IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI B R BASKARAN, ACCOUNTANT MEMBER

IT(TP)A No.218/Bang/2015
Assessment year: 2010-11

The Deputy Commissioner of Income Tax, Circle 3(1)(2), Bangalore.	Vs.	M/s. EYBGS India Pvt. Ltd., 3rd Floor, Tower C, RMZ Infinity, Old Madras Road, Benniganahalli, K.R. Puram Bangalore – 560 016. **PAN: AABCE 6565A**
APPELLANT		RESPONDENT

IT(TP)A No.199/Bang/2015
Assessment year: 2010-11

M/s. EYGBS (India) LLP [Earlier known as EYBGS (India) Pvt. Ltd.], Bangalore – 560 016. **PAN: AABCE 6565A**	Vs.	The Deputy Commissioner of Income Tax, Circle 3(1)(2), Bangalore.
APPELLANT		RESPONDENT

Revenue by	:	Shri Muzaffar Hussain, CIT(DR)(ITAT), Bengaluru
Assessee by	:	Shri Rajan Vora, CA

Date of hearing	:	26.02.2020
Date of Pronouncement	:	20.05.2020

O R D E R

Per B R Baskaran, Accountant Member

These cross appeals are directed against the assessment order dated 30-12-2014 passed by the assessing officer for assessment year 2010-11 u/s 143(3) r.w.s 144 of the Act in pursuance of directions given by Ld Dispute Resolution Panel (DRP).

2. The facts relating to the case are discussed in brief. The assessee is 100% subsidiary of EYGI B.V., Netherlands. It is engaged in the business of providing back office support services, which are in the nature of 'Information Technology Enabled Services' (ITES). The nature of services provided by the assessee to its Associated Enterprises (AEs) includes financial analysis and reporting functions such as standard reporting/analysis, work-in-progress details, time sheet details etc., accounting centre processing activities/functions such as accounts receivable, accounts payable functions, billing analysis and invoice preparation etc and financial assistance/administration functions such as time and expenses review, helpdesk providing assistance on employee queries etc. The assessee is remunerated at "cost plus" basis for the services provided to its AEs.

3. The assessee adopted TNMM method to benchmark its international transactions and adopted Operating Profit/Operating Cost (OP/OC) as Profit Level Indicator (PLI). The assessee made Transfer pricing adjustment of Rs.8,11,70,000/- voluntarily to its financial results. It also included foreign exchange gains as part of its operating income. Accordingly, it worked out the PLI at 28.86%. The arithmetic mean of PLI of comparable companies selected by the assessee worked out to 18.53%. Accordingly, the assessee claimed that its international transactions with the AEs are at arms length. The Transfer Pricing Officer (TPO), however,

rejected the Transfer pricing study of the assessee. By applying certain filters, the TPO selected following set of 10 comparable companies:-

Sl.No.	NAME	PLI
1	Accentia Technologies Ltd.	43.06%
2	Acropetal Technologies Ltd. (Seg.)	22.27%
3	E-Clerx Services Ltd.	55.97%
4	Fortune Infotech Ltd.	22.80%
5	ICRA Online Ltd. (Seg.)	43.39%
6	Informed Technologies India Ltd.	26.15%
7	Infosys BPO	31.23%
8	Cosmic Global Ltd.	14.97%
9	Sundaram Business Services Ltd.	- 12.31%
10	Jeevan Scientific Technology Ltd. (Seg.)	21.05%
	AVERAGE	26.86%

The average mean margin of comparable companies selected by the TPO was 26.86%. After giving credit for working capital adjustment of 0.23%, the adjusted margin was worked out by TPO at 26.63%. While computing the profit margin, the TPO did not consider foreign exchange gains as part of operating income. Accordingly, the total amount of Transfer Pricing adjustment was worked out at Rs.10,01,18,202/-. Since the assessee had voluntarily added a sum of Rs.8,11,70,000/- as voluntary Transfer Pricing Adjustment, the TPO proposed additional adjustment of Rs.1,89,48,202/-.

