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

BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER

ITA No.1688/Bang/2017
Assessment Year : 2009-10

Robert Bosch Engineering and Business Solutions Pvt. Ltd. Hosur Road Koramangala Bangalore **PAN NO : AAACR7108R**	**Vs.**	Deputy Commissioner of Income-tax Large Tax Payers Unit Bangalore
APPELLANT		**RESPONDENT**

ITA No.1659/Bang/2017
Assessment Year : 2009-10

ACIT LTU, Circle-1 Bangalore	**Vs.**	Robert Bosch Engineering and Business Solutions Pvt. Ltd. Hosur Road Koramangala Bangalore
APPELLANT		**RESPONDENT**

Appellant by	**:**	Shri Percy Padiwala, Sr. Counsel
Respondent by	**:**	Ms. Neera Malhotra, D.R.

Date of Hearing	**:**	29.03.2021
Date of Pronouncement	**:**	28.06.2021

O R D E R

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

These cross appeals are directed against order dated 31.5.2017 passed by Ld. CIT(A)-14, Bengaluru and they relate to the assessment year 2009-10. At the time of hearing, both the parties submitted that the tax effect involved in the appeal filed by the revenue is less than Rs.50 lakhs and hence, the same is not maintainable in view of the Circular No.17/2019 dated 08-08-2019 issued by CBDT. Accordingly, we dismiss the appeal of the revenue in limine.

2. We shall now take up the appeal filed by the assessee. The grounds of appeal and additional ground raised by the assessee read as under.

1. *That the order of the Learned CIT(A) LTU is bad in law to the extent challenged herein.*

2. *Having regard to the facts, the Learned CIT(A) erred an holding that the Appellant's business is not exclusively in software development services.*

3. *Having regard to the facts, the Learned CIT(A) erred in holding that the Appellant is also involved in the business of rendering of technical services.*

4. *Without prejudice to the above, the Learned CIT(A) while coming to the conclusion that the Appellant is also involved in rendering technical services has not specifically mentioned which part of the services would constitute technical service under the Agreement.*

5. *Without prejudice the above, both the Learned CIT(A) as well as the Learned AO have erroneously stated that the Appellant has excluded foreign currency expenses from its export turnover while computing deduction under section 10A of the Income-tax Act, 1961 ['the Act'].*

6. *That the Learned CIT(A) erred in not adjudicating the Ground No.4 raised by the Appellant that expenditure in foreign currency and Telecommunication charges, when reduced from export turnover, ought to be reduced from Total Turnover as well.*

7. *That the Learned CIT(A) erred in not direct5ing the AO to grant deduction u/s 10A in respect of export proceeds realized beyond 6 months from end of previous yer as contemplated in the provisions of sec 155 (11A) of the Act.*

8. *For these and other grounds that may be urged at the time of hearing, the Appellant prays for appropriate relief.*

Additional ground:

1. *Having regard to the facts and circumstances, the appellant pleads the Hon'ble Bench to direct the A.O. to grant additional foreign tax credit of Rs.1,54,40,330/-.*

The ground No.1 to 8 raised by the assessee relate to deduction allowed u/s 10A of the Act. The additional ground relate to granting of foreign tax credit.

3. The assessee is engaged in business of development of software, dealing in automotive components, mechanical and electronic designs, translations etc. The assessment for the year under consideration was completed by the A.O. u/s 143(3) r.w.s. 144C of the Act.

4. The first issue relates to the deduction allowed u/s 10A of the Act. The assessee claimed a deduction of Rs.233.05 crores u/s 10A of the Act which consisted of claim of Rs.174.94 crores in respect of STP undertaking located at Bengaluru and Rs.58.11 crores in respect of undertaking located at Coimbatore. The A.O. noticed that the assessee has excluded 3 items, viz., communication charges, expenditure incurred in foreign currency and unrealized export proceeds from the amount of "export turnover", while computing deduction u/s 10A of the Act. The A.O. held that the same is in accordance with the provisions of section 10A of the Act. The A.O. also noticed that the assessee has reduced communication charges and expenses in foreign currency from the amount of "total turnover" also, while computing deduction u/s 10A of the Act. The A.O. took the view that the same is not permissible under the provisions of

section 10A of the Act. In this regard, he also took support of the decision rendered by Chennai bench of Tribunal in the case of California Software Company Ltd. (118 TTJ 844). Accordingly, he did not allow deduction of communication charges and expenses incurred in foreign currency from the "total turnover", while computing deduction u/s 10A of the Act.

