IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI B. RAMAKOTAIAH, ACCOUNTANT MEMBER

ITA No.	Asst. Year	Appellant	Respondent
221/Hyd/14	2007-08	BA Continuum India Private Limited (Formerly known as BA Continuum Solutions Private Limited ('BACS') HYDERABAD **[PAN: AACCC3062D]**	Deputy Commissioner of Income Tax, Circle-1(3), HYDERABAD
301/Hyd/14	2007-08	Deputy Commissioner of Income Tax, Circle-1(2), HYDERABAD	BA Continuum India Private Limited (Formerly known as BA Continuum Solutions Private Limited ('BACS') HYDERABAD **[PAN: AACCC3062D]**

For Assessee : Shri Sampath Raghunathan, AR
For Revenue : Shri P. Chandra Sekhar, DR

Date of Hearing : 03-11-2016
Date of Pronouncement : 16-12-2016

O R D E R

PER B. RAMAKOTAIAH, A.M. :

These are cross-appeals by Assessee and Revenue against the order(s) of the Commissioner of Income Tax (Appeals)-V, Hyderabad, dated 31-10-2013.

2. Briefly stated fact are, assessee-company, BA Continuum India Private Limited ['BACI'] (formerly known as CFC) (PAN-AACCC3062D) has merged with the BA Continuum Solutions

Private Limited [BACS] (PAN -AACCC2310C) w.e.f. 01 April 2008. Assessee-company was engaged in the business of providing Information Technology [IT] and IT enabled services [ITES] to its Associated Enterprises ('AE').

3. During the previous year relevant to AY.2007-08, assessee-company had the following international transactions:

Sr. No.	Description of International transaction	Amount (Rs)	Most appropriate method
1.	Provision of software services	6,98,000	TNMM
2.	Provision for ITES	13,99,000	TNMM
3.	Reimbursement of expenses	1,37,100	TNMM

4. Assessee maintained the relevant Transfer Pricing [TP] documentation as required u/s 92D of the Income Tax Act [Act] r/w Rule 10D of the Income-tax Rules, 1962. In the TP documentation maintained by assessee-company, Transactional Net Margin Method [TNMM] was selected as the most appropriate method for determining the Arm's Length Price [ALP] for all the international transactions. Assessee-company selected the mark-up on operating cost (i.e. OP/OC) as the appropriate Profit Level Indicator [PLI] in applying the TNMM. As a part of the TP documentation, assessee-company undertook benchmarking analysis to justify the arm's length nature of all the international transactions.

5. Assessee-company applied various quantitative and qualitative filters to arrive at a set of 8 comparable companies with the arithmetic mean of comparable companies at 18.62% as

against 23.61% margin of the Company. Since, assessee-company's margin was more than the arithmetic mean of the comparables, the international transactions of assessee-company were concluded to be at arm's length.

6. Assessee-company was served with a notice u/s 143(2) of the Act by the Deputy Commissioner of Income Tax, Circle-9(1), Mumbai for initiating regular assessment proceedings. Since, assessee-company had international transactions during the FY. 2006-07, the AO at Mumbai referred the international transactions reported by assessee-company vide its Form 3CEB to the Additional Commissioner of Income Tax, Transfer Pricing-1(2), Mumbai (hereinafter referred to as TPO) u/s. 92CA of the Act for verification of arm's length nature of the international transactions.

7. In the TP proceedings u/s. 92CA of the Act TPO vide the show-cause notice dated 09 September 2009 has rejected the benchmarking analysis of assessee-company, conducted a fresh benchmarking analysis using various filters, selected 25 comparable companies for benchmarking the international transactions of assessee-company and proposed to compare the same with assessee-company. TPO determined the arm's length margin at 30.67% for the 25 companies and proposed to make a TP adjustment amounting to Rs. 7,99,23,060/-. TPO has denied granting working capital adjustment to the assessee as requested.

