

IT/ILT: Claim of deduction under section 10A on basis of suo motu TP adjustments was allowable

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[2018] 93 taxmann.com 154 (Delhi - Trib.)

IN THE ITAT DELHI BENCH 'C'

Assistant Commissioner of Income-tax, Circle-12 (1), New Delhi

v.

GS Engineering & Construction India (P.) Ltd.*

H.S. SIDHU, JUDICIAL MEMBER
AND PRASHANT MAHARISHI, ACCOUNTANT MEMBER
IT APPEAL NO. 3956 (DELHI) OF 2014
[ASSESSMENT YEAR 2009-10]
APRIL 5, 2018

Section [92C](#), read with section [10A](#), of the Income-tax Act, 1961 - Transfer pricing - Computation of arm's length price (Comparables and adjustment/Adjustment - General) - Assessment year 2009-10 - Whether where assessee himself had computed arm's length price and had disclosed income on basis of arm's length price and there was no enhancement of income due to determination of arm's length price, assessee was entitled to deduction under section 10A in respect of income declared in return of income on basis of computation of ALP - Held, yes [Para 6] [In favour of assessee]

CASE REVIEW

iGate Global Solutions Ltd. v. Asstt. CIT [\[2008\] 24 SOT 3 \(URO\) \(Bang.\)](#) (para 6) followed.

CASES REFERRED TO

iGate Global Solutions Ltd. v. Asstt. CIT [\[2008\] 24 SOT 3 \(URO\) \(Bang.\)](#) (para 3), *Approva Systems (P.) Ltd. v. Dy. CIT* [\[2018\] 92 taxmann.com 82 \(Pune - Trib.\)](#) (para 5) and *CIT v. iGate Global Solutions Ltd.* [\[2013\] 31 taxmann.com 88/216 Taxman 11 \(Mag.\)/354 ITR 1 \(Kar.\)](#) (para 5).

B.R. Mishra, Sr. DR *for the Appellant*. **G.C. Srivastava**, Adv., **Daksh Bhardwaj**, Adv. and **Suvinay K. Dash**, Adv. *for the Respondent*.

ORDER

H.S. Sidhu, Judicial Member - The Revenue has filed this Appeal against the impugned Order dated 29.4.2014 of the Ld. CIT (A)-XX, New Delhi relevant to assessment year 2009-10.

2. The grounds raised in this Appeal read as under:—

1. On the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in allowing the claim of deduction u/s. 10A amounting to Rs. 4,32,49,245/-.
2. On the facts and circumstances of the case and in law, the Ld. CIT (A) has failed to appreciate the fact that the amount of RP adjustment of Rs.

10,75,80,929/- is not the sale proceed of any export.

3. The appellant craves leave, to add, alter or amend any ground of appeal raised above at the time of the hearing.

3. The brief facts of the case are that the assessee filed its return of income on 30.9.2009 for the AY 2009-10 declaring income Rs. 2,90,47,940/-. The case of the assessee was selected for scrutiny and notice u/s. 143(2) of the Income Tax Act, 1961 (hereinafter referred as the Act) was issued on 30.8.2009. Again notice u/s. 143(2) of the Act alongwith questionnaire u/s. 142(1) of the Act was issued on 14.2.2011. In response to the notices, the A.R. of the assessee appeared from time to time and filed requisite details. The assessee is engaged in the business of engineering and constructions activities. During the course of hearing the AR of the Assessee produced books of accounts. The assessee has claimed that it is operating an undertaking and the profit of which is eligible for deduction under section 10A of the Income Tax Act, 1961. A perusal of computation of allowable deduction u/s. 10A furnished by the assessee shows that the assessee has taken Transfer Pricing adjustment of Rs. 10,75,80,929/- for the purpose of deduction u/s. 10A at Rs. 4,32,49,245/-. The assessee has net loss of Rs. 4,51,77,842/- of the undertaking. After Transfer Pricing adjustment of Rs. 10,75,80,929/- such losses were converted into business income of Rs. 6,24,03,087/-. AO vide his questionnaire has asked the assessee to explain as to why Transfer Pricing adjustment Rs. 10,75,80,929/- should not be excluded from the profit of the undertaking while computing deduction u/s. 10A of the Act. In response thereto, it was submitted that the assessee has added voluntary Transfer Pricing adjustment of Rs. 10,75,80,929/- in the total turnover; however, the same has not been included in the export turnover. Thus, it is evident that the assessee has not claimed any deduction u/s. 10A in respect of the above mentioned Transfer Pricing adjustment. AO noted that as per section 92C sub- section 4, it is clearly given that where no deduction u/s. 10A or section 10AA or section 10B or under Chapter VI-A shall be allowed in respect of the amount of income which the total income of the assessee is enhanced after computation of the income under this sub section. The above mentioned Transfer Pricing adjustment is done by the assessee in order to compute Arm's Length Price. AO further noted that the above adjustment was not recorded in the financial statement/Profit & Loss account of the assessee. The assessee has also not considered the above mentioned adjustment while computing book profit u/s. 115JB. It is evident that the Transfer Pricing addition was made in order to claim deduction u/s. 10A on the value which is not a part of any export activity. Even if the above mentioned adjustment would have not been done by the assessee in such case Transfer Pricing Officer must have increase the transactions value in order to compute Arm's Length Price u/s. 92CA. Accordingly, AO observed that it is very clear that deduction u/s. 10A will not be available on such Transfer Pricing adjustment. AO further observed that the motive behind the provision of deduction u/s. 10A is to encourage incoming of foreign exchange on account of export of goods and services. Accordingly, for allowance of deduction u/s. 10A, the basic condition is that the sale proceeds of articles or things or computer software exported out of India should be received in, or brought into, India by the assessee inconvertible foreign exchange, within a period of 6 months from the end of the previous year or, within such further period as the competent authority may allow in this behalf. But in instance case, the assessee has claimed deduction u/s. 10A of the Act against the adjustment amount on account of Transfer Pricing. AO further observed that there is no actual foreign invert remittance against the underlying Transfer Pricing adjustment. In its reply the assessee has failed to explain and justify as to why the above adjustment should be included in the profit of the undertaking for the purpose of deduction u/s. 10A of the Act. However, there is no direct nexus between the export business of the assessee and Transfer Pricing adjustment. Moreover, the amount of adjustment as worked out by the assessee itself has not been routed through Profit & Loss account and not forming part of the book profit of the assessee. The assessee also could not explain as to why the above adjustment has not been considered for calculating Book Profit for Minimum Alternative Tax u/s. 115JB. From the above discussion, it is established that the assessee, by no means, is eligible for deduction u/s. 10A against the amount of adjustment on account of Transfer Pricing which has been carried out of the financial

