

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

**BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER
AND
SHRI VIJAY PAL RAO, JUDICIAL MEMBER**

**ITA No.405 (Bang) 2014
(Assessment year : 2008-09)**

The Income Tax Officer,
Nrupathunga Road, Rashthrohana Bahavan,
Bangalore

Appellant

Vs

M/s Wrench Solutions Pvt. Ltd.
No.76, Facile Towers, Victoria Road,
Bangalore

PAN No.AABCC1544P

Respondent

And

**ITA No.458(Bang)/2014
(Assessment year : 2008-09)
(By Assessee)**

**Revenue by : Shri AR V. Sreenivsan, JCIT
Assessee by : Shri D.S.Vivek, CA**

**Date of hearing : 19-04-2017
Date of pronouncement : -04-2017**

ORDER

PER SHRI A.K.GARODIA, AM

These are cross appeals filed by the assessee and the revenue and these are directed against the order of the ld. CIT(A)-I, Bangalore dated 29-11-2013 for assessment year 2008-09.

2. The grounds raised by the assessee in its appeal are as under;

“1. The ld. CIT(A) has erred by upholding the order of the AO, DCIT 12(2) which is bad in law.

2. The ld. CIT(A) has erred in reducing a portion of the Wrench Product development from the operating cost of the Bangalore Unit by misinterpreting the submissions made by the assessee without properly examining whether any such cost was actually incurred at the Bangalore Unit and has apportioned the same based on the ratio of turnover of the 2 units.

3. The ld. CIT(A) erred in not considering the responses filed by the appellant where in it was detailed and elaborated on the nature of business done at respective units and the details of the wrench Development cost being exclusively incurred for export market.

4. The ld. CIT(A) has mis-interpreted the submissions of the assessee by considering only the remuneration paid to the Director and not the salary expenses attributable to the unit as a whole, charged on the actual basis to the Bangalore Unit.

5. The CIT(A) has erred in understanding the fact that the domestic unit is mainly engaged in providing AMC services to the Domestic Customers only and sells the old products domestic customers by wrong examination of the purchase orders submitted.

6. The appellant reserves the right to add additional grounds to, or elaborate on the above grounds during the appeal hearing as long as it is in relation to the above subject matter under dispute”.

3. The grounds raised by the revenue in its appeal are as under;

“1. The order of the ld. CIT(A) is opposed to law and facts of the case.

2. On the facts and in the circumstances of the case the ld. CIT(A) erred in law and in directing the AO to exclude the

expenditure incurred in foreign currency both from the export turnover as well as from total turnover for the purpose of computation of deduction u/s 10AA, without appreciating the fact that the statute allows exclusion of such 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() 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(SA) in so far as it relates to the above grounds may be reversed and that of the AO may be restored.

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

4. Regarding the appeal of the revenue, ld. DR of the revenue supported the assessment order whereas the ld. AR of the assessee supported the order of the ld. CIT(A). He also submitted that this issue is squarely covered in favour of the assessee by the judgment of the Hon'ble High Court of Karnataka rendered in the case of M/s Tata Elxsi Ltd as reported in 349 ITR 98.

5. We have considered the rival submissions. We find that for the purpose of computing deduction allowable to the assessee u/s 10A of the IT Act, 1961, the AO excluded the expenditure incurred in foreign currency from the export turnover whereas this is the direction of the ld CIT(A), to the AO that these expenses should also be excluded from the total turnover. As per the judgment of the Hon'ble Karnataka High Court rendered in the case of M/s Tata Elxsi Ltd., (Supra), it is

held that the total turnover is sum total of export turnover and domestic turnover and therefore, if an amount is reduced from the export turnover then the total turnover also goes down by the same amount automatically. Since, the direction of the ld. CIT(A) is in line with this judgment of the Hon'ble Karnataka High Court, we decline to interfere with the order of the ld. CIT(A) on this issue.

6. In the result, the appeal of the revenue is dismissed.

7. Regarding the assessee's appeal, it was submitted by the ld. AR of the assessee that ground no.1 is general. Regarding ground no.2 & 3, it was submitted by the ld. AR of the assessee that the expenses incurred by the assessee on Wrench product development should be allowed as deduction from the profit of Cochin unit and Bangalore unit on actual basis as has been claimed by the assessee instead of apportionment of this expenses in the ratio of turnover of these two units as has been done by the AO. Various arguments were made by the ld. AR of the assessee but in reply to a query raised by the Bench as to whether the assessee has been able to establish the direct nexus of the expenses claimed for Bangalore unit with the revenue shown for Bangalore unit, it was submitted by the ld. AR of the assessee that no such direct nexus was asked to be established by the authorities below and therefore, this exercise was not done and the relevant facts are not readily available. In view of these facts, we feel it proper to restore this matter to the file of AO for a fresh decision with the direction that the assessee should establish the nexus between the expenses in respect of Wrench product development claimed by the assessee for Bangalore unit with the revenue shown in that unit and if the assessee is able to establish the nexus of entire such

expenses claimed for Bangalore unit with revenue shown in Bangalore unit then the entire such expenses claimed in Bangalore unit should be allowed in computing the income of Bangalore unit without apportioning any part thereof to Cochin unit but if the assessee is not able to establish such nexus of entire such expenses then the apportionment made by the AO of such expenses in the ratio of turnover of these two units should be accepted. We order accordingly. Ground No.2 & 3 are allowed for statistical purposes.

