

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF NOVEMBER 2020

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE H.T.NARENDRA PRASAD

I.T.A. NO.544 OF 2013

BETWEEN:

1. THE COMMISSIONER OF INCOME-TAX
C.R. BUILDING, QUEENS ROAD
BANGALORE.
2. THE ASST. COMMISSIONER OF INCOME-TAX
CIRCLE-11(5), RASHTROTHANA BHAVAN
NRUPATHUNGA ROAD, BANGALORE.

... APPELLANTS

(BY SRI. K.V. ARAVIND, ADV.,)

AND:

M/S. NTT DATA GLOBAL ADVISORY
SERVICES PVT. LTD.,
GLOBAL VILLAGE TECH PARK
TOWER-E, 9TH FLOOR
MYLASANDRA, PATTANAGERE VILLAGE
RVCE POST, BANGALORE-560058
(AMENDED AS PER COURT ORDER DATED 12.11.2020)

... RESPONDENT

(BY SRI. CHYTHANYA K.K. ADV.)

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THIS ITA IS FILED UNDER SECTION 260-A OF I.T. ACT,
1961 ARISING OUT OF ORDER DATED 21.06.2013 PASSED IN ITA
NO.1182/BANG/2011 FOR THE ASSESSMENT YEAR 2007-08,
PRAYING TO:

(I) FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE.

(II) ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT, BANGALORE IN ITA NO.1182/BANG/2011 DATED 21-06-2013 AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE-11(5), BANGALORE.

THIS ITA COMING ON FOR HEARING, THIS DAY, **ALOK ARADHE J.**, DELIVERED THE FOLLOWING:

JUDGMENT

This appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the Act for short) has been preferred by the revenue. The subject matter of the appeal pertains to the Assessment year 2007-08. The appeal was admitted by a bench of this Court vide order dated 21.03.2014 on the following substantial question of law:

(i) Whether the Tribunal on the facts and circumstances of the case and in law was correct in holding that, the assessee's activity of human resources services are IT enabled services, when the assessee was only making available the data base of qualified IT personnel and entitled to

deduction u/s. 10A of the Act and recorded a perverse finding?

(ii) Whether the Tribunal on the facts and circumstances of the case and in law was correct in holding that the assessee's activity of human resources services are IT enabled services, when the assessee was only making available the data base of qualified IT personnel and entitled to deduction under Section 10A of the Act and recorded a perverse finding?

2. The factual background, in which the aforesaid substantial questions of law arise for consideration in this appeal needs mention. The assessee is a private limited company and is in the business of software development and professional services. During the Assessment Year 2007-08, the assessee had 6 separate units, each in Bangalore and Chennai. The assessee filed the return of income for the Assessment Year 2007-08 on 31.10.2007 and claimed deduction under Section 10A of the Act only in respect of

five units viz., unit Nos.2 to 6 to the extent of Rs.1,24,77,99,092/- and reflected the income after the deduction at Rs.29,30,45,240/-. The Assessing Officer by an order dated 24.12.2010 re-computed the deduction under Section 10A of the Act by reducing the recruitment fee from the export turnover. The assessee thereupon filed an appeal before the Commissioner of Income Tax (Appeals) who by an order dated 24.10.2011 affirmed the order passed by the Assessing Officer and held that income from human resource services is not eligible for deduction under Section 10A of the Act and accepted the alternative plea to tax only net income from the business of manpower supply.

3. The assessee thereupon approached the Income Tax Appellate Tribunal (hereinafter referred to as 'the tribunal' for short). The tribunal by an order dated 25.05.2012 by placing reliance on **'COMMISSIONER OF INCOME TAX AND ANR. VS. M/S TATA ELXSI LTD AND ANR.'**, **I.T.A.NO.386, 387**

& 388/2015 DECIDED ON 15.02.2016 held that income reduced from export turnover has to be reduced from total turnover. The assessee thereupon preferred an appeal under Section 254(2) of the Act seeking rectification of the mistake. The tribunal by an order dated 01.03.2013 held that the finding recorded by the tribunal in the previous order is erroneous and the same requires re-adjudication. Therefore, the order dated 25.05.2012 was recalled. Thereafter, the tribunal by an order dated 21.06.2013 *inter alia* held that transmitting the data of qualified Information Technology personnel is human resource services and Information Technology enabled services. Accordingly, the appeal preferred by the assessee was allowed and the appeal preferred by the revenue was dismissed as infructuous. In the aforesaid factual background, this appeal has been filed.

