IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 10TH DAY OF JULY 2012

PRESENT

THE HON'BLE MR.JUSTICE D.V.SHYLENDRA KUMAR

AND

THE HON'BLE MR. JUSTICE B.MANOHAR

ITA No.826/2007 c/w ITA No.827/2007

ITA.NO.826/2007

BETWEEN:

M/S.AZTEE SOFTWARE & TECHNOLOGY
SERVICES LIMITED,
NO.23, 3RD 'A' CROSS,
18TH MAIN, 6TH BLOCK,
KORAMANGALA,
BANGALORE – 560 068. ...APPELLANT

(BY SMT.S.R.ANURADHA, ADVOCATE)

AND:

THE ASSISTANT COMMISSIONER OF INCOME TAX
CIRCLE 11(1), 5TH FLOOR,
BANGALORE. ...RESPONDENT

(BY SRI.M.V.SESHACHALA, ADVOCATE)

ITA FILED U/S.260-A OF I.T.ACT, 1961 ARISING OUT OF ORDER DATED 12-07-2007 PASSED IN ITA.NO.584/Bang/2006 FOR THE ASSESSMENT YEAR 2002-2003, PRAYING TO FORMULALTE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN AND ALLOW THE APPEAL AND SET ASIDE THE ORDER DATED 12-07-2007 OF ITAT, SPECIAL BENCH, BANGALORE IN ITA.NO.584/B/2006 AND CONFIRM THE ORDER OF THE CIT(A) ON THE ISSUES RAISED IN THE INTEREST OF JUSTICE AND EQUITY.

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(BY SRI.M.V.SESHACHALA, ADVOCATE)

ITA FILED U/S.260-A OF I.T.ACT, 1961 ARISING OUT OF ORDER DATED 12-07-2007 PASSED IN ITA.NO.585/Bang/2006 FOR THE ASSESSMENT YEAR 2002-2003, PRAYING TO FORMULALTE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN AND ALLOW THE APPEAL AND SET ASIDE THE ORDER DATED 12-07-2007 OF ITAT, SPECIAL BENCH, BANGALORE IN ITA.NO.585/B/2006 AND CONFIRM THE ORDER OF THE CIT(A) ON THE ISSUES RAISED IN THE INTEREST OF JUSTICE AND EQUITY.

THESE APPEALS COMING ON FOR HEARING THIS DAY, SHYLENDRA KUMAR J., DELIVERED THE FOLLOWING:

JUDGMENT

RE:: I T A NO. 826/2007

This appeal by the assessee under Section 260-A of the Income Tax Act, 1961 is against the order of the Tribunal dated 12-07-2007 in I T A No.584/Bang/2006.

2. The assessee is a company engaged in the business of development and export of software. The assessment year is 2002-03.

3. The appeal had been admitted on 21-10-2008 but without reference to any questions of law and the matter had been directed to be listed for final hearing.

4. The respondent is served and represented by Sri.M.V.Seshachala, learned Standing Counsel.

5. Appearing on behalf of the appellant-assessee, Smt.S.R.Anuradha, learned counsel submits that there are some subsequent developments which had taken place subsequent to the filing of the appeal, the company in question has got merged with another company and therefore, the successor company may have to come on record. For such reason, she seeks a short accommodation.

6. On the other hand, Sri.Seshachala, learned counsel has drawn our attention to paragraph 170 of the order of the Tribunal reading as under:

"In the light of above discussion, we set aside the impugned order of the Commissioner of Income Tax (Appeals) and restore the matter to the file of the Assessing officer who may again refer the question of determination of Arm's Length price to the Transfer Pricing Officer. In our view, Transfer Pricing Officer should use his power and first call upon the taxpayer to furnish ALP and all material and information which he is obliged to maintain under Rule 10D of the Income Tax Rules. It would be appropriate to consider and make suitable adjustments in the Arm's Length price determined by the taxpayer and on the basis of information furnished by him or otherwise available with revenue authorities. By this, we do not mean to suggest that Transfer Pricing Officer cannot determine ALP on some method other than furnished by the Taxpayer. However, as we have discussed above, any changes in the most appropriate method of computing the arms length price is to be dealt with by way of a speaking order. T.P.O. is also at liberty to collect independent relevant information of comparable uncontrolled transactions. Let the revenue authorities determine fresh ALP in the light of above observation and in accordance with the regulations. Be that as it may a fair and reasonable Arm's Length Price should be determined as enjoined by the directions of the Board to its officer. With the above hopeful observation, we remand the matter back to the file of the Assessing Officer."

7. We notice that in this appeal, the assessee has raised as many as 30 substantial questions of law. In our considered opinion, it is not really necessary to consider any of these questions, as in the first instance, the order of the Tribunal is not at all adverse to the interest of the appellant but is one to set aside the order passed by the Lower Appellate Authority and remanding the matter. We notice that all questions are left open, for redetermination by the Lower Appellate Authority.

8. In a matter which is remanded for a re-examination, no question of law arises for examination by the High Court in an appeal under Section 260-A of the Act, unless any part of the remand order suffers from a patent illegality or is an order perverse in nature, and is left to the Lower Appellate Authority to redetermine.

9. in this view of the matter, we do not propose to examine this appeal on merits any further but dismiss

the appeal without expressing any opinion on any of the aspects and leaving it open to the assessee to urge all such contentions as are available to the assessee before the authority to which the matter is remanded.

RE:: I T A No.827/2006

10. This appeal by the very assessee as above in respect of the assessment year 2002-03, insofar as it relates to partially allowing the appeal of the revenue before the Tribunal in ITA No.585/Bang/2006 and both appeals having disposed of by the common order.

11. The order of CIT(Appeals) having been set aside the matter is remanded. Even the order passed in the appeal of the revenue also being to the same effect and for the reasons indicated above, we do not propose to examine this appeal also on merits but dispose of the

appeal as indicated above while dismissing ITA No.826/2007.

12. This appeal is also dismissed for the very reason.

Sd/-
JUDGE

Sd/-
JUDGE

mpk/-*