HC-KAR

NC: 2025:KHC:36360-DB
ITA No. 107 of 2025
C/W ITA No. 106 of 2025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF SEPTEMBER, 2025

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE C M JOSHI

INCOME TAX APPEAL NO. 107 OF 2025

C/W

INCOME TAX APPEAL NO. 106 OF 2025

IN ITA No. 107/2025

BETWEEN:

1. PR.COMMISSIONER OF INCOME TAX-2
   BMTC COMPLEX
   KORAMANGALA
   BANGALORE

2. THE DEPUTY COMMISSIONER
   OF INCOME TAX,
   CIRCLE-4(1)(1)
   BMTC COMPLEX, KORMANGALA
   BENGALURU

…APPELLANTS

(BY SRI SANMATHI E.I., ADVOCATE)

AND:

1. M/S.EYGBS (INDIA) PVT LTD
   3RD FLOOR, TOWER 'C' RMZ INFINITY
   OLD MADRAS ROAD

BENNIGANAHALLI
K.R.PURAM
BANGALORE - 560016

…RESPONDENT

THIS INCOME TAX APPEAL IS FILED UNDER SEC.260-A OF INCOME TAX ACT 1961, PRAYING TO SET ASIDE THE APPELLATE ORDER DATED 08.11.2024 PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, C BENCH, BANGALORE AS SOUGHT FOR, IN THE RESPONDENT- ASSESSEES CASE, IN APPEAL PROCEEDINGS NO. ITA NO.1368/BANG/2024 (ANNEXURE A) FOR A.Y.2016-17 AND GRANT SUCH OTHER OR RELIEF AS DEEMED FIT.

IN ITA NO. 106/2025

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   BMTC COMPLEX
   KORAMANGALA
   BANGALORE

2. THE DEPUTY COMMISSIONER OF INCOME TAX,
   CIRCLE-4(1)(1), BMTC COMPLEX
   KORMANGALA
   BENGALURU

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THESE APPEALS, COMING ON FOR ORDERS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MR. JUSTICE C M JOSHI

ORAL JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

1. For the reasons stated in the applications — I.A.No.1/2025, the same are allowed. The delay of 46 days in filing the above captioned appeals, is condoned.

2. The Revenue have filed the present appeals under Section 260A of the Income Tax Act, 1961 [**the Act**], impugning a common order dated 08.11.2024 [**impugned order**], passed by the learned Income Tax Appellate Tribunal [**Tribunal**] in ITA No.1367/Bang/2024 in respect of the Assessment Year [**AY**] 2015-16 and in ITA No.1368/Bang/2024 in respect of AY 2016-17.

3. The Revenue had preferred the said appeals before the learned Tribunal assailing orders dated 27.05.2024 passed by the Commissioner of Income Tax (Appeals) [**CIT(A)**], in respect of the AYs 2015-16 and 2016-17.

4. The Assessee [EYGBS (India) Private Limited], had appealed the Assessment Orders passed by the learned Assessing Officer [**AO**], *inter alia* on account of denial of deduction under Section 10AA of the Act on the Arms Length Price [**ALP**] Adjustment made pursuant to the Advance Pricing Agreement [**APA**] and an adhoc disallowance of 10% of dividend income under Section 14A of the Act.

5. The Assessee is engaged in the business of providing back office support and data processing services to its customers. The Assessee had filed its return of income [**ROI**] for the AY 2015-16 and AY 2016-17 on 30.11.2015 and 14.10.2016 respectively. The Assessee had declared an income of ₹23,91,78,770/- in its return for AY 2015-16 and ₹52,84,99,480/- for its AY 2016-17. The assessee had also claimed a deduction of ₹5,60,58,819/- for AY 2015-16 and ₹62,67,14,829/- for AY 2016-17, under Section 10AA of the Act. In addition, the Assessee had also claimed deduction under Chapter VI-A of the Act. Immediately after filing its original return for AY 2015-16, the Assessee had filed a revised return voluntarily declaring transfer pricing [**TP**] adjustments of ₹14,82,00,000/-, which was reworked at ₹21,36,91,000/- on

account of APA. Similarly, the Assessee had along with his return, made TP adjustments of ₹48,36,10,916/- for AY 2016-17 on account of APA.