5. The A.O. also noticed that the sale consideration to the extent of Rs.5,30,985/- has not been received in respect of Bengaluru unit. The assessee submitted that it is a holder of export house certificate and it has got time of 360 days for receiving the sale consideration. The A.O. took the view that the provisions of section 10A of the Act provide for a period of 6 months only for receiving the sale consideration. Accordingly, he held that the unrealized sale consideration of Rs.5,30,985/- is required to be excluded from the amount of "export turnover", while computing deduction u/s 10A of the Act. Accordingly, the A.O. allowed deduction of Rs183.70 crores only u/s 10A of the Act, as against the claim of Rs.233.05 crores.

6. Before Ld. CIT(A), the assessee contended that the definition of "export turnover" given in sec.10A of the Act provides for reduction of freight, telecommunication charges and insurance attributable to delivery of articles or things or computer software outside India. The said definition provides for reduction of expenses if any, incurred in foreign exchange only in respect of proceeds received on "**providing technical services outside India**". The assessee submitted that it is engaged in the business of development of software only and it did not provide any technical service outside India. Accordingly, it objected to exclusion of expenditure in foreign currency from the amount of "export turnover". We noticed that the AO did not allow exclusion of expenses from the total turnover, while computing

deduction u/s 10A, even though those expenses were reduced from "export turnover". In this regard, the assessee placed its reliance on the decision rendered by Hon'ble jurisdictional Karnataka High Court in its own case in ITA No.697 of 2009 relating to assessment year 2003-04, wherein it was held that the amount reduced from the export turnover should also be reduced from the total turnover. The assessee also placed reliance on the decision rendered by Hyderabad bench of Tribunal in the case of M/s. Patni Telecom Pvt. Ltd. Vs. ITO (2009) 308 ITR 414.

7. The Ld. CIT(A), upon examination of the service agreements, took the view that the assessee is not providing software development services alone, since the service agreement also referred to certain "technical services". Accordingly, he took the view that the services performed by the assessee other than ITS &ITes, would fall within the ambit of "technical services". Accordingly, he held that the reduction of expenditure incurred in foreign currency relatable to technical services is mandated by law. Accordingly, he directed the A.O. to segregate receipts into "software services" and "technical services" and re-compute the deduction accordingly. The assesse is aggrieved by the decision rendered so by Ld. CIT(A).

8. The ld. A.R. submitted that the assessee is providing only "software development services" and it does not provide any technical services as observed by Ld. CIT(A). The Ld. A.R. submitted that an identical issue was examined by the coordinate bench in the assessee's own case in ITA No.412/Bang/2007 dated 22.1.2014 relating to assessment year 2007-08 and the matter has been restored to the file of Ld. CIT(A) for examining this issue afresh. In assessment year 2004-05 also, the matter was restored to the file of Ld. CIT(A) with a direction to follow the decision rendered by

jurisdictional High Court in the case of Infosys Ltd. (ITA No.2972, 2973, 2974 & 3015/2015 dated 13.2.2013), wherein it was held that the expenditure in foreign currency need not be excluded from export proceeds realised on export of computer software. The Ld. A.R. further submitted that the amount deducted from export turnover is also required to be deducted from the total turnover, while computing deduction u/s 10A of the Act as per the decisions rendered by Hon'ble Karnataka High Court as well as Hon'ble Supreme Court.

