

TAX FLASH NEWS

Deduction under Section 10A (for export of software services) is allowable in respect of a suo moto transfer pricing adjustment carried out by the taxpayer in the income tax return

Background

Recently, the Bangalore Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of Austin Medical Solutions Pvt. Ltd.¹ (the taxpayer) held that deduction under Section 10A of the Income-tax Act, 1961 (the Act) (for export of software services) should be allowed in cases where the taxpayer has carried out a suo moto transfer pricing adjustment in the income tax return. The Tribunal held that the provisions of the second proviso to Section 92C(4) of the Act did not apply to such cases.

Facts of the case

- The taxpayer is an Indian company engaged in the export of software and Information Technology Enabled Services (ITeS). For the assessment year under consideration, the taxpayer filed its Return of Income (RoI) declaring nil income. In the RoI, the income under the head 'Income from Business/ Profession' included an amount computed by way of a suo moto transfer pricing adjustment to the price of the taxpayer's international transactions under Section 92 of the Act. The taxpayer claimed a deduction under Section 10A of the Act, in respect of the entire business income and arrived at nil total income.
- During the assessment proceedings, the Assessing Officer (AO), for the purpose of computing the deduction under Section 10A, sought to disallow the amount of transfer pricing adjustment carried out suo moto by the taxpayer. The taxpayer in its defence, placed reliance on the decision of the Bangalore

Bench of the Tribunal in the case of iGate Global Solutions². However, the AO referred to the provisions of the second proviso to Section 92C(4) of the Act which states that no deduction under Section 10A, 10AA, 10B or under Chapter VIA of the Act shall be allowed in respect of the amount of income by which the total income of the taxpayer is enhanced after computation of income under this sub-section. The AO held that the taxpayer's claim defeated the purpose for which Section 92C of the Act was legislated.

- The Commissioner of Income-tax (Appeals) [CIT(A)] upheld the action of the AO denying the taxpayer's claim for deduction under Section 10A of the Act, in respect of the suo moto transfer pricing adjustment made by the taxpayer. The CIT(A) relied upon the ruling of the Karnataka High Court in the case of Yokogawa India Ltd.³ and distinguished the decision of the coordinate bench in the case of iGate Global Solutions Ltd., holding that the methodology of computation of deduction under Section 10A of the Act was not brought to the notice of the Tribunal in the case of iGate Global Solutions Ltd.

Tribunal's ruling

- The Tribunal referred to the ruling of the coordinate bench in the case of iGate Global Solutions Ltd., where under similar circumstances the bench had allowed the deduction under Section 10A of the Act in respect of suo moto transfer pricing adjustment carried out by the taxpayer. The Tribunal referred to the following

¹ Austin Medical Solutions Pvt. Ltd. vs. ITO [I.T.(TP)A. No. 542/Bang/2012] – Taxsutra.com

² iGate Global Solutions Limited vs. ACIT (2008) 24 SOT 3 (Bang)

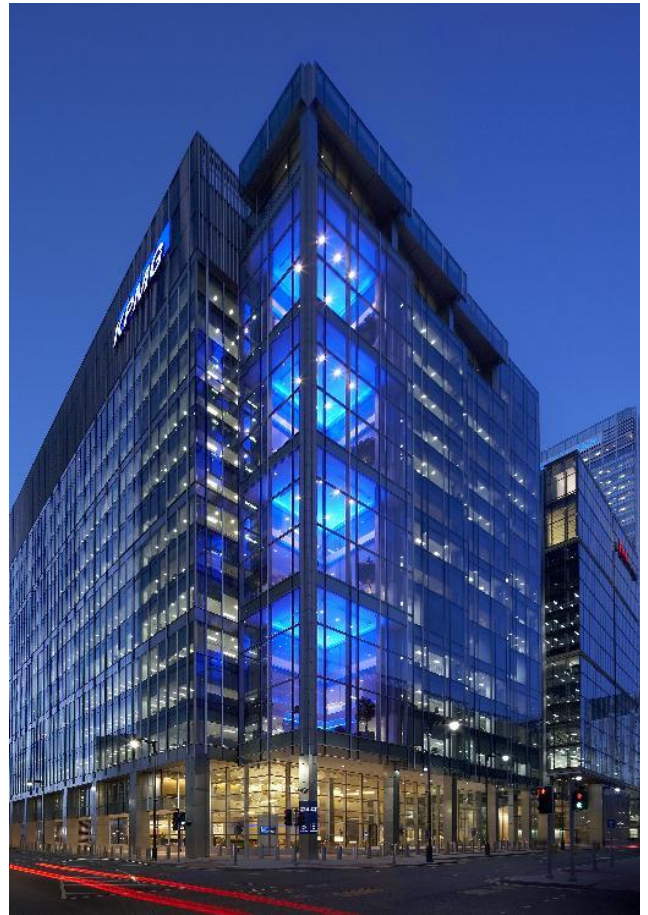
³ Yokogawa India Ltd & Others [2012] 341 ITR 385 (Kar)

arguments that were relied upon by the coordinate bench in the case of iGate Global Solutions Ltd.:

- Second proviso to Section 92C(4) provides for disallowance of deduction under Section 10A, 10AA, 10B or Chapter VIA of the Act, in respect of amount of income, by which the total income of the taxpayer is 'enhanced' after computation of income under the sub-section. However, in the present case, income has not been enhanced as the same was already returned by the taxpayer.
- It is not a case where there is an enhancement of income due to the determination of arm's length price (ALP) during the assessment proceedings. Hence, the taxpayer was entitled to a deduction under Section 10A in respect of income declared in the return of income.
- The Tribunal also referred to the ruling of the Karnataka High Court in the same case of iGate Global Solutions where the revenue authority had challenged the above-referred judgement of the coordinate bench. The Tribunal noted that the Karnataka High Court upheld the judgment of the coordinate bench and ruled that the AO erred in relying upon Section 92C(4) to a case where ALP determined by the taxpayer itself, whereas the said provision applies to a case where ALP was determined by the AO.
- The Tribunal held that judgement of the Karnataka High Court in the case of Yokogawa India Ltd. relied upon by the CIT(A), did not deal with the question of allowability of deduction under Section 10A of the Act, in respect of the suo moto transfer pricing adjustment made by the taxpayer. Hence, the said judgement does not apply to the issue in the case on hand.
- Following the above referred judgements of the Karnataka High Court as well as the coordinate Bench of the Tribunal in the case of iGate Global Solutions, the Tribunal in the present case held that the taxpayer be allowed a deduction under Section 10A of the Act, in respect of the suo moto transfer pricing adjustment carried out in the RoI.

Our comments

This is a welcome decision of the Bangalore Tribunal where it has correctly distinguished the judgements in the cases of iGate Global Solutions and Yokogawa India Ltd. with reference to the issues at hand and provided due relief to the taxpayer. This decision is expected to reinforce the fact that a suo moto transfer pricing adjustment is a bona fide action of the taxpayer to meet the ALP requirements.



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