4. Learned counsel for the revenue submitted that the assessee is not engaged in human resource services and is engaged only in the business of

placement which is akin to a commission agent and therefore, the benefit of deduction under Section 10A of the Act cannot be granted to the assessee. It is urged that mere compilation of information of certain candidates in computers does not amount to Information Technology enabled services and in the prevalent circumstances, mere use of computer cannot be held to be Information Technology enabled service. It is also submitted that the nature of activity carried on by the assessee is clear from the reply submitted by the assessee before the Assessing Officer as well as Commissioner of Income Tax (Appeals) and the tribunal and from the stand taken by the assessee before the authorities, it is evident that the assessee is not entitled to deduction under Section 10A of the Act. It is also urged that tribunal has erred in relying on the decision rendered by the Chennai Bench of the Tribunal in ***ITO VS. ACCURUM INDIA PVT. LTD.***

5. It is also argued that Delhi High Court in **'COMMISSIONER OF INCOME-TAX-II, NEW DELHI VS. ML OUTSOURCING SERVICES (P.) LTD.'**, 271 **CTR 553 (DELHI)** has clearly laid down as to what constitutes 'Human Resource Services' and the activity undertaken by the assessee does not fall within the aforesaid expression interpreted by the Delhi High Court and in view of law laid down by Delhi High Court, the activity of the assessee cannot be treated as human resource services. It is also urged that tribunal recorded a finding of fact for the first time that the assessee engaged in the training and recruitment, which was not even the case of the assessee, which is evident from the reply submitted by the assessee before the Assessing Officer as well as the Commissioner of Income Tax (Appeals). It is also urged that the order requires reconsideration in view of law laid down by Supreme Court in **ML OUTSOURCING SERVICES (P.) LTD. supra**. It is also pointed out that the assessee during the course

of hearing submitted that it is imparting training to its own employees also. Therefore, possibility of training expenses referred to by the tribunal may have been incurred by the assessee for training its own employees. It is also pointed out that factual analysis as to whether training has been imparted to the persons mentioned in the list, which was shared with the other companies is required. Lastly, it was urged that the fact whether or not the assessee had incurred expenses for training of its own employees or for the employees of other companies requires factual determination.

6. On the other hand, learned counsel for the assessee submitted that assessee itself is a software company and has been given the benefit of computation of deduction under Section 10A of the Act. It is further submitted that human resource services extended by the assessee are entitled to deduction even without training. In this connection, learned counsel for the assessee has invited the attention of this court to Notification dated

26.09.2000 issued by Central Board of Direct Taxes (CBDT) in exercise of powers under Explanation 2 of Section 10A clause (b) of item (i) of Explanation 2 of Section 10B and clause (b) of Explanation to Section 80HHE of the Act, which includes human resource services. Learned counsel for the assessee has also invited our attention to dictionary meaning of expression 'human resources' and has also referred to Circular No.772 dated 23.12.1998. In support of aforesaid submissions, reliance has been placed on decision of Delhi High Court in '**COMMISSIONER OF INCOME-TAX-II, NEW DELHI VS. M/S M.L.OUTSOURCING P. LTD.**', IN ITA NO.1255/2011 DATED 03.09.2014, '**COMMISSIONER OF INCOME-TAX-VIII VS. M/S KIRAN KAPOOR**', (2015) 57 TAXMANN.COM 39 (DELHI) and in the case of '**COMMISSIONER OF INCOME TAX-14 VS. MALHAR INFORMATION SERVICES**', 351 ITR 119 (BOM).