9. The Ld. D.R., on the contrary, supported the order passed by Ld. CIT(A).

10. We heard the parties on this issue and perused the record. We notice that the issue whether the expenditure incurred in foreign currency is required to be excluded from the export turnover or not when the assessee is exporting only software, was examined by the coordinate bench in the assessee's own case in assessment year 2007-08 and the matter was restored to the file of the Ld. CIT(A) with the following observations:

> *"16. We have considered the rival submissions. It is clear from the decision of the Hyderabad Bench of the ITAT that to exclude expenses incurred in foreign currency from the export turnover, the assessee should have obtained the benefit of section 10A on income from rendering technical services outside India. The admitted factual position in the present case is that the assessee is in the business of exporting computer software and therefore the expenses incurred in foreign exchange cannot be said to be one incurred by the assessee in connection with providing technical services outside India. The assessee does not claim exclusion of telecommunication charges or insurance attributable to the delivery of software outside India. The claim for exclusion from the*

export turnover is made by the assessee only in respect of expenses incurred in foreign currency in providing technical services outside India. We however do not have the break-up of the item of expenditure incurred in foreign currency outside India. A copy of the agreement between the Assessee and Robert Bosch, Germany titled software project agreement (SPA) has been filed before us. We do not know as to whether the entire export turnover is in relation to this client alone or there were other clients for whom the Assessee rendered computer software development services. A perusal of the SPA filed before us shows that the Assessee agreed to carry out software development work for Robert Bosch Germany at Germany also. The terms of the agreement for rendering services on-site at clauses-5.2 to 5.2.6 of the agreement does not involve rendering of any technical services. The question as to whether the entire expenditure incurred in foreign exchange outside India relates to providing technical services outside India cannot be decided in the absence of the required information as stated above. If the claim of the Assessee that the entire expenditure incurred in foreign exchange outside India does not relate to providing technical services outside India, then the same cannot be excluded from the export turnover. Since the factual verification is required for adjudicating the aforesaid issue, we deem it appropriate to set aside the order of the CIT(A) and remand the issue to him with a direction to decide the issue with regard to Gr.No.2 and 3 raised by the Assessee before him. We accordingly allow the appeal of the assessee for statistical purpose."

11. In assessment year 2004-05 also, the coordinate bench restored the issue to the file of the Ld. CIT(A) for examining this issue in the light of decision rendered by Hon'ble jurisdictional High Court in the case of Infosys Ltd. (supra). Consistent with the view taken in the above said two years in the assessee's own case, we set aside the

order passed by Ld. CIT(A) on this issue and restore the same to his file for examining it afresh on similar lines.

12. The next issue is whether the amount deducted from export turnover is also required to be deducted from total turnover or not. Since this issue is related to computation of deduction u/s 10A, this issue also restored to the file of the Ld. CIT(A) with the direction to follow the decision rendered by Hon'ble Karnataka High Court in the case of Tata Elixi Ltd., and also decision rendered by Hon'ble Supreme Court in the case of HCL Technologies Ltd.

13. The next issue relates to deduction of unrealized amount of Rs.5,30,985/- from the export proceeds, while computing deduction u/s 10A of the Act, on the ground that the same has not been realised within a period of 6 months. In this regard, the Ld. A.R. invited our attention to Master Circular No.9/2008-09 dated 1st July, 2008 issued by RBI. The Ld. A.R. submitted that the RBI has granted "general permission" to realize the export proceeds within a period of 12 months from the date of export on or after 1st September, 2004. We notice that the Ld. CIT(A) has not adjudicated this aspect. Accordingly, we restore this issue also to his file for examining the same afresh by considering the circular issued by RBI.

14. The Additional ground raised by the assessee relate to claim of foreign tax credit of Rs.1.54 crores. Since this is a legal ground and all facts are available on record, we admit the same. Since this issue requires examination at the end of AO, we restore this issue to the file of the A.O. for examining the claim of the assessee in accordance with law.

15. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes and the appeal of the revenue is dismissed.

Order pronounced in the open court on 28th June, 2021

Sd/-	**Sd/-**
(George George K.)	**(B.R. Baskaran)**
Judicial Member	**Accountant Member**

Bangalore,
Dated 28th June, 2021.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.