8. The following are the 25 companies selected by TPO as per the TPO's order:

Sr. No.	Companies selected by TPO	OP/OC(%)
1	Mold- Tek Technologies Ltd. (Seg)	113.49
2	Vishal Information Technologies Ltd.	51.19
3	eClerx Services Limited	89.33
4	Maple Esolutions Ltd.	34.05
5	Accentia Technologies Limited	38.26
6	Iservices India Pvt. Ltd.	50.27
7	H C L Comnet Systems & Services Ltd. (Seg)	44.99
8	Aditya Birla Minacs Worldwide Ltd	11.98
9	Allsec Technologies Ltd	27.31
10	Apex knowledge Solutions Pvt Ltd	12.83
11	Appollo Health street Ltd	-13.55
12	Asit C Mehta Financial Services Ltd	24.21
13	Bodhtree Consulting Limited (Seg)	29.58
14	Caliber Point Business Solutions Ltd	21.26
15	Cosmic Global Ltd	12.40
16	Datamatics Financial Services Ltd	5.07
17	Flextronics Software Systems Limited (Seg)	14.54
18	Genesys International Corporation Ltd.	13.35
19	I C R A Techno Analytics Ltd. (Seg)	12.24
20	Informed Technologies India Ltd.	35.56
21	lnfosys B P O Ltd.	27.89
22	R Systems International Ltd. (Seg)	20.18
23	Spanco Ltd. (Seg)	25.81
24	Triton Corp Ltd.	34.93
25	Wipro Ltd. (Seg)	29.70
	Average Margin	30.67

9. Subsequently, on account of merger of the Company with another company the files got transferred from the AO at Mumbai to the jurisdictional AO of the assessee at Hyderabad i.e. Deputy Commissioner of Income Tax, Circle 1(3), Hyderabad (hereinafter referred to as 'AO').

10. During the course of assessment proceedings, AO asked the assessee-company to provide various information/

documents which were regularly provided by assessee to the AO. Subsequently, AO completed assessment for the relevant assessment year and passed draft assessment order u/s 143(3) r/w section 144C(1) of Act on 16 December 2010, wherein he recomputed the amount of deduction claimed by assessee-company u/s 10A of the Act and added TP adjustment as proposed by the TPO.

11. Assessee subsequently filed a letter dated 04 January 2011 before AO requesting him to pass the final assessment order as assessee wished to file an appeal before the CIT(A) instead of filing an appeal before the Dispute Resolution Panel [DRP]. In view of the above letter filed by assessee, AO passed final assessment order u/s 143(3) r/w section 144C(4) of the Act on 25 February 2011.

12. Aggrieved by the order passed of AO/TPO, assessee preferred an appeal before the Ld. CIT(A) on 28 March 2011 with respect to the above mentioned TP adjustment and deduction u/s 10A of the Act. Ld. CIT(A) passed an order u/s 250 of the Act on 31 October 2013. The Ld. CIT(A) allowed partial relief for the grounds raised by assessee barring the ground on TP adjustment which was upheld by the Ld. CIT(A). With regard to assessee's ground on erroneous computation of margins of certain companies, the Ld. CIT(A) upheld the conclusions of TPO.

13. Aggrieved by the Ld. CIT(A) order, assessee filed present appeal before this forum.

14. Assessee raised eight grounds and the following four grounds are the principal grounds pertaining to TP adjustment:

"Ground No. 4: On the facts and in the circumstances of the case and in law, TPO erred in computing the operating margin/operating cost (i.e. PLI) of five comparable companies out of the twenty five comparable companies considered by TPO and the Ld. CIT(A) further erred in upholding/confirming the action of TPO.

Ground No. 5: On the facts and in the circumstances of the case and in law, TPO erred and the Ld. CIT(A) further erred in upholding/ confirming the action of TPO in selecting high profit margin companies and high turnover companies as comparable to the Company.

Ground No. 6: On the facts and in the circumstances of the case and in law, TPO erred and the Ld. CIT(A) further erred in upholding/ confirming the action of TPO in selecting the comparable companies which are functionally different and companies whose financials are not reliable.

