

IN THE HIGH COURT OF KARNATAKA AT
BENGALURU

DATED THIS THE 15TH DAY OF FEBRUARY 2016

PRESENT

THE HON'BLE MR.JUSTICE JAYANT PATEL

AND

THE HON'BLE MRS.JUSTICE S SUJATHA

**ITA No.386/2015 c/w ITA Nos.387/2015 &
388/2015**

IN ITA No.386/2015:

BETWEEN:

1. Commissioner of Income Tax,
C.R.Buildings,
Queens Road,
Bangalore – 560001.

2. Assistant Commissioner of
Income, Circle – 12(4),
Bangalore.

....Appellants

(By Sri E.I.Sanmathi, Adv)

AND:

M/s.Tata elxsi Ltd
ITPB Road,Hoody,
Whitefield .Road,
Bangalore

PAN: AAAT7472Q

...Respondent

(By Sri K.K.Chythanya, Adv)

IN ITA NO.387/2015:

BETWEEN:

1. Commissioner of Income Tax,
C.R.Buildings,
Queens Road,
Bangalore – 560001.

2. Assistant Commissioner of
Income, Circle – 12(2),
Bangalore.

...Appellants

(By Sri E.I.Sanmathi, Adv)

AND:

M/s.Tata elxsi Ltd
ITPB Road,
Hoody,
Whitefield Road,
Bangalore
PAN: AAAT7472Q

...Respondent

(By Sri.K.K.Chythanya, Adv)

IN ITA NO.388/2015:

BETWEEN:

1. Commissioner of Income Tax,
C.R.Buildings,
Queens Road,
Bangalore – 560001.

2. Assistant Commissioner of
Income, Circle – 12(2),
Bangalore.

...Appellants

(By Sri E.I.Sanmathi, Adv)

AND:

M/s.Tata elxsi Ltd
ITPB Road,
Hoody,
Whitefield Road,
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PAN: AAAT7472Q

...Respondent

(By Sri.K.K.Chythanya, Adv)

These ITAs are filed Under Section 260-A of I.T.Act, 1961 arising out of Order dated 20.03.2015 passed in ITA No.386/2015 ITA No.398/Bang/2012, for the Assessment year 2006-2007, in ITA No.387/2015 ITA No.1074/Bang/2012, for the Assessment year 2007-2008 and in ITA No.388/2015 ITA No.1410/Bang/2012, for the Assessment Year 2008-2009. Praying that this Hon'ble Court may be pleased to:

- a) Decide the foregoing question of law and / or such other questions of law as may be formulated by the Hon'ble Court as deemed fit.
- b) Set aside the appellate order dated: 20/03/2015 passed by the ITAT, 'B' Bench, Bangalore, in appeal proceedings No.ITA No.398/Bang/2012 for Assessment Year 2006-2007 in ITA No.386/2015, ITA No.1074/Bang/2012 for Assessment Year 2007-2008 in ITA No.387/2015 and ITA No.1410/Bang/2012 for Assessment Year 2008-2009 in ITA No.388/2015, as sought for in this appeal and to grant such other relief as deemed fit, in the interest of justice.

These Appeals coming on for admission this day,
JAYANT PATEL J., delivered the following:

JUDGMENT

In all appeals, more than one questions are raised but learned counsel appearing for the appellant has pressed only one question in all appeals which reads as under:

“1. Whether on facts and in the circumstances of the case, the Tribunal is right in law in directing the assessing authority not to exclude the expenses incurred in foreign currency from export turnover for the purpose of computation of deduction under Section 10A of the act in the case of the assessee against the provisions of the Act and when the development of and creation of software program's outside India in accordance with the requirements of the clients abroad, interacting and studying the need of the clients and advising them accordingly involves rendering of technical services outside India?

2. The second question/other questions are not pressed.

3. We have heard Mr.Sanmathi, learned counsel appearing for Revenue in all the appeals and Mr.K.K.Chaithanya has appeared for assesseees and he has prayed that the permission may be granted to him to file vakalathnama. Permission is granted.

4. Upon hearing the learned counsel appearing for both the sides, we find that the appeals need not be retained any further since the question raised in the present appeals are covered by the decision of this Court in ITA No.660/08 in case of Commissioner of Income Tax vs. Tata Elxsi Ltd., decided on 16th September 2014. We may record that, in the decision of this Court referred above, it was observed thus:

“This appeal is preferred by the Revenue challenging the order passed by the Tribunal, holding that the per diem allowance cannot be reduced from the export turnover for the purpose of computing deduction under Section 80HHE of the Income Tax Act, 1961,

as the same was not spent for providing technical services.

2. The appeal was admitted on 17.06.2010, to consider the following substantial questions of law:

“1. Whether the Tribunal was correct in reversing the finding of the Assessing Officer and the Appellate Commissioner that per diem (amount paid to employees in foreign exchange) expenditure of Rs.3,81,64,086/- incurred in foreign currency is to be deducted from the export turnover for the purpose of computing deduction u/s.10A of the Act?

2. Whether the Tribunal was correct in taking into consideration Explanation 2 (iv) of Section 10A of the Act which clearly contemplated that such expenditure was liable to be deducted from the export turnover for the purpose of computing deduction U/s.10A of the Act?”

3. This Court had an occasion to consider the said questions of law in the case

of **Commissioner of Income Tax And Another Vs. MICO in ITA No.1172/2006**, wherein the said substantial questions of law was answered in favour of the assessee and against the revenue. Therefore, we find no merit in this appeal. Accordingly, the appeal is dismissed.”

5. When the question raised is already covered by the above referred decision of this Court, we do not find that the appeals deserve to be entertained on the ground that substantial questions of law would arise for consideration. However, the learned counsel appearing for the appellant-revenue contended that the Department has carried the matter before the Apex Court against the decision of this Court in case of Commissioner of IT vs. Tata Elxsi Ltd., in SLPs pending before the Apex Court. He submitted that, therefore this Court may clarify that the effect may be given after the Apex Court decides SLP against the above referred decision of this Court in case of Tata Elxsi Ltd., Whereas, the learned counsel for the assessee

submitted that as such, the effect of the decision of this Court may not be deferred till the Apex Court decides the matter. However, he submitted in the event Revenue succeeds in the proceedings before the Apex Court against the decision of this Court in Tata Elxsi Ltd., the consequential order may be passed by the Assessing Officer.

6. In our considered view as such when the issue is already covered by the decision of this Court, the effect to be given by the Assessing Officer cannot be deferred but at the same time, if the Apex Court ultimately holds in favour of Revenue, then liberty should be reserved to the Assessing Officer to pass further order on the basis of the decision of the Apex Court.

7. Under the circumstances, we find that following order deserves to be passed:

(1) As the issue is already covered by the decision of this Court in case of Tata Elxsi Ltd., supra, no substantial questions of law would arise for consideration as sought to be canvassed. Hence, appeals do not deserve to be entertained. The Assessing Officer shall give effect to the order of this Court with the clarification that in the event that the Apex Court takes a different view in SLP against the decision of this Court in case of Tata Elxsi Ltd., the Assessing Officer shall be at liberty to pass further consequential order based on the decision of the Apex Court.

Order accordingly. All the appeals are disposed of accordingly.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

Sk/-