

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "H", MUMBAI**

**BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.4462/M/2016
Assessment Year: 2008-09**

M/s. Tech Mahindra R&D Services Ltd. (Now merged with Tech Mahindra Ltd.), Gateway Building, Apollo Bunderm Mumbai- 400 001 PAN: AABCA4342H	Vs.	Dy. Commissioner of Income Tax 2(3)(1), Aayakar Bhavan, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Karthik Natarajan, A.R.
Revenue by : Shri M V. Rajguru, D.R.

Date of Hearing : 06.03.2018
Date of Pronouncement : 15.05.2018

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 27.04.2016 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2008-09.

2. The assessee has raised the following grounds of appeal:

“The CIT(A) erred in holding that Commissioner of Income Tax - 2 (CIT) has decided the ground relating to proportionate unbilled revenue and sub-contract charges vis-à-vis exemption under section 10A against the appellant. The CIT set aside the assessment order on the above issue to be decided after undertaking appropriate inquiries.

2. The CIT(A) confirming the action of AO in excluding the proportionate unbilled revenue of Rs.4,55,86,705 from the export turnover, while computing deduction under section 10A.

3. The CIT(A) erred in confirming the action of the AO in excluding proportionate revenue of Rs.11,45,75,769 earned from onsite work sub-contracted to its Associated Enterprise (AE) while computing deduction under section 10A.

3. Ground No.1 is connected to ground No.2 & 3 and they all are adjudicated in the ensuing paras together.

4. The issue raised in ground No.2 is against the confirmation of exclusion of proportionate unbilled revenue of Rs.4,55,86,705/- from the export turnover by Ld. CIT(A) while computing deduction under section 10A as made by the AO.

5. The assessee filed the return of income declaring total loss of Rs.8,50,23,793/- after claiming deduction under section 10A of the Act to the extent of Rs.7,05,06,499/-. The assessment was originally completed under section 143(3) read with section 144C of the Act on 24.01.2012 determining the taxable income at Rs.4,28,30,420/- by restricting the deduction under section 10A to Rs.4,45,32,957/-. The assessment was set aside by the Ld. CIT(A) by exercising revisionary jurisdiction under section 263 of the Act. Now this is the appeal before us against the order of Ld. CIT(A) passed in the set aside proceedings. The assessment was completed in this case vide order dated 30.03.2015 passed under section 143(3) read with section 263 of the Act assessing the total income of Rs.6,94,00,943/-. During the course of assessment proceedings, the AO, after examination of the balance sheet, observed that sundry debtors include debtors on account of

unbilled revenue to the tune of Rs.4,55,86,705/-. According to the AO, since the said amount was not realised the same cannot be considered for claiming under section 10A of the Act by excluding from the export turnover and the same was excluded from the export turnover and deduction u/s 10A was reduced proportionately.

6. In the appellate proceedings, the Ld. CIT(A) affirmed the order of AO by not giving any detailed finding.

7. The Ld. A.R. vehemently submitted before us that the Ld. CIT(A) has erred in law and on facts in upholding the order of AO by ignoring the fact that unbilled revenue represented the work done by the assessee which could not be billed till the year end pending completion of certain milestones and thus the unbilled revenue is billed in the subsequent year as per the contract conditions. The Ld. A.R. submitted that the assessee has correctly accounted for the amount of unbilled revenue as per the accounting standard 9 issued by ICAI on which provides for recognition of revenue in the books of accounts on accrual /mercantile basis. The Ld. A.R. further submitted that the said unbilled revenue was duly billed during the next year and the money was recovered within the period as stipulated by the RBI. The Ld. A.R. contended that this is the practice which is consistently followed by the assessee over the years. In defense of his arguments, the Ld. A.R. relied on a series of decisions namely M/s. iNautix Technologies India Pvt. Ltd. vs. ACIT in ITA No.541/Mds/2006 & ors. for A.Y. 2002-03 & ors. vide order dated 09.08.11 and

Patni Telecom Solutions P. Ltd. vs. ITO in ITA No.1988/Hyd/2011 for A.Y. 2007-08. The Ld. A.R. submitted that in both the cited decisions it has been held that unbilled revenue has to be included both in the total turnover as well as in the export turnover for the purpose of deduction under section 10A of the Act. The Ld. A.R. finally prayed that in view of the ratio laid down in the above cited decisions, this issue may be decided in favour of the assessee.

