IN THE INCOME TAX APPELLATE TRIBUNAL
'B' Bench Chennai

Before Dr. O. K. Narayanan, Vice President
and Shri V. Durga Rao, Judicial Member

ITA Nos. 1703 & 1731/Mds/2010
Assessment years : 2004-05 & 2005-06

M/s. Polaris Software Lab Ltd., Polaris House, 244, Anna Salai, Chennai-600 006.	v.	The Addl. Commissioner of Income-tax, Company Range-V, Chennai.

(PAN : AAACP4314E)

A N D

ITA Nos. 1826 & 1827/Mds/2010
Assessment years : 2004-05 & 2005-06

The Asst. Commissioner of Income Tax, Company Circle-V(2), Chennai.	v.	M/s. Polaris Software Lab Ltd., Polaris House, 244, Anna Salai, Chennai – 600 006.
(Appellants)		(Respondents)

Assessee by	:	Shri R. Vijayaraghavan, Advocate
Department by	:	Shri Guru Bashyam, JCIT
Date of Hearing	:	21.01.2013
Date of Pronouncement	:	21.01.2013

O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

These cross appeals by the assessee and the Revenue are directed against the orders of the CIT(Appeals)-V, Chennai for the assessment years 2004-05 and 2005-06. As common issues are involved in these appeals, they were heard together and are being disposed of by this common order for the sake of convenience.

2. In the appeals filed by the assessee the facts in brief are that the assessee company is engaged in the business of software development. The assessee filed a return of income for the assessment year 2004-05 declaring 19,09,26,230/-. Initially the return was processed u/s 143(1) of the Income Tax Act, 1961 ('the Act' for short). Subsequently, a notice under section 143(2) was issued and the case was referred to the Transfer Pricing Officer in accordance with the provisions of sec. 92CA of the Act. The assessment was completed on 29-12-2006 computing the total income at ₹ 46,64,59,708/-.

3. For the assessment year 2005-06 the assessee filed its return of income on 24-10-2005 declaring total income of ₹ 15,01,40,760/-. The return was processed u/s 143(1) of the

Act and subsequent notice u/s 143(2) was issued. The case was referred to the Transfer Pricing Officer in accordance with the provisions of section 92CA of the Act. The assessment was completed on 26.12.2008 computing the total income at ₹ 25,68,43,267/-.

4. The issue raised by the assessee in both the appeals relates to the exclusion of foreign currency from export turnover while computing the deduction under section 10A and 80HHE of the Act. The contention of the assessee before the Assessing Officer as well as the CIT(Appeals) was that the assessee was not engaged in rendering technical services and the business was purely in the nature of software development and therefore the foreign expenditure should not have been excluded from the export turnover. The CIT(Appeals) by following the decision of the Tribunal in the assessee's own case for the assessment years 2001-02 to 2003-04 decided the issue against the assessee and dismissed the grounds raised by the assessee.

5. Before us, the learned counsel for the assessee fairly conceded that the issue raised by him is covered by the decision of the Tribunal in the assessee's own case which was

against the assessee. We, therefore, respectfully following the decision of the Tribunal, find no infirmity in the orders passed by the CIT(Appeals). Accordingly, this ground raised by the assessee for both the assessment years under consideration is dismissed.

6. The next ground raised by the assessee for the assessment year 2004-05 relates to the treatment of interest income. The assessee has received interest income earned from the deposits and the Assessing Officer has treated the same as income from 'other sources'. The assessee carried the matter in appeal before the CIT(Appeals) and submitted that the interest income had accrued on fixed deposits which had been made as per the insistence of bankers as a collateral security for overdraft facility. It was submitted that the deposits having been made for the reason of commercial expediency, have a direct and immediate nexus with the business activity and this being the case, the benefit of deduction u/s 10A ought to be given to the interest income also. The CIT(Appeals) after considering the submissions of the assessee observed that there was no direct nexus between the interest income earned by the assessee and the business

of the assessee. He accordingly dismissed this ground raised by the assessee.

7. On being aggrieved the assessee has carried the matter before the Tribunal. The learned counsel for the assessee submitted that even if there is no nexus between the interest income earned by the assessee and the business of the assessee, at least the expenses incurred to earn the interest income may be allowed.

8. On the other hand, the learned DR supported the orders of the authorities below.

9. We have heard both the sides, perused the records and gone through the orders of the authorities below. We find that the assessee has kept the deposits with the Bank and earned some interest income. This interest has nothing to do with the business of the assessee. Therefore, we find no infirmity in the order of the CIT(Appeals) that there is no nexus between the interest income and the business of the assessee. However, if the assessee is in a position to produce evidence to show that it had incurred some expenditure to earn the interest income, the Assessing Officer may consider the same and decide the issue accordingly. This ground of

appeal raised by the assessee is therefore partly allowed for statistical purposes.

10. Coming to the appeals filed by the Revenue for the assessment years 2004-05 and 2005-06, the ground raised by the Revenue relates to exclusion of foreign currency expenses not related to onsite software development from the export turnover for the purpose of computing deduction u/s 10A and 80HHE of the Act. The case of the assessee is that foreign expenditure which has been incurred on on-site software development activity should not be excluded from the export turnover. For the assessment year 2004-05 the assessee has claimed that the following expenses are not directly connected with the software development and export and therefore should not be excluded from export turnover. The nature of the expenditure is given below as given by the CIT(Appeals) in para 5.2 at page No.4 of his order:

Nature of expense	**Relating to 10A**	**Relating to 80HHE**	**Total**
Consultancy and professional charges	30,043,747	22,247,579	52,291,326
Training expenses	1,685,777	1,248,328	2,934,105
Sponsorship expenses	12,095,474	8,956,773	21,052,247
Membership and Subscription charges	280,914	208,019	488,933

Business promotion expenses	6,251,467	4,629,250	10,880,717

The CIT(Appeals) by following the decision in the case of the assessee for the assessment years 2001-02, 2002-03 and 2003-04 allowed the same. We find no infirmity in the order passed by the CIT(Appeals). Accordingly, the Revenue's appeals on this ground for the assessment years 2004-05 and 2005-06 are dismissed.

11. In the result, assessee's appeal for assessment year 2004-05 is partly allowed for statistical purposes and the assessee's appeal for the assessment year 2005-06 is dismissed. The Revenue's appeals for both the assessment years under consideration stand dismissed.

Order pronounced in the open court at the time of hearing on the 21st of January, 2013, at Chennai.

Sd/-	Sd/-
(Dr. O. K. Narayanan)	(V.Durga Rao)
VICE PRESIDENT	JUDICIAL MEMBER

Chennai,
Dated the 21st January, 2013.

H.
Copy to: Assessee/AO/CIT(A)/CIT/D.R./Guard file