Ground No. 7: On the facts and in the circumstances of the case and in law, TPO erred and the Ld. CIT(A) further erred in upholding/ confirming the action of TPO in rejecting the claim of working capital adjustment of 2.27% and not providing downward adjustment to the mark-up of comparable companies in-spite of being quantified by the Appellant".

15. Revenue in its appeal has raised only one ground:

"Ground No. 2: The Learned CIT(A) erred in directing the Assessing Officer to reduce the lease line charges from total turnover as well as export turnover".

16. Assessee has raised an additional ground stating that the order passed on assessee is not valid as the AO has erred in carrying on the assessment proceedings in the name of the assessee which was a non-existing entity on the date of passing of such orders. The reasons for raising the additional ground are stated as under:

• BACI (formerly known as CFC) was incorporated on 10 February 2004 with its registered office at Mumbai. The Company was engaged in the business of providing information technology ('IT') and IT enabled services CITES') to its associated enterprises.

• The Company got merged with the Appellant with effect from 01 April 2008 vide the Hon'ble Andhra Pradesh High Court order dated 14 December 2009 and the Hon'ble Bombay High Court order dated 18 December 2009. Post receipt of merger orders, the Appellant filed letter with the jurisdictional income tax officer of the Company as well as the jurisdictional income tax officer of the Appellant on 09 April 2010 and 13 April 2010 respectively (enclosed along with appeal documents), intimating about the merger of the Company with the Appellant and thereby requesting for transfer of files of the Company from Mumbai income tax jurisdiction to Hyderabad income tax jurisdiction. Please find enclosed copy of the said letters vide Annexure 1 and 2 respectively.

• Thereafter, the Appellant got its name changed to BACI with effect from 15 September 2010 (enclosed along with appeal documents).

• The Company was served with a notice u/s 143(2) of the Income-tax Act, 1961 ('Act') by the Deputy Commissioner of Income Tax, Circle - 9(1), Mumbai (hereinafter referred to as 'Ld. Mumbai AO') for initiating regular assessment proceedings for the financial year ('FY') 2006-07.

• Since, the Company had international transactions during the FY 2006-07, the Ld. Mumbai AO referred the international transactions reported by the Company in its Form 3CEB to the Additional Commissioner of Income Tax, Transfer Pricing-1(2), Mumbai (hereinafter referred to as 'Ld.TPO') u/s 92CA of the Act for verification of arm's nature of the said international transactions.

• TPO proposed to 'make a transfer pricing ('TP') adjustment of Rs. 7,99,23,060 vide the order under section 92CA(3) of the Act dated 28 October 2010 passed in the name of the Company, which was not in existence as on the date of order.

• Subsequently, on account of merger of the Company with the Appellant, the files of the Company got transferred from the Ld. Mumbai AO to the jurisdictional Income Tax Officer of the Appellant at Hyderabad i.e. Deputy Commissioner of Income Tax, Circle 1(3), Hyderabad ('Ld. AO').

• During the course of assessment proceedings, AO asked the Company to provide various information/documents which were regularly filed by the Appellant with AO.

• *AO completed assessment for the relevant AY and passed draft assessment order u/s 143(3) r/w section 144C(1) of Act on 16 December 2010, wherein AO recomputed the amount of deduction claimed by the Company u/s 10A of the Act and added TP adjustment as proposed by TPO. The said draft assessment order was passed in the name of the Company which was not in existence as on that date.*

17. At the time of hearing, however, Ld. Counsel submitted that they are not pressing the above additional ground. Accordingly, the additional ground is treated as withdrawn and dismissed.

<u>ITA No. 221/Hyd/2014:</u>

18. As briefly stated above, assessee is contesting mainly on four grounds i.e., from 4 to 7. The adjudication of the said grounds is as under:

19. Computation of Margins:

"Ground No. 4: On the facts and in the circumstances of the case and in law, TPO erred in computing the operating margin/operating cost (i.e. PLI) of five comparable companies out of the twenty five comparable companies considered by TPO and the Ld. CIT(A) further erred in upholding/confirming the action of TPO".