8. The Ld. D.R., on the other hand, heavily relied on the order of AO & Ld. CIT(A) and prayed that the same should be affirmed in view of the fact that assessee has not billed the work done and however included the same in the turnover in order to claim the higher deduction under section 10A of the Act. The Ld. D.R. requested the Bench that the order of Ld. CIT(A) be affirmed.

9. We have heard the rival submissions and perused the relevant material on record as placed before us. The assessee is engaged in the business of softwares development in Bangalore and export thereof and thus is eligible under section 10A of the Act qua those profits as are attributable to the export turnover. During the year, there is no dispute as to the development of softwares and export thereof. The dispute is as regards the work done but not billed which included by the assessee to the extent of Rs.4,55,86,705/- in the export turnover and the profit was claimed as exempt u/s 10A of the Act. According to the AO, the said unbilled revenue should be excluded from the export turnover for the purpose of

computing the deduction under section 10A of the Act which was also affirmed by the Ld. CIT(A). Now the issue before us is whether the unbilled revenue has to be included in the export turnover for the purpose of calculation of deduction under section 10A. The said unbilled revenue represented the work done but not billed by the assessee till the year end due to non completion of certain milestones. We also find that the assessee has duly accounted for the said work done following the revenue recognition as per the accounting standard 9 issued by ICAI. Moreover, the assessee is consistently following the practice of revenue recognition of unbilled revenue in its business which is accepted by the revenue in the past. The case of the assessee is also squarely covered by the decision of co-ordinate bench of the Tribunal in the case of M/s. iNautix Technologies India Pvt. Ltd. vs. ACIT (supra) wherein a similar issue has been decided that the amount of unbilled revenue should be included in the export turnover and also in the total turnover for the purpose of calculating deduction u/s 10A of the Act. In another case, in the case of Patni Telecom Solutions P. Ltd. vs. ITO (supra) the co-ordinate bench of the Tribunal has held as under:

9.1. We also find that the assessee in this case has included unbilled revenues in its total turnover in its annual accounts. So to claim otherwise, while computing deduction under [section 10A](#) of the Act in our view is not correct. Under these circumstances, the correct position would be to include this unbilled amount, both in total turnover as well as in export turnover. The assessee has specifically submitted that unbilled turnover was subsequently billed and substantial amount has been realised in the immediately subsequent year, within the statutory period permitted for claim of exemption under [section 10A](#) of the Act. All the details were filed both before the Assessing Officer and the Ld. CIT(A). Both these authorities ignored these submissions. Assessing Officer as well as the CIT(A) should have considered these details and granted relief on the amount of foreign exchange realised by the assessee within the stipulated period as per law. Any how, we do

not direct the Assessing Officer to do so in view of our finding in the next paragraphs.

9.2. One other aspect in this case is that the assessee for all the previous assessment years and in the succeeding assessment years, has consistently followed a method of computation of deduction under [section 10A](#) wherein unbilled turnover was deducted both from export turnover and total turnover. We once again repeat the observation that, in the case of this assessee, the export turnover is equal to the total turnover. The assessee has been claiming deduction under [section 10A](#) on this basis and the Revenue has been allowing the same, by accepting the claim of the assessee. Though the Ld. D.R. submitted that there is no res judicata in tax proceedings, for the sake of consistency and to avoid chain reaction in future assessment years, and as the tax rates for all the years are same and as the assessee has claimed deduction under [section 10A](#) on this year unbilled revenues in the next assessment year and as the revenue has accepted this claim, we are of the opinion that the unbilled revenues have to be eliminated from the total turnover as well as the export turnover in this year and the deduction under [section 10A](#) be computed. We direct the Assessing Officer accordingly. Hence, we allow this ground of the assessee.”