4. The Ld DRP directed the AO/TPO to exclude certain comparable companies. It is pertinent to note that the AO had allowed deduction u/s 10AA to the assessee. While computing deduction, the AO had excluded telecommunication expenses & foreign travel expenses from Export turnover only. The Ld DRP held that the said amount should be excluded from Total turnover also. The DRP also held that the foreign exchange gains shall form part of operating income. The Ld DRP also noticed that the assessee has claimed deduction u/s 10AA against the Voluntary Transfer Pricing adjustment of Rs.8.11 crores made by the assessee. The Ld DRP

noticed that the assessee has not furnished any details as to how the above said amount was worked out by the assessee. Further the provisions of sec.10AA also mandate that the export consideration should be brought into India in order to claim deduction u/s 10AA of the Act. The Ld DRP noticed that the assessee has claimed deduction u/s 10AA in respect of its Gurgaon Unit and the said unit has actually incurred loss. The assessee has shown profit by making voluntary Transfer pricing adjustment, referred above. Accordingly the Ld DRP held that the assessee is not eligible for deduction u/s 10AA of the Act and accordingly directed the AO to disallow the claim. The AO, accordingly, passed the final assessment order in pursuance of directions given by Ld DRP.

5. Aggrieved by the directions given by Ld DRP, both the parties are in appeal before us.

6. We shall first take up the appeal filed by the Revenue. Ground No.1,11 & 12 are general in nature. The ground no.2 & 3 relate to the direction of Ld DRP to allow deduction of telecommunication expenses and foreign travel expenses from Total turnover also while computing deduction u/s 10A/10AA of the Act. We notice that the Ld DRP has followed the binding decision rendered by the Hon'ble jurisdictional High Court in the case of Tata Elxsi Ltd (2011)(247 CTR 334)(Kar.) in giving the said direction. Since the Ld DRP has followed the decision rendered by the jurisdictional High Court in directing the AO to exclude telecommunication & foreign travel expenses both from Export turnover and Total turnover while computing deduction u/s 10A/10AA of the Act, we do not find any reason to interfere with the said direction.

7. In Ground No.4 and 5, the revenue is aggrieved in exclusion of two comparable companies, viz., M/s E-Clerx Services Ltd and M/s Acropetal Technologies Ltd.

8. With regard to M/s E-Clerx Services Ltd, the Ld DRP noticed that the functions performed by this company has been examined by the Special bench of the Tribunal in the case of M/s Maersk Global Centres (India) Private Limited vs. ACIT (ITA No.7466/Mum/2012) and the Special bench has given a finding that the above said company is mainly engaged in providing high-end services involving specialised knowledge and domain expertise in the field and hence the same cannot be compared with a company engaged in providing low end services to the group concerns. The co-ordinate bench of Tribunal has held in the case of Symphony Marketing Solutions India P Ltd (ITA No.1316/Bang/2012) that M/s E-Clerx Services Ltd is engaged in KPO (Knowledge Process Outsourcing) services. We notice that the Ld DRP has considered the assessee herein as a low end service provider and accordingly followed the above said decisions. The Ld D.R submitted that the TPO has not considered this company as engaged in providing KPO services. However, the nature of services provided this company has been examined by the Special bench as well as co-ordinate benches. Accordingly, the Ld DRP has directed the AO to exclude this company. Since the Ld DRP has followed the decisions rendered by the Special bench as well as co-ordinate benches, we do not find any reason to interfere with its decision rendered on this comparable company.

9. With regard to M/s Acropetal Technologies Ltd, the Ld D.R submitted that the Ld DRP has applied “on site filter” and “employee cost” filter for excluding this company. The Ld D.R submitted that the TPO has not applied these filters and hence the Ld DRP was not right in applying these filters. The Ld A.R, on the contrary, submitted that this company has been held to be not comparable for an ITES company by the co-ordinate bench in the case of Tesco Hindustan Service Centre P Ltd (IT(TP)A Nos. 191 & 569/Bang/2015 dated 25-01-2017). In the above said case, the co-

ordinate bench has excluded this company by following the decision rendered by another co-ordinate bench in the case of Kodiak Networks (India) P Ltd vs. DCIT (IT(TP)A No.1540/Bang/2012), wherein it was held that M/s Acropetal Technologies Ltd (seg.) is functionally different and cannot be compared with a company providing captive services. Further, in the case of Symphony Marketing Solutions India (P) Ltd (IT(TP)A No.1316/Bang/2012 dated 14.08.2013 for AY 2008-09), the co-ordinate bench has held as under:-