statement of the assessee and taken directly to the computation of income. Hence, the whole amount of Transfer Pricing adjustment i.e. Rs. 10,75,80,929/- was treated as forming part of taxable income of the assessee and accordingly, addition of Rs. 10,75,80,929/- was made and income of the assessee was assessed at Rs. 7,22,97,190/- u/s. 143(3) of the Act vide order dated 15.03.2013. Against the aforesaid assessment order, assessee appealed before the Ld. CIT (A)-XX, New Delhi, who vide his impugned order dated 29.4.2014 has partly allowed the appeal and directed the AO to allow the claim for deduction of Rs. 4,32,49,245/- u/s. 10A by respectfully follow the decision of the ITAT, Bangalore in the case of *iGate Global Solutions Ltd. v. Asstt. CIT* [\[2008\] 24 SOT 3 \(URO\) \(Bang.\)](#) Aggrieved with the order of the Ld. CIT (A), the Revenue is in appeal before the Tribunal.

4. Ld. DR relied upon the Order of the AO and reiterated the contentions raised in the grounds of appeal.

5. On the contrary, Ld. Counsel of the assessee has relied upon the order of the Ld. CIT (A) and stated he has passed a well reasoned order which does not need any interference. He also filed the copy of the ITAT, 'B' Bench Pune decision dated 12.03.2018 in the case of *Approva Systems (P.) Ltd. v. Dy. CIT* [\[2018\] 92 taxmann.com 82 \(Pune - Trib.\)](#) wherein on similar facts and by respectfully following the ITAT, Bangalore in the case of *iGate Global Solutions Ltd. (supra)* and Hon'ble High Court of Karnataka decision in the case of *CIT v. iGate Global Solutions Ltd.* [\[2013\] 31 taxmann.com 88/216 Taxman 11 \(Mag.\)/354 ITR 1](#) the claim for deduction u/s. 10A of the Act in respect of suo-moto TP adjustment made by the assessee, was allowed.

6. We have heard both the parties and perused the relevant records, especially the impugned order. We find that the assessee has clarified that (i) it does not have any business other than the unit which is eligible for exemption u/s. 10A, (ii) the voluntary TP adjustment has been made in respect of international transaction involving export of engineering design services and (iii) the voluntary TP adjustment has been made through a disclosure in Form 3CEB and is not an ad-hoc addition in the income tax return. The assessee has excluded voluntary TP adjustment from 'export turnover' in line with the computation mechanism prescribed in section 10A. The TPO has not made any adjustment in his order dated 10/09/2012 passed u/s. 92CA(3). The assessee has explained that the proviso to section 92C(4) is not applicable in its case as the assessee has on its own determined its total income in the return of income having regard to the arm's length price. The assessee has relied on the decision of the ITAT, 'B' Bench Pune decision dated 12.03.2018 in the case of *Approva Systems Pvt. Ltd. (supra)* wherein on similar facts and by respectfully following the ITAT, Bangalore in the case of *iGate Global Solutions Ltd. (supra)* and Hon'ble High Court of Karnataka decision in the case of *iGate Global Solutions Ltd. (supra)*, the claim for deduction u/s. 10A of the Act in respect of suo-moto TP adjustment made by the assessee, was allowed. It was also noted that ITAT Bangalore in the case of *iGate Global Solutions Ltd. (supra)* has held that "From the Memo Explaining the Provisions of Finance Bill, 2006 as well as from the literal meaning of the word 'enhanced', it is clear that if income increased, as a result of computation of arm's length price, then such increase is not to be considered for deduction under section 10A. In the instant case, the assessee himself has computed the arm's length prices and has disclosed the income on the basis of arm's length prices. It is not a case, where there is an enhancement of income due to determination of arm's length price. Hence, it was rightly held that assessee was entitled to deduction under section 10A in respect of income declared in the return of income on the basis of computation of arm's length price. We are of the considered view that the facts in the present case are exactly similar to the facts as in the case of *iGate Global Solutions Ltd. (supra)*. Therefore, the Ld. CIT (A) respectfully following the decision of the ITAT Bangalore in the case of *iGate Global Solutions Ltd. (supra)*, has held that the assessee is eligible for deduction u/s. 10A in respect of income declared in the return of income on the basis of computation of arm's length price. Accordingly, he directed the A.O. to allow the claim for deduction of Rs. 4,32,49,245/- u/s. 10A in the instant case, which does not need any interference on our part, hence, we uphold the action of the Ld. CIT (A) and reject the grounds raised by

the Revenue.

7. In the result, the appeal filed by the Revenue stands dismissed.

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*In favour of assessee.