It was submitted that in the case of the following comparable companies, the margin computed by TPO suffers from arithmetical and other errors.

<u>I. Accentia Technologies Limited ('Accentia')</u>:

Accentia operates in three segments and TPO has considered 'Medical Transcription' services segment for the purpose of margin computation. TPO did not reduce the proportional depreciation from the segmental revenue, while arriving at the operating profits of the Accentia, thereby enhancing the net cost plus margin of Accentia to 38.26% instead of 30.61% (before working capital adjustment). This is contradictory to TPO's own approach wherein, he has considered depreciation for the purpose of computing operating cost and thereby arriving at net cost plus margins.

II. Flextronics Software Systems Limited ('Flextronics'):

TPO at the time of computing the margin of Flextronics considered the financial statement of FY 2005-06, resulting in net cost plus margin of 14.54% instead of actual margin of 8.62% (before working capital adjustment) for FY2006-07. TPO has used current year data for all the companies selected as comparables, however for the purpose of computing margin of Flextronics, TPO has considered the wrong FY. Therefore, use of previous year's data for computation of margins of Flextronics is deviation from TPO's own stand.

III. Iservices India Private Limited ('Iservices'):

The margin computed by TPO at 50.27% is erroneous vis- a-vis the correct margin computation of 49.47% (before working capital adjustment). TPO has considered 'foreign exchange fluctuations' as non-operating in nature and excluded the same from the total cost of Iservices for determining the operating cost. However, while doing so, TPO has erroneously excluded the same twice from the total cost of Iservices resulting in higher margin.

VI. I C R A Techno Analytics Limited ('ICRA'):

The margin computed by TPO at 12.24% is erroneous vis-a-vis the correct margin computation of 10.94% (before working capital adjustment). Assessee has made submission in relation to this before the Ld. CIT(A). However, the Ld. CIT(A) did not consider the same.

19.1. It was submitted that if the above mentioned revised margin of the comparable companies is considered, the arm's length margin of the comparables companies mentioned in the TP order will come down to 30.05% from 30.67% and thereby the margin of the Company will fall in the +/- 5% range as per proviso to section 92C(2) of the Act. In view of the above, it was the prayer to consider the correct margin computation of various comparable companies and delete the TP adjustment made by TPO/ Ld.AO.

20. Ld. DR however, submitted that TPO has correctly calculated the margins. However, he has no objection if it is restored to the AO for verification.

21. After considering the rival contentions, we are of the view that this issue has to be examined by the AO after giving due opportunity to assessee. Therefore, this ground is restored to the file of AO/TPO to examine whether assessee's above contentions are correct and if so, to modify the margins computed. With these directions, this ground is considered allowed for statistical purposes.

22. Selection of Comparable Companies: Ground Nos. 5 & 6 pertain to the issue of Comparability of certain companies.

Ground No. 5: On the facts and in the circumstances of the case and in law, TPO erred and the Ld. CIT(A) further erred in upholding/ confirming the action of TPO in selecting high profit margin companies and high turnover companies as comparable to the Company.

Ground No. 6: On the facts and in the circumstances of the case and in law, TPO erred and the Ld. CIT(A) further erred in upholding/ confirming the action of TPO in selecting the comparable companies which are functionally different and companies whose financials are not reliable.

22.1. It was submitted that TPO erred in selecting the following companies as comparables which are functionally not comparable to the assessee-company, having high profit margin etc. It was the contention that the following comparable companies should be rejected / excluded from the final list of comparables selected by TPO for the reasons stated:

i. Mold Tek Technologies Limited ('Mold Tek');
ii. Vishal Information Technologies Limited ('Vishal');
iii. eClerx Services Limited ('eClerx');
iv. Maple Esolutions Limited ('Maple');

i. Mold Tek Technologies Limited ('Mold Tek'):

Functionally different: Moldtek should be rejected as comparable as it is engaged in providing engineering design services for construction of building by using design tools like CADI CAM, Stadd Pro by employing highly skilled software engineers for the purpose. These services are in nature of KPO and sharp contrast to the nature of work undertaken by assessee-company. TPO did not agree to the contention of assessee that Moldtek functionally different and involved in high end KPO services. Ld. CIT(A) relied on TPO's order and rejected the contentions of assessee.