> "12.....As far as Acropetal Technologies Ltd is concerned, this company does the business of export of software services. It is also seen from segmental revenue of this company (Note 15 to the notes on accounts to Annual report 07-08) that it derives income from engineering design services and software development services. It is also pertinent to point out that before the TPO, the assessee raised an objection that this company performs different functions and mainly engaged in the area of software development services and engineering design services. The TPO in his order has observed that the services rendered by this company fall in the definition of ITES.
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> 13. We have considered the submissions of the learned counsel for the Assessee. On a perusal of the Note No.15 of notes to accounts which gives segmental revenue of this company, it is clear that the major source of income for this company is from providing Engineering Design Service and Information Technology Services. The functions performed by the Engineering Design Services segment of the company cannot be considered as comparable to the ITES/BPO functions performed by the Assessee. The performance of Engineering Design Services is regarded as providing high end services among the BPO which requires high skill whereas the services performed by the Assessee are routine low end ITES functions. We therefore hold that this company could not have been selected as a comparable, especially when it performs engineering design services which only a Knowledge Process Outsourcing [KPO] would do and not a Business Process Outsourcing [BPO]."

We notice that the co-ordinate benches are consistently holding that M/s Acropetal Technologies Ltd cannot be considered as a comparable company, since it performs different functions. We have also gone through the Annual report of this company placed in the paper book. In part B of Notes on accounts (Page 1025 of paper book), it is stated that the company is engaged in the development of computer software. So it appears that the nature of engineering design services provided by the above said company is in the form of development computer software and it may be in the nature of high end services. However, the assessee herein is providing low end ITES services. Accordingly, following the decision rendered by the co-ordinate benches, we hold that this company cannot be considered to be a good comparable. Accordingly we uphold the decision rendered by Ld DRP on this company.

10. Ground No.6 and 7 urged by the revenue relate to the working capital adjustment given by the TPO and modified by Ld DRP. The contention of the revenue is whether working capital adjustment could be given or not. We have earlier noticed that the TPO has granted rebate towards working capital adjustment to the tune of 0.23%. The contention of the assessee before Ld DRP was that the TPO has actually worked out the working capital adjustment at 0.64%, but granted the rebate only to the tune of 0.23%. The Ld DRP, hence, directed the TPO to correct the mistake, if any. Since the direction given by Ld DRP relates to correction of mistake only, we do not find any infirmity in the direction so given.

11. Ground No.8 and 9 urged by the revenue relate to the question as to whether the foreign exchange gain can be taken as operating income or not. The TPO was of the view that the foreign exchange gain cannot be considered as part of operating income. The Ld DRP, following the decision rendered by the co-ordinate bench in the case of SAP Labs India

(P) Ltd vs. ACIT (2011)(44 SOT 156)(bang.) held that the foreign exchange gain should be considered as part of operating income. The revenue is aggrieved.

12. We heard the parties on this issue and perused the record. We notice that the Ld DRP has followed the decision rendered by the co-ordinate bench in the case of SAP labs India (P) Ltd (supra). Identical view has also been expressed by another co-ordinate bench in the case of CISCO Systems (India) Private Ltd (IT(TP)A No.271/Bang/2014 dated 14.08.2014. Accordingly, we do not find any infirmity in the direction given by Ld DRP on this issue.

13. Ground No.10 urged by the revenue relates to the direction given by Ld DRP to apply export filter in ITES segment. The contention of the revenue is that the said direction actually amounts to setting aside the draft order and hence the same is beyond the scope of the DRP. We notice that the Ld DRP has applied the export filter on all the comparable companies and since one of the comparable companies selected by the TPO named M/s Sundaram Business Services Ltd failed this filter, the Ld DRP has directed for exclusion of the same.

14. We heard the parties and notice that the Ld DRP has applied the export filter on all the comparables and accordingly rendered its decision. Hence we are of the view that the said action will not amount to setting aside the draft order as contended by the revenue.

15. We shall now take up the appeal of the assessee. The main ground urged by the assessee relates to the rejection of claim for deduction u/s 10AA of the Act on the amount of transfer pricing adjustment voluntarily made by the assessee.

16. The additional grounds relate to the inclusion/exclusion of certain comparable companies. The Ld A.R submitted that the assessee may not press the additional grounds, if the revenue's appeal is dismissed. Since we have dismissed the appeal of the revenue in the earlier paragraphs, the additional grounds urged by the assessee are not adjudicated, as the same would be academic in nature.