6. The voluntary TP adjustment pursuant to the APA, included ₹11,96,94,000 for the SEZ unit (which is eligible for deduction under Section 10AA of the Act) for the Assessment year 2015-16 and ₹36,90,62,637/- for AY 2016-17. Tabular statements setting out the income from business of the SEZ undertaking and the claims of exemption under Section 10AA of the Act in respect of the AY 2015-16 and 2016-17, are set out below:

AY 2015-16 (Pertaining to ITA No.106/2025):

Particulars	SEZ Unit Eligible for deduction u/s 10AA
Profit of the undertaking as per computation statement	4,46,64,504
Add: Voluntary TP adjustment	11,96,94,000
Income from business of the undertaking after voluntary TP adjustment	16,43,58,504

AY 2016-17 (Pertaining to ITA No.107/2025):

Particulars	SEZ Unit Eligible for deduction u/s 10AA
Profit of the undertaking as per computation statement	43,60,79,542

Add: Voluntary TP adjustment	36,90,62,637
Income from business of the undertaking after voluntary TP adjustment	80,51,42,179

7. The AO had denied the exemption under Section 10AA on the TP pricing adjustment made pursuant to the APA. The AO reasoned that the assessee had declared the TP adjustments in anticipation of such TP adjustments by the TPA and to avoid the rigour of Section 92C(4) of the Act. The AO further observed that the Assessee had failed to substantiate and furnish details as to how the TP adjustments had arisen in order for the same to be treated as eligible profits. Only the gains derived from exports were allowed deduction. The AO noted that the issue was covered by a decision of this Court in ***CIT vs. I Gate Global Solutions Private Limited : ITA No.452/2008,*** as well as the decision of the CIT(A) in Assessee's own case for AY 2014-15. Notwithstanding the same, the AO held that since the Revenue had preferred a Special Leave Petition before the Hon'ble Supreme Court, in ***CIT vs. IGate Global Solutions Private Limited,*** it was compelled to make the necessary addition / disallowance on the said issue.

8. In addition to the above, the AO made a disallowance of ₹23,93,733/- for AY 2015-16 and ₹25,12,500/- in respect of the AY 2016-17, under Section 14A of the Act. The AO noted that the Assessee had earned income from dividends during the previous year relevant to the assessment years and is exempt from charge of tax. The Assessee had claimed that it had not incurred any expenditure for incurring exempt income and the investments made had been liquidated during the year. However, the AO made an *adhoc* disallowance of 10% of the exempt income under Section 14A of the Act.

9. The Assessee appealed the assessment orders before the CIT(A).

10. The learned CIT(A), allowed the appeal and found that the exemption under Section 10AA of the Act could not be denied on the enhanced income and the proviso to Section 92C(4) of the Act, was not a bar for allowing such a claim. The CIT(A) relied on the decision of the learned Tribunal in Assessee's own case for the earlier assessment years.

11. Insofar as the question of disallowance under Section 14A is concerned, the learned CIT(A) noted that there was no opening balance or closing balance of investments made in mutual funds, which had yielded in the exempt income. Thus, Rule 8D of the Income Tax Rules, 1962, are not applicable.

12. The CIT(A), also found no basis for making a disallowance of 10% of the exempt income.

13. The Revenue appealed the said decisions before the learned Tribunal, which were dismissed in terms of the impugned order.

14. The questions of law in the present appeals as projected by the Revenue, are similarly worded. We consider it apposite to set out the questions of law as projected in ITA No.106/2025. The same are reproduced below:

> "(1) "Whether on facts and circumstances of the case, the Tribunal's order can be said as perverse in nature in confirming the order of first appellate authority holding that voluntary adjustment made to ALP pursuant to APA is eligible for deduction under section 10AA of the Act without appreciating that the assessee has declared TP adjustments pursuant to APA in its computation of income only in

anticipation of TP adjustments by the Transfer Pricing Officer and to avoid rigors of Section 92C(4) of the Act and consequently enhanced benefits under section 10AA of the Act"?

(ii) "Whether on facts and circumstances of the case, the Tribunal's order can be said as perverse in nature in not appreciating that the assesee failed to substantiate an furnish details as to how the income in form of TP adjustments has arisen out of the eligible units and to be treated as eligible profits"?