7. We have considered the submissions made by learned counsel for the parties and have perused the record. Section 10A of the Act deals with special provision in respect of newly established undertaking in Free Trade Zone (FTZ) and provides for deduction. The relevant extract of Section 10A reads as under:

10A. (1) Subject to the provisions of this section, a deduction of such profits and gains as are derived by an undertaking from the export of articles or things or computer software for a period of 10 consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce such articles or things or computer software, as the case may be, shall be allowed from the total income of the appellant :

Xxxxxx

(2) This section applies to any undertaking which fulfils all the following conditions, namely :—

(i) it has begun or begins to manufacture or produce articles or things or computer software during the previous year relevant to the assessment year--

(a) commencing on or after the 1st day of April, 1981, in any free trade zone; or

(b) commencing on or after the 1st day of April, 1994, in any electronic hardware technology park, or, as the case may be, software technology park;

(c) xxxx

Explanation 2 to Section 10A

"Computer software means-

(a) Any computer programme recorded on any disc, tape, perforated media or other information storage device; or

(b) Any customized electronic data or any product or service of a similar nature, as may be notified by the Board."

8. The aforesaid provision applies to an undertaking which begins to manufacture or produce such articles or things or computer software for a period

of 10 consecutive years beginning from Assessment Year in which undertaking begins to manufacture or produce such articles or things or computer software. The expression 'computer software' has been defined in Explanation 2 to Section 10A and provides that the same means even any customized electronic data or any product or service of a similar nature as may be notified by the Board. Thus, the Legislature has empowered the Board to notify the products or services of similar nature which would be covered under clause (b) and treated as 'customized electronic data' and also, 'any product or service of similar nature'. The Board has issued a Notification dated 26.09.2000 and the aforesaid Notification admittedly contains human resources as well as Information Technology enabled product or services. The relevant extract of the Notification, is reproduced below for the facility of reference:

In exercise of the powers conferred by clause (b) of item (i) of Explanation 2 of

section 10A, clause (b) of item (i) of Explanation 2 of section 10B and clause (b) of Explanation to section 80HHE of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby specifies the following information technology enabled products or services, as the case may be, for the purpose of said clauses, namely :—

- (i) Back-office Operations ;*
- (ii) Call Centres ;*
- (iii) Content Development or Animation ;*
- (iv) Data Processing ;*
- (v) Engineering and Design ;*
- (vi) Geographic Information System Services ;*
- (vii) Human Resources Services ;*
- (viii) Insurance Claim Processing ;*
- (ix) Legal Databases ;*
- (x) Medical Transcription ;*
- (xi) Payroll ;*
- (xii) Remote Maintenance ;*
- (xiii) Revenue Accounting ;*
- (xiv) Support Centres, and ;*
- (xv) Web-site Services.*

9. The aforesaid Notification has been issued with an object to outsourcing service industry in India as it generates employment and helps in earning Foreign Exchange. The assessee admittedly is involved in providing human resource services and from the perusal of the order passed by the Assessing Officer, it is evident that if the nature of activity of the assessee is maintenance of computerized database with regard to various types of qualified Information Technology personnel available in India and the company provides the customers with information to potential candidates, which would meet the requirements on the customers. Thus, the role of the company is to create an electronic database of qualified personnel and transmit data through electronic means to the client. The Commissioner of Income Tax (Appeals) has also found that the assessee is in the business of supply of manpower from India to its Foreign clients after their recruitment in India. Thus, irrespective of the fact

whether or not the assessee provides training to its employees or to the employees who are recruited by its clients, since, the assessee is engaged in providing human resource services, its case is squarely covered by Notification dated 26.09.2000. Therefore, the assessee is entitled to the benefit of deduction under Section 10A of the Act.

In view of preceding analysis, the substantial questions of law framed by a bench of this court answered against the revenue and in favour of the assessee. In the result, we do not find any merit in this appeal, the same fails and is hereby dismissed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**