17. We have noticed earlier that the assessee had made transfer pricing adjustment of Rs.8,11,70,000/- voluntarily and added the same to the total income while filing return of income. The assessee also claimed deduction u/s 10AA of the Act on the profits of business arrived at after inclusion of above said amounts. The Ld DRP took the view that the assessee did not furnish the details as to how the above said figure was arrived at by the assessee. It further took the view that the assessee will not be bringing the above said amount in foreign exchange within the period prescribed in sec.10AA of the Act, which is one of the mandatory conditions for allowing deduction under that section. The Ld DRP also noticed that the eligible unit has actually incurred loss and hence the assessee is not eligible to claim deduction u/s 10AA of the Act. However, the assessee, by making voluntary Transfer pricing adjustment, is attempting to avail deduction u/s 10AA of the Act and the same should not be permitted. The Ld DRP also held that the Transfer pricing adjustment determined by the TPO is added to the total income for tax purposes, irrespective of the profits/loss of 10A/10AA units and whether they are eligible for deduction under those sections or not. Further the Ld DRP also proceeded on the ground that the assessee did not determine the voluntary T.P adjustment in its Transfer Pricing Study. Accordingly, the Ld DRP held that the decision rendered by the co-ordinate bench in the case of I-Gate Global Solutions Ltd (2007)(112 TTJ 1002) is distinguishable. Accordingly the Ld DRP directed the AO to

disallow the deduction claimed u/s 10AA in respect of Voluntary Transfer pricing adjustment.

18. We heard the parties on this issue and perused the record. The Ld A.R submitted that the Ld DRP was factually not correct in observing that the assessee did not furnish details of voluntary Transfer pricing adjustment. It has added the amount of voluntary TP adjustment while computing the revised margin of the assessee, which is placed at page 680 of the paper book. He further submitted that the assessee has arrived at the amount of voluntary T.P adjustment in a scientific manner by comparing the margins of comparable companies selected by the assessee. Accordingly he submitted that the Ld DRP was not justified in observing that the same is an adhoc amount. He further submitted that the co-ordinate bench has held in the case of I-Gate Global Solutions Ltd (supra) has held that the assessee is eligible for deduction u/s 10AA on the amount of voluntary TP adjustment. He submitted that the decision of the Tribunal in the above said case has since been upheld by the Hon'ble High Court of Karnataka. He further submitted that the Pune bench of Tribunal has rendered a decision in favour of the assessee in the case of Apoorva Systems (P) Ltd (2018)(92 taxmann.com 82) by considering the decision rendered in the case of I-Gate Global Solutions Ltd. On the contrary, the Ld D.R supported the order passed by Ld DRP on this issue.

19. We notice that an identical issue has been examined by the Pune bench of Tribunal in the case of Apoorva Systems (P) Ltd (supra). For the same of convenience, we extract below the relevant observations made by the Pune bench in the above said case:-

> **"15.** Now, coming to the second claim of deduction under section 10B/10A of the Act on TP adjustment of Rs. 64,07,399/-. The assessee on its own motion had offered adjustment on account of transfer pricing provision to the extent of Rs.

64,07,399/-. The computation of income is placed at page 40 of the Paper Book. The assessee claims that on the aforesaid additional income offered, it is entitled to claim the benefit of deduction under section 10B/10A of the Act. We may point herein itself that in the return of income, the assessee had claimed the said deduction under section 10B of the Act. However, during the course of hearing before the authorities below, the said claim was revised to 10A deduction. The question thus, which arises before us is whether the assessee is entitled to claim 10A deduction on the additional TP adjustment offered by the assessee on its own motion in the return of income. The assessee was 100% Export Oriented Unit which was captive service provider to its associated enterprises. The total exports were to the associated enterprises and the plea of assessee in this regard is that foreign exchange due on exports has been received in India in time. In order to adjudicate the issue, we need to take into consideration the provisions of section starting with section 92(1) of the Act. The Chapter X of the Act lays down the special provisions relating to avoidance of tax. Under section 92 of the Act, any income arising from international transactions shall be computed having regard to the arm's length price. In other words, section provides computation of income from international transactions having regard to the arm's length price. The income which is so computed in respect of international transactions entered into by the assessee is notional income in the hands of assessee. This is the basic point which has to be kept in mind while adjudicating the issue raised in the present appeal.