(iii) "Whether on facts and circumstances of the case, the Tribunal's order can be said as perverse in nature not apricating that the assessee hd not complied with conditions set out in Section 10AA to get the deduction under said section and further this amount being alleged as deemed income for the purposes of being part of business of the undertaking is clearly not allowable as per the provisions of Section 2(24) of the Act and this Section defines profit and gains of the undertaking and thus is not eligible for computation under Section 10AA of the Act after the enhancement of income on voluntary TP adjustments by the assessee consequent to APA "?

(iv) "Whether on facts and circumstances of the case, the Tribunal's order can be said as perverse in nature in not appreciating that decision relied upon by assessee has not reached finality and SLP is pending before Supreme Court"?

(v) "Whether on facts and circumstances of the case, the Tribunal's order can be said as perverse in nature in setting aside disallowance made under Section 14A of the Act by holding that all the investments in mutual funds were made during the year and also redeemed during the year and there is no opening or closing balance of mutual funds/investments in the balance sheet which does not mean that assessee did not incur any expenditure with respect to exempt income"?

(vi) "Whether on facts and circumstances of the case, the Tribunal's order can be said as perverse in nature not apricating that conditions for invoking Section 14A was fully satisfied in case of assessee"?

15. As apparent from the above, the first four questions of law relate to the disallowance of Section 10AA of the Act in respect of the TP adjustments made pursuant to the APA entered into by the assessee with the Central Board of Direct Taxes [**CBDT**]. The second set of questions – question nos. 5 and 6 – relate to the division of disallowance under Section 14A of the Act.

16. As noted above, the AO had denied the exemption under Section 10-AA of the Act on the ground that the same was occasioned by TP adjustment. The said disallowance was founded on the proviso to Section 92C(4) of the Act.

17. It is material to note that the TP adjustments are made pursuant to the APA entered into by the Assessee with CBDT. Section 92CC of the Act empowers the CBDT (Central Board of Direct Taxes) to enter into an APA (Advance Pricing Agreement) with any person for determining an ALP or specify the manner in which the ALP is to be determined, in relation to an international transaction to be entered into by that person and income referred to in Section 9(1)(i) of the Act or the manner in which said income is to be determined as is reasonably attributable to the operations carried out in India.

18. It is relevant to refer to Sub-sections (1) and (2) of Section 92CD of the Act. The same reads as under:

> "**92CD.** (1) Notwithstanding anything to the contrary contained in Section 139, where any person has entered into an agreement and prior to the date of entering into the agreement, any return of income has been furnished under the provisions of Section 139 for any assessment year relevant to a previous year to which such agreement applies, such person shall furnish, within a period of three months from the end of the month in which the said agreement was entered

> into, a modified return in accordance with and limited to the agreement.
>
> (2) Save as otherwise provided in this section, all other provisions of this Act shall apply accordingly as if the modified return is a return furnished under Section 139."

19. The provisions of Sections 92CD(1) of the Act are unambiguous and even if a return has been filed prior to an Assessee entering into an APA, he is entitled to furnish a modified return declaring his income in accordance with the terms of the APA. Subject to certain exceptions, the APA is binding both on the Assessee and the Revenue.

20. It is clear that the scheme of providing for an APA is to remove any uncertainty as to the determination of an income of an Assessee engaged in international transactions with associated enterprises. The Assessee is required to declare his income in accordance with the APA. Except in certain cases, where there is a change in law and facts or the agreement is occasioned by fraud or misrepresentation, the APA would be binding. Sub-sections (5), (6) and (7) of Section 92CC of the Act provide for the same in unambiguous terms. The said Sub-sections are reproduced below:

"(5) The advance pricing agreement entered into shall be binding—

(a) on the person in whose case, and in respect of the transaction in relation to which, the agreement has been entered into; and

(b) on the Principal Commissioner or Commissioner, and the income-tax authorities subordinate to him, in respect of the said person and the said transaction.

(6) The agreement referred to in sub-section (1) shall not be binding if there is a change in law or facts having bearing on the agreement so entered.

(7) The Board may, with the approval of the Central Government, by an order, declare an agreement to be *void ab initio*, if it finds that the agreement has been obtained by the person by fraud or misrepresentation of facts."

21. We also consider it apposite to set out Section 92C of the Act, in its entirety.

"92C. (1) The arm's length price in relation to an international transaction [or specified domestic transaction] shall be determined by any of the following methods, being the most appropriate method, having regard to the nature of transaction or class of transaction or class of associated persons or functions performed by such persons or such other relevant factors as the Board may prescribe, namely:—

(a) comparable uncontrolled price method;

(b) resale price method;

(c) cost plus method;

(4) profit split method;

(e) transactional net margin method;

(f) such other method as may be prescribed by the Board.

