at the rate of one per cent on the amount of the shortfall from the tax due on the returned income.”

10. From a plain reading of the provisions of section 234C, it is clear that levy of interest u/s. 234C of the Act is on the returned income. We therefore direct the AO to levy interest on the returned income. This ground of appeal is accordingly allowed.

11. Ground No.3 raised by the assessee is with regard to charging of interest u/s. 234D of the Act, which is consequential and AO is directed to give consequential relief.

12. In the result, the appeal by the assessee is partly allowed.

Pronounced in the open court on this 7th day of August, 2015.

Sd/-

(ABRAHAM P. GEORGE)
Accountant Member

Sd/-

(N.V. VASUDEVAN)
Judicial Member

Bangalore,
Dated, the 7th August, 2015.

/D S/

Copy to:

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

By order

Assistant Registrar /
Senior Private Secretary
ITAT, Bangalore.