16. Under section 92CA of the Act, where a person has entered into an international transaction in any previous year with its associated enterprises, then in order to benchmark the arm's length price of such an international transaction and to compute its arm's length price under section 92C of the Act, reference is to be made to the TPO by the Assessing Officer under the specified conditions, who in turn has to compute the said arm's length price in the hands of assessee.

17. Section 92C(4) of the Act provides that where an arm's length price is determined under sub-section (3), then the Assessing Officer may compute total income of assessee having regard to the arm's length price so determined. In other words, the

Assessing Officer is empowered to compute total income of assessee in relation to international transactions undertaken by the assessee with its associated enterprises. The proviso therein provides that no deduction under section 10A/10AA or 10B or Chapter VI-A of the Act shall be allowed in respect of such amount of income, by which the total income of assessee had been enhanced after computation of arm's length price of international transactions. The income so determined by the Assessing Officer by following the procedure laid down in Chapter is to be added as additional income of assessee, on which no deduction under section 10A/10AA or Chapter VI-A of the Act is to be allowed.

18. However, in the facts of present case before us, it is not the Assessing Officer or TPO who has determined the additional income on account of transfer pricing provisions. The assessee on its own motion has offered additional income on account of transfer pricing provisions to the extent of Rs. 64,07,399/-. The said income was offered as part of business profits of assessee and was declared as income from business in the computation of income filed by the assessee. The issue which arises is whether on such additional income, the assessee is entitled to claim the benefit of section 10B/10A of the Act. In the first instance, in the paras hereinabove, the assessee is found to be entitled to claim the deduction under section 10A of the Act, which has also been allowed to the assessee in earlier years. Consequently, we restrict our observations to the aforesaid claim whether to be allowed or not in the case of assessee under section 10A of the Act. In this regard, there is need to look at the computation provisions provided in sub-section (4) to section 10A of the Act. The said sub-section reads as under: —

"10(A)(1)..

(2) & (3) ** ** **

(4) For the purposes of sub-sections (1) and (1A), the profits derived from export of articles or things or computer software shall be the amount which bears to the profits of the business of the undertaking, the same proportion as the export turnover in

respect of such articles or things or computer software bears to the total turnover of the business carried on by the undertaking."

19. As per said sub-section, the profits derived from the export of articles or things or computer software, shall be the amount which bears to the profits of business of the undertaking, the same proportion as the export turnover in respect of such articles or things or computer software, bears to the total turnover of business carried on by the undertaking. Thus, the first step we have to look at the profits derived from export of articles or things of computer software and the profits of business of undertaking. The additional income is on the basis of artificial/notional income computed in the hands of assessee under the provisions of section 92(1) of the Act. The case of CIT(A) is that the assessee has failed to bring into country the export proceeds in foreign exchange in respect of such additional income offered and consequently, no deduction under section 10A of the Act is to be allowed. The connected aspect of the issue is that there is no dispute in the minds of authorities below that it is profits of business. Such profit of business is neither export turnover nor the total turnover of assessee but is artificial income which needs to be taxed in the hands of assessee. **Consequently, we hold that the said artificial income cannot be part of export turnover or total turnover though it will be part of profits of business. Simile which follows is that in the absence of it being offered as export turnover or total turnover, then there could not be any condition for getting foreign exchange to India.** The assessee has computed the additional income by following the transfer pricing provisions and has offered the same to tax as its business profits. Once it has been so offered to tax, it forms part of profits of business and while computing the deduction under section 10A(4) of the Act, the said profits have to be taken into consideration and the deduction so computed.

20. We find that on similar facts the Bangalore Bench of Tribunal in the case of *iGate Global Solutions Ltd.* (*supra*) had allowed the deduction under section 10A of the Act in respect of transfer pricing adjustment *suo-moto* offered by the assessee. The relevant findings of Tribunal are as under:—

'17. We have heard both the parties. Before proceeding further, it will be relevant to reproduce section 10A(1).