(2) The most appropriate method referred to in sub-section (1) shall be applied for determination of arm's length price, in the manner as may be prescribed:

Provided that where more than one price is determined by the most appropriate method, the arm's length price shall be taken to be the arithmetical mean of such prices:

Provided further that if the variation between the arm's length price so determined and price at which the international transaction [or specified domestic transaction] has actually been undertaken does not exceed such percentage not exceeding three per cent of the latter, as may be notified by the Central Government in the Official Gazette in this behalf, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price :]

Provided also that where more than one price is determined by the most appropriate method, the arm's length

price in relation to an international transaction or specified domestic transaction undertaken on or after the 1st day of April, 2014, shall be computed in such manner as may be prescribed and accordingly the first and second proviso shall not apply.

Explanation-For the removal of doubts, it is hereby clarified that the provisions of the second proviso shall also be applicable to all assessment or reassessment proceedings pending before an Assessing Officer as on the 1st day of October, 2009.

(2A) Where the first proviso to sub-section (2) as it stood before its amendment by the Finance (No. 2) Act, 2009 (33 of 2009), is applicable in respect of an international transaction for an assessment year and the variation between the arithmetical mean referred to in the said proviso and the price at which such transaction has actually been undertaken exceeds five per cent of the arithmetical mean, then, the assessee shall not be entitled to exercise the option as referred to in the said proviso.

(2B) Nothing contained in sub-section (2A) shall empower the Assessing Officer either to assess or reassess under section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under section 154 for any assessment year the proceedings of which have been completed before the 1st day of October, 2009.

(3) Where during the course of any proceeding for the assessment of income, the Assessing Officer is, on the basis of material or information or document in his possession, of the opinion that-

(a) the price charged or paid in an international transaction or specified domestic transaction has not been determined in accordance with sub-sections (1) and (2); or

(b) any information and document relating to an international transaction specified domestic transaction have not been kept and maintained by the assessee in accordance with the provisions contained in sub-section (1) of section 92D and the rules made in this behalf; or

(c) the information or data used in computation of the arm's length price is not reliable or correct; or

(d) the assessee has failed to furnish, within the specified time, any information or document which he was required to furnish by a notice issued under sub-section (3) of section 92D,

the Assessing Officer may proceed to determine the arm's length price in relation to the said international transaction or specified domestic transaction in accordance with sub-sections (1) and (2), on the basis of such material or information or document available with him:

Provided that an opportunity shall be given by the Assessing Officer by serving a notice calling upon the assessee to show cause, on a date and time to be specified

in the notice, why the arm's length price should not be so determined on the basis of material or information or document in the possession of the Assessing Officer.

(4) Where an arm's length price is determined by the Assessing Officer under sub-section (3), the Assessing Officer may compute the total income of the assessee having regard to the arm's length price so determined:

Provided that no deduction under section 10A "or section 10AA or section 10B or under Chapter VI-A shall be allowed in respect of the amount of income by which the total income of the assessee is enhanced after computation of income under this sub-section:

Provided further that where the total income of an associated enterprise is computed under this sub-section in determination of the arm's length price paid to another associated enterprise from which tax has been deducted or was deductible under the provisions of Chapter XVIIB, the income of the other associated enterprise shall not be recomputed by reason of such determination of arm's length price in the case of the first mentioned enterprise.

22. It is apparent from a plain reading of sub-section (4) of Section 92C of the Act that the same is inapplicable. The said sub-section requires the AO to compute the total income, having regard to the ALP determined by the AO under sub-section (3) of Section 92-C of the Act.

23. Sub-section (3) of Section 92C provides that the AO can proceed to determine the ALP only in cases he is of the opinion on the basis of material that (a) the price charged or paid in international transaction, has not been determined in accordance with sub-sections (1) and (2) of Section 92-C; or b) that information and documentation relating to the international transaction has not been maintained as mandatorily required; or c) that the information or data for computing the ALP is unreliable; or there is failure on the part of the assessee to furnish any information or document required to be furnished along with the notice.