22.2. In this regard, assessee placed reliance on the following Judicial precedents for rejection of Moldtek as a comparable company:

- Maersk Global Centres (India) Private Limited vs. ACIT, Mumbai [I.T.A. No.7466/Mum/2012/AY 2008-09] ;
- Symphony Marketing Solutions India Pvt. Ltd. - IT(TP)A No. 1316/Bang/2012] ;
- Capital IQ Information systems (India) Pvt. Ltd., Vs. DCIT Hyderabad [ITA No.1961/Hyd/2011] ;
- Avineon India (P.) Ltd Vs. DCIT [41 taxmann.com 334 (2014) (Hyd ITAT)] ;
- C3i Support Services (P.) Ltd Vs. ACIT [46 taxmann.com 453 (2014) (Hyd ITAT)]

ii. Vishal Information Technologies Limited ('Vishal'):

Functionally different: Vishal subcontracts majority of its ITES work to third party vendors and has made significant payments to these vendors, to the extent of 85.76% of the total expenditure during the year under consideration. Vishal has also commenced the new line of business of printing on demand (POD), wherein it prints upon client request. Thus, it is into the business of e-publishing. Vishal was holding substantial inventories in the new line of POD business. Vishal's employee cost to the total operating cost is only 3.47% during the year under consideration vis-it-vis assessee's 47%. TPO did not agree to the contention of assessee and rejected the submissions of assessee. Ld. CTT(A) relied on TPO's order and rejected the contentions of assessee. In this regard, assessee placed reliance on the following Judicial precedents for rejection of Vishal as a comparable company:

- Capital IQ Information Systems India (P.) Ltd Vs. DCIT [32 taxmann.com 21 (2013) (Hyd ITAT)] ;
- Avineon India (P.) Ltd Vs. DCIT [41 taxmann.com 334 (2014) (Hyd ITAT)] ;
- C3i Support Services (P.) Ltd Vs. ACIT [46 taxmann.com 453 (2014) (Hyd ITAT)] ;
- BA Continuum India Private Limited [ITA No. 1154/Hyd/2011 (Hyd ITAT)]

iii. Eclerx Services Limited ('Eclerx'):

Functionally different: Eclerx should be rejected as comparable as it is engaged in providing high end services in the nature of KPO activities like Data Analytics, and customized process solutions. These include data analytics, operations management, audits and reconciliation, metrics management and reporting services. TPO did not agree to the contention of assessee and rejected the submissions. Ld. CTT(A) relied on TPO's order and rejected the contentions of assessee. Assessee placed reliance on the following Judicial precedents for rejection of Eclerx as a comparable company:

- Maersk Global Centres (India) Private Limited Vs. ACIT, Mumbai [I.T.A. No.7466/Mum/2012/AY 2007-08] ;
- United Health Group Information Services Pvt. Ltd. [ITA No.6312/Del/2012/AY 2007-08] ;

- Calibrated Healthcare Systems India Pvt. Ltd. [ITA No. 5271/Del/201 2/AY 2007-08] ;
- Hyundai Motors India Engineering P. Ltd. [ITA No.1 850/Hyd/20 12/A Y 2007-08]

iv. Maple Esolutions Limited ('Maple'):

Unreliable financials: It was the contention that the directors of Maple were found to be involved in fraud and accordingly its financial statements cannot be trusted and are not reliable. TPO did not agree to the contention of assessee and rejected the submissions. Ld. CIT(A) relied on TPO's order and rejected the contentions of assessee. Assessee placed reliance on the following Judicial precedents for rejection of Maple as a comparable company:

- Capital IQ Information systems (India) Pvt. Ltd., Hyderabad Vs. DCIT [ITA No. 1961/Hyd/2011]

22.3. Ld. DR in reply however, submitted that as far as Maple is concerned, the fraud has occurred in earlier year and Co-ordinate Bench at Bangalore has accepted the comparable in their order in M/s. Akamai Technologies India Pvt. LTd., in IT(TP)A No. 879/Bang/2013 dt. 16-03-2016. This company is to be accepted as comparable. With reference to the other companies of Eclerx and Mold-Tek Technologies Ltd., it was submitted that assessee-company falls in between and KPO and BPO. Therefore, the action of the TPO is correct. He also referred to the order of TPO that assessee has not raised any objections.

22.4. In reply, Ld. Counsel submitted that assessee did object to the comparables before the TPO and further before the CIT(A) also. With reference to Maple E solutions Limited., it was submitted that Hyderabad Bench in the case of Capital IQ Information Systems (India) Pvt. Ltd., has deleted the company. With reference to the KPO and BPO, Ld. Counsel relied on the decision of the Hon'ble Delhi High Court in the case of Rampgreen Solutions Pvt Limited Vs. CIT in ITA No 102/2015 dt 10-08-2015 and submitted that this company is to be excluded.

23. We have considered the rival contentions and perused the objections raised by assessee. As far as Mold-Tek Technologies Ltd., is concerned, the objections of assessee are to be accepted as the said company was excluded in the following cases by the Co-ordinate Bench decisions:

i. Maersk Global Centres (India) Private Limited Vs. ACIT, Mumbai [I.T.A. No.7466/Mum/2012/AY 2007-08];
ii. Capital IQ Information Systems (India) Pvt. Ltd. Vs. DCIT [32 taxmann.com 21 (2013) (Hyd ITAT)];
iii. Avineon India (P) Ltd., Vs. DCIT [41 taxmann.com 334 (2014) (Hyd ITAT)]
iv. C3i Support Services (P) Ltd., Vs. ACIT [46 taxmann.com 453 (2014) (Hyd ITAT)]

23.1. As this company was analysed and already excluded, respectfully following the same we reject the DR’s objections and direct the TPO to exclude this company from the list of comparables.

23.2. With reference to Vishal Information Technologies Ltd., also this company is functionally different and was held not comparable in the following cases:

i. Capital IQ Information Systems (India) Pvt. Ltd. Vs. DCIT [32 taxmann.com 21 (2013) (Hyd ITAT)];
ii. Avineon India (P) Ltd., Vs. DCIT [41 taxmann.com 334 (2014) (Hyd ITAT)]
iii. C3i Support Services (P) Ltd., Vs. ACIT [46 taxmann.com 453 (2014) (Hyd ITAT)]
iv. BA Continuum India Private Limited Vs. ACIT [ITA No. 1154/Hyd/2011 (Hyd ITAT)]

Since this company is already held to be not comparable in similar cases, we direct the TPO to exclude the above company.

23.3. <u>eClerx Services Limited</u>: This company is also objected to as it is involved in KPO business. This company is already excluded in the Co-ordinate Bench decision cited above in the submissions. Respectfully following, we direct the TPO to exclude this company.

23.4. <u>Maple Esolutions Ltd:</u> This company also has un-reliable financials as directors of Maple Esolutions Ltd., are found to be involved in fraud. Under Company Law, once director is involved in fraud, the offence continues for later years also. This company is excluded in the Co-ordinate Bench decision in Hyderabad in the case of Capital IQ Information Systems (India)

Pvt. Ltd. Therefore, respectfully following the same, we direct the TPO to exclude the above company.