"Section 10A. Special provision in respect of newly established undertakings in free trade zone, etc.—(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 ten 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 assessee :

Provided that where in computing the total income of the undertaking for any assessment year, its profits and gains had not been included by application of the provisions of this section as it stood immediately before its substitution by the Finance Act, 2000, the undertaking shall be entitled to deduction referred to in this sub-section only for the unexpired period of the aforesaid ten consecutive assessment years :

Provided further that where an undertaking initially located in any free trade zone or export processing zone is subsequently located in a special economic zone, by reason of conversion of such free trade zone por export processing zone into a special economic zone, the period of ten. consecutive assessment years referred to in this sub-section shall be reckoned from the assessment year relevant to the previous year in which the (undertaking began to. manufacture or produce such articles or things or computer software) in such free trade zone or export processing zone :

Provided also that for the assessment year beginning on the 1-4-2003, the deduction under this sub-section shall be ninety per cent of the profits and gains derived by an undertaking from the export of such articles or things or computer software :

Provided also that no deduction under this section shall be allowed to any undertaking for the assessment year beginning on the 1-4-2010 and subsequent years."

18. Section 10A(4) has also been amended with effect from 1-4-2001. Before amendment, the profit derived from export of articles or things was the amount which bears to the profit of the business, the same, proportion as the export turnover in respect of such article or thing or computer software, bears to the total turnover of the business. With effect from 1-4-2001, instead of profits of the business, the words 'profit of the business of the undertaking have been substituted. The word 'undertaking' has not been defined under section 10A. The words 'industrial undertaking' have been defined in the book Law Lexicon by Venkataramiya, at p. 1133 it has been defined as under :—

"The expression 'industrial undertaking' must have a technical and economic content. An industrial undertaking would normally be in its ordinary excitation some industrial concern or enterprise for adventure which is undertaking to be done by the person concerned. The definition of 'industrial undertaking in section 3(d) of the Industrial Development and Regulation Act. 1951, means any undertaking pertaining to a scheduled industry carried on in one or more factories by any person or authority including Government. *CIT* v. *Textile Machinery Corpn. Ltd.* [1971] 11 ITJ 105 at pp. 112, 113 (Cal.) 75 CWN 186 (Cal.): AIR 1971 Cal. 1, see also *Union of India* v. *Sakseria Cotton Mills Ltd.* [1973] 75 Bom. L.R. 100 at p. 105."

19. Industrial undertaking has been defined in section 33B of the Income-tax Act for that section. As per this definition, industrial undertaking' means an undertaking, which is mainly engaged in the business of generation or distribution of electricity or another form of power or in the construction of ships or in the manufacture or processing of goods or in mining. Hence, the meaning of 'industrial undertaking' is not restricted to one unit. The undertaking is to be considered as consisting of a number of units provided all the units are engaged in any of the activities mentioned in Explanation to section 33B. Industrial undertaking has also been defined in Explanation to section 10(15).

20. Before us, it has not been clarified that Pune unit is an independent unit and is in no way related with the activities carried out at Bangalore or Chennai unit. In absence of the facts, it is not possible to say that Pune unit was an independent

undertaking engaged in the business of software development, which was in no way related to the software development done at Bangalore or Chennai unit. In case, the Pune unit is found to be independent, then loss from such unit is to be independently calculated. In case such unit is associated with the activities, which are carried out at Bangalore or Chennai unit, then Pune unit will be considered as part of that undertaking. Hence, the issue of ascertaining as to whether Pune unit was an independent unit or a unit associated with activities of other two units is restored back on the file of the Assessing Officer. In case it is found that it is part of the other two units and is associated with the activities done in other two units, then it will be considered as part of the same undertaking and loss will be adjusted. However, in case, if it is found, it is an independent unit, then it will be treated as independent undertaking and the assessee cannot be forced to have exemption in respect of such independent undertaking. In that case the loss will (not) be adjusted against other income.

21. The last grievance is in respect of not allowing deduction under section 10A on the adjustment made by the assessee to the arm's length price.

22. In the instant case, the assessee company entered into transaction with associated enterprise. The assessee company determined arm's length price and accordingly made adjustment to the income because arm's length price determined was more than the consideration, at which the transactions were shown in the books of account. The deduction under section 10A has not been allowed as per proviso to section 92C(4). As per this proviso, no deduction under section 10A or 10B or under Chapter VI-A is to be allowed in respect of amount of income, by which the total income of the assessee is enhanced after computation of income under the sub-section. The. learned Authorised Representative during the course of proceedings has referred to the word 'enhanced'. In case the income is enhanced, then deduction is not permissible. However, in the instant case, income has not been enhanced because the same was already returned by the assessee. In the Memo Explaining the Provisions of Finance Bill, 2006, it has been mentioned as under :—

[2006] 201 CTR (St) 147 : [2006] 281 ITR (St) 196

"Under sub-section (4), it has been provided that on the basis of arm's length price so determined, the Assessing Officer may compute the total income of an assessee. The first proviso to sub-section (4) provides that where the total income of the assessee as computed by Assessing Officer is higher than the income declared by the assessee, no deduction under section 10A or section 10B or under Chapter VI-A will be allowed in respect of the amount of income, by which the total income of the assessee is enhanced after computation of income under sub-section."

