

