23.5. The Grounds are allowed accordingly.

24. Working Capital Adjustments: the ground pertaining is as under:

Ground No. 7: On the facts and in the circumstances of the case and in law, TPO erred and the Ld. CIT(A) further erred in upholding/ confirming the action of TPO in rejecting the claim of working capital adjustment of 2.27% and not providing downward adjustment to the mark-up of comparable companies in-spite of being quantified by the Appellant.

24.1. Assessee submitted that there exists difference in the debtors and creditors of assessee and the comparable companies selected by TPO, which materially affect the amount of net profit margin in the open market. Accordingly, assessee submitted the working capital adjustment of the company was calculated at 2.27%. Assessee further submitted that once the said working capital adjustment is granted to the company, the ALP will fall within +/- 5% range as per the proviso to section 92C(2) of the Act and therefore, there should not be any TP adjustment on the company. TPO rejected the workings and submission of assessee for working capital adjustment by stating that approach adopted is based on several assumptions. . Ld. CIT(A) relied on TPO's order and rejected the submission of assessee.

24.2. Assessee reiterated the submissions and placed reliance on the following judicial precedents for grant of working capital adjustment:

- Capital IQ Information Systems (India) Pvt. Ltd. [ITA No.196I/Hyd/20l l] ;
- United Health Group Information Services Pvt. Ltd. [ITA No.6312/Del/2012/AY 2007-08] ;
- Sun Life India Service Centre Pvt. Ltd., [ITA No.5799/Del/2012].

24.3. After considering the rival contentions we are of the opinion that TPO should have allowed the working capital adjustment as was done in the other cases of Capital IQ Information Systems (India) Pvt. Ltd. and United Health Group Information Services Pvt. Ltd., which are similarly placed like that of assessee. However, we are of the opinion that after excluding the above companies contested in above grounds this contention may become academic. TPO is directed to examine the issue and see whether assessee's operations are within the margin provided u/s. 92CA and if it is not then, the TPO is directed to make necessary working capital adjustment, if warranted.

25. With these observations and directions, assessee's grounds are considered allowed for statistical purposes.

<u>Revenue's Appeal in ITA No. 301/Hyd/2014</u>:

26. The only issue in Revenue's appeal is exclusion of lease line charges from the Total Turnover as directed by the CIT(A) . Lease line charges were excluded from the Export Turnover by the AO. Ld.CIT(A) directed the same to be excluded from the Total Turnover as well.

26.1. We have considered the submissions of the parties on the issue and perused the materials on record. This issue is squarely covered by the decision of the Hon'ble Bombay High Court in the case of CIT Vs. Gem Plus Jewellery India Ltd., [330 ITR 175] (Bom) and also Special Bench decision of the ITAT, Chennai in the case of ITO Vs. Sak Soft Ltd. [313 ITR (AT) 353] wherein it has been held that communication charges etc., attributable to the delivery of the computer software outside India which are to be reduced from the export turnover should be reduced from the total turnover as well, while computing the deduction u/s. 10A. Therefore, following the ratio laid down in the aforesaid cases, we affirm the order of Ld.CIT(A) to reduce the same from the export turnover as well as total turnover while computing the deduction u/s. 10A of the I.T. Act. This Ground of Revenue is accordingly rejected.

27. To sum-up Assessee's appeal is allowed for statistical purposes and Revenue's appeal is dismissed.

Order pronounced in the open Court on 16th December, 2016

Sd/-	Sd/-
(P. MADHAVI DEVI)	**(B. RAMAKOTAIAH)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Hyderabad, Dated 16th December, 2016

TNMM

Copy to :

1. BA Continuum India Private Limited, (Formerly known as BA Continuum Solutions Private Limited), Building No. 5, K. Raheja Mind Space, Hitech City, Madhapur, Hyderabad.

2. Deputy Commissioner of Income Tax, Circle-1(3), Hyderabad.

3. Deputy Commissioner of Income Tax, Circle-1(2), Hyderabad.

4. CIT(Appeals)-V, Hyderabad.

5. CIT-I, Hyderabad.

6. D.R. ITAT, Hyderabad.

7. Guard File.