23. 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 aim'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 is 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.'

21. The Hon'ble High Court of Karnataka in its order in the case of *iGate Global Solutions Ltd.* (*supra*) considered the following substantial question of law raised by the Revenue.

"(4) Whether the Tribunal was correct in holding that deduction u/s. 10A of the Act is allowable in respect of income computed on the arm's length price by ignoring the proviso to Section 92(4) of the Act"

22. The Hon'ble High Court in paras 5 and 6 of its order held as under:—

"5. In so far as substantial question of law No.4 is concerned, the error committed by the Assessing Officer was relying on Section 92(C)(4) to a case where Arm's Length Price was determined by the assessee, whereas the said provision applies to a case where Arm's Length Price was determined by the

Assessing Officer. That mistake has been corrected by the Tribunal by setting aside the order passed by the Commissioner as well as the assessing authority.

6. In that view of the matter, we do not see any error committed by the Tribunal in the impugned order. Therefore, the said question is also answered in favour of the assessee and against the Revenue."

23. The issue thus, has been decided by the Hon'ble High Court of Karnataka in the case of *iGate Global Solutions Ltd.* (*supra*), wherein the assessee's claim for deduction under section 10A of the Act in respect of *suo-moto* TP adjustment made by the assessee, has been allowed.

24. The Bangalore Bench of Tribunal in a later decision in the case of *Austin Medical Solutions (P.) Ltd.* (*supra*) has applied the said proposition of the Hon'ble High Court of Karnataka (*supra*) and had allowed the deduction claimed under section 10A of the Act in respect of suo-moto TP adjustment amounting to Rs. 28,61,352/- while determining the arm's length price of international transactions.

25. The learned Departmental Representative for the Revenue on the other hand, had placed reliance on the ratio laid down by Mumbai Bench of Tribunal in *Deloitte Consulting India Pvt. Ltd.'s* case (supra), which does not stand because of the ratio laid down by the Hon'ble High Court of Karnataka on the said issue. Though the said decision is of non-jurisdictional High Court, but the same is binding on the Tribunal in the absence of any contrary decision of the jurisdictional High Court as held by the Hon'ble Bombay High Court in *Smt. Godavaridevi Saraf 's* case (*supra*). The learned Authorized Representative for the assessee has also placed reliance on various decisions of different Benches of Tribunal for the proposition that the decision of non-jurisdictional High Court is binding on the Tribunal. However, the issue stands covered by the jurisdictional High Court and applying the said proposition and in view of our decisions in the paras hereinabove on other issues raised in the present appeal, we hold that the assessee is entitled to claim the aforesaid deduction under section 10A of the Ac on additional income offered on

account of *suo-moto* adjustment on account of transfer pricing provisions. The provisions of section 92C(4) of the Act are not attracted. The modified ground of appeal No.4 raised by the assessee is thus, allowed."

Identical view has been expressed by the Delhi bench of Tribunal in the case of AT Kearney India P Ltd (ITA No.2623/Del/2015 dated 21.06.2019). Accordingly we hold that the assessee is eligible for deduction u/s 10AA of the Act in respect of voluntary Transfer Pricing adjustment made by it. We direct accordingly.

20. In the result, the appeal of the revenue is dismissed and the appeal of the assessee is partly allowed.

Pronounced in the open court on this 20th day of May, 2020.

Sd/-	Sd/-0
(N V VASUDEVAN)	(B R BASKARAN)
VICE PRESIDENT	ACCOUNTANT MEMBER

Bangalore,
Dated, the 20th May, 2020.

/*Desai S Murthy /*

Copy to:

1. Revenue 2. Assessee 3. CIT 4. CIT(A)
5. DR, ITAT, Bangalore. 6. Guard file

By order

Assistant Registrar
ITAT, Bangalore.