10. In view of the ratio laid down by the co-ordinate benches of the Tribunal under the identical facts, we are inclined to set aside the order of Ld. CIT(A) and direct the AO to include the unbilled revenue in the export turnover for the purpose of arriving at the deduction under section 10A of the Act.

11. The issue raised in ground No.3 is against the confirmation of the action of AO in excluding the proportionate revenue of Rs.11,45,75,769/- earned from onsite work sub-contracted to its associated enterprise while computing under section 10A of the Act.

12. The brief facts are that the Pr. CIT in the order passed under section 263 of the Act directed to AO to frame the assessment denovo on the issue of sub contracting activities as he found that the assessee is entitled to deduction u/s 10A in respect of profit from manufacture or production of article or thing or computer software and export of the same and not

in respect of sub-contracting manufacturing activities. The assessee has sub-contracted some of its activities for which sub-contractor charges of Rs. 11,45,75,769/- were paid. In the set aside proceedings the AO observed that assessee has sub contracted some of his activities which does not amount to production or manufacture and therefore not eligible for deduction under section 10A of the Act on the said proportionate amount and reduced the same from export turnover to the extent of Rs. 11,45,75,769/-.

13. In the appellate proceedings, the Ld CIT(A) dismissed the appeal of the assessee after considering the submissions of the assessee by observing and holding as under:

"5.2 I have carefully considered the facts of the case and submission made by the Ld. AR. I have also gone through the order of Ld. CIT-2, Mumbai. He has decided the issue against the assessee at para 5 of his order by holding as follows: "with regard to sub-contracting, deduction is eligible to an assessee for production or manufacture of articles or things or computer software and hence the deduction is not eligible." As stated by Ld. AR, the appellant has not filed any appeal against the order of Ld. CIT-2, Mumbai. Hence, the exclusion by AO of the proportionate revenue from onsite work sub-contracted by the appellant is correct and is accordingly confirmed. The ground is dismissed."

14. At the outset, the Ld. Counsel for the assessee submitted that the issue is covered in favour of the assessee by the decision of Hon'ble Karnataka High Court in the case of CIT vs. M/s. Mphasis Software and Service India Pvt. Ltd in Income Tax Appeals No. 263-264/2014 dated 29.07.2015 in which it has been held that income earned by the assessee through onsite work subcontracted through AEs on behalf of the assessee would be eligible for deduction under section 10A of the Act. The Ld. A.R. submitted that in view of the ratio laid

down by the Hon'ble Karnataka High Court, the issue was decided in favour of the assessee.

15. Per contra, the Ld. D.R. relied on the order of the authorities below.

16. We have heard the rival submissions and perused the material on record. We find that in this case the dispute is regarding the profit which was earned by the assessee on sub-contracting operation to its AEs onsite for the purpose of development of software. According to the AO the said profit which is attributable to the execution of work through AEs cannot be treated for the purpose of deduction under section 10A. The Ld. CIT(A) upheld the view of the AO on the ground that the assessee has not preferred any appeal against the order of Pr. CIT passed under section 263 of the Act. In our opinion the order of CIT(A) merely dismissing the issue against the assessee on the ground that order of CIT is not challenged. In the present case the case of the assessee is squarely covered by the decision of the Hon'ble Karnataka High Court in the case of CIT vs. M/s. Mphasis Software and Service India Pvt. Ltd. (supra) wherein it has been held that profit is attributable to onsite work of development of software through sub-contracting of certain operation to AEs is part of the net profit for the purpose of claiming deduction under section 10A. We, therefore, respectfully following the ratio laid down by the Hon'ble Karnataka High Court, set aside the order of Ld. CIT(A) and direct the AO to allow the deduction in respect of sub-contracting amount of Rs.11,45,75,769/-.

17. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 15.05.2018.

Sd/-
(C.N. Prasad)
JUDICIAL MEMBER

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Mumbai, Dated: 15.05.2018.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.