8. Regarding ground no.4, it was submitted by the ld. AR of the assessee that it is noted by the ld. CIT(A) in para-4.5 of his order that this was the submissions of the ld. AR of the assessee before him that if the AO has apportioned an amount of Rs.13,47,270/- to the Bangalore unit then he should allow deduction of that expenses in that unit u/s 35 of the IT Act, 1961 because it is an expense incurred for scientific research allowable u/s 35(1)(iv) of the IT Act even if it is of capital nature. He submitted that this issue has been decided by the ld. CIT(A) against the assessee on this basis that the assessee has never claimed this expenses as R&D expenses and therefore, the order of the ld. CIT(A) on this issue is not justified. At this juncture, a query was raised by the Bench that as per the provisions of sec.35(1)(iv) of the IT Act, deduction is allowable in respect of expenditure of capital nature on scientific research and therefore, the assessee has to first establish that this expenses are incurred on scientific research. The Bench asked the ld. AR of the assessee to point out the evidence in this regard. In reply, the ld. AR of the assessee draw our attention to pages 19-23 of the paper book and pointed out that on these pages is the details of employees with their names, designation, educational qualification and prior work experience and from the

same, it can be seen that all these persons are technically qualified persons and therefore, it has to be accepted that the assessee has carried out scientific research and the expenses claimed are for scientific research. Further observation was made by the Bench that merely by employing technical persons, it cannot be said that the assessee has actually carried out scientific research unless it is established that in fact, scientific research was carried out by the assessee. In reply, no further evidence could be pointed out by the ld. AR of the assessee to establish this aspect that in fact, scientific research was carried out by the assessee. In view of this factual position, we find no merit in this claim of the assessee that deduction of this amount should be allowed u/s 35(1)(iv) of the Act, 1961. Accordingly, ground no.4 is rejected.

9. Regarding ground no. 5 & 6, it was submitted by the ld. AR of the assessee that these grounds are general in nature,

10. In the result, the appeal of the assessee is partly allowed for statistical purposes.

11. In the combined result, the appeal of the revenue is dismissed and the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on the date mentioned on the caption page.

(VIJAY PAL RAO)
JUDICIAL MEMBER

Place: Bangalore:

D a t e d : .04.2017

am*

(A.K. GARODIA)
ACCOUNTANT MEMBER

Copy to :

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

By order, AR, ITAT, Bangalore

1. श्रुतलेख की तारीख.....
DATE OF DICTATION.....
2. तारीख, जिस पर टाइप किया हुआ मसौदे, संबंधित सदस्य के सामने रखा गया है
DATE ON WHICH TYPED DRAFT IS PLACED BEFORE THE DICTATING MEMBER.....
3. तारीख जिस पर अनुमोदित मसौदे व. निजी सचिव/निजी सचिव के पास वापस आए
DATE ON WHICH THE APPROVED DRAFT COMES TO THE PS/Sr.PS.....
4. घोषणा के लिए आदेश संबंधित सदस्य के सामने रखने की तिथि
DATE ON WHICH THE ORDER IS PLACED BEFORE THE DICTATING MEMBER FOR PRONOUNCEMENT.....
5. आदेश नि.सचिव/व.नि.सचिव के पास वापस आने की तिथि
DATE ON WHICH THE ORDER COMES BACK TO THE PS/Sr.PS.....
- 6 आदेश अपलोड करने की तिथि
DATE OF UPLOADING THE ORDER ON WEBSITE.....
7. अगर अपलोड नहीं किया तो, उसका कारण
IF NOT UPLOADED, FURNISH THE REASON FOR DOING SO.....
8. बेंच लिपिक के पास फाइल जाने की तिथि
DATE ON WHICH THE FILE GOES TO THE BENCH CLERK.....
9. आदेश ज़ेरोक्स/पृष्ठांकन के लिए भेजने की तिथि
DATE ON WHICH ORDER GOES FOR XEROX & ENDORSEMENT.....
10. फाइल मुख्य लिपिक के पास जाने की तिथि
DATE ON WHICH THE FILE GOES TO THE HEAD CLERK.....
11. आदेश पर हस्ताक्षर के लिए फाइल सहायक रजिस्ट्रार के पास जाने की तिथि
THE DATE ON WHICH THE FILE GOES TO THE ASSISTANT REGISTRAR FOR SIGNATURE ON THE ORDER.....
12. अधिकरण आदेश के प्रेषण के लिए फाइल प्रेषण विभाग में जाने की तिथि
THE DATE ON WHICH THE FILE GOES TO DESPATCH SECTION FOR DESPATCH OF THE TRIBUNAL ORDER.....
13. आदेश की प्रेषण की तिथि
DATE OF DESPATCH OF ORDER.....