24. It is apparent that in a case where the assessee voluntarily computes the ALP pursuant to an APA entered into with CBDT, none of the conditions as set out in sub-section (3) of Section 92C are attracted. It follows that sub-section (4) of Section 92C is not attracted.

25. More importantly, the proviso to sub-section (4) of Section 92C also clearly states that no deduction under Section 10A or 10AA or 10B or under Chapter VI-A of the Act would be allowed in respect of the amount of income by which the total income of the

assessee is enhanced after computation under the said section. Thus in a case where the assessee voluntarily declares his income based on the ALP determined on the basis of an APA, there would be no occasion for the AO to enhance the income of the assessee.

26. Absent any enhancement of income, the proviso to sub-section (4) of Section 92C is clearly inapplicable.

27. It is also necessary to bear in mind that in terms of Section 10AA (1) of the Act, the profits and gains of an enterprise, as referred to in clause (j) of Section 2 of the Special Economic Zones Act, 2005, from an eligible Unit, which is derived from export of articles or things are exempt.

28. The ALP is imputed to transactions to determine the profits and gains that are derived by the assessee from any international transactions (or specified domestic transactions) in order to assess the real income of the assessee after eliminating any bias or element of transfer of profits.

29. Thus, indisputably, the income computed on the basis of ALP would provide a measure of the profits or income derived by the

activities carried on by an Assessee. The proviso to Section 92C(4) essentially limits exemption under Section 10AA in cases where the income computed is enhanced by the AO under Section 92C of the Act.

30. It is also relevant to refer to the CBDT Circular No.14/2006. Paragraphs 24.1 and 24.2 of the said circular, as quoted in the assessment order, are reproduced below:

> "24.1 The existing provisions of section 92C provide for computation of arm's length price. Sub-section (4) of the said section provides that the Assessing Officer may compute the total income of an assessee on the basis of the arm's length price. The first proviso to sub-section (4) provides that where the total income of an assessee as computed by the Assessing Officer is higher than the income declared by the assessee, no deduction under section 10A or section 10B or under Chapter VI-A shall be allowed in respect of the amount of income by which the total income of the assessee is enhanced after computation of income under this sub-section.
>
> 24.2 Sections 10A and 10B provide deductions in respect of profits and gains derived from exports. Section 10AA also provides for

> deduction of profits and gains derived from exports, in respect of newly established units in Special Economic Zones. Provisions of sub-section (4) of section 92C have been rationalized so as to provide for similar treatment in respect of deduction under section 10A, 10B and 10AA on the income enhanced by way of computing the income in accordance with Arm's length price. Accordingly, the first proviso to sub-section 92C has been amended so as to provide that no deduction under section 10AA shall be allowed in respect of the amount of income by which the total income of the assessee is enhanced after computation of income under said sub-section."

31. The said circular also amply clarifies that the first proviso to sub-section (4) of Section 92C of the Act is applicable where the total income of the assessee as computed by the Assessing Officer is "higher than the income declared by the assessee".

32. In the present case, the AO has not enhanced the income declared by the assessee. The assessee had voluntarily factored in the ALP pursuant to the APA entered into with the CBDT, for computing the income as declared in its returns.

33. We may also refer to the following observations from the decision of a Co-ordinate Bench of this Court in ***Commissioner of Income Tax vs. iGate Global Solutions Limited : ITA No.452/2008***:

> "6. 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 authority, that mistake has been corrected by the tribunal, set aside the order passed by the Commissioner as well as the assessing authority."

34. In view of the above, we find no infirmity in the finding of the learned CIT(A) as well as the learned Tribunal in rejecting the Revenue's contention that exemption under Section 10AA of Chapter VI-A of the Act, is not available in respect of declared income of the assessee insofar as it relates to the TP adjustments made pursuant to the APA.

35. Insofar as disallowance under Section 14A is concerned, we note that the AO has not provided any tangible basis for making the adhoc disallowance of 10% of the dividend income from mutual funds. The Tribunal had also noted that in Assessee's own case

for earlier assessment years, the Revenue had accepted the deletion of such allowances as made by the CIT(A) and it had not appealed against the said decision before the Tribunal. In the given circumstances, we do not find any substantial question of law arises for consideration in these appeals.

36. The appeals are, accordingly, dismissed.

Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE

Sd/-
(C M JOSHI)
JUDGE

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List No.: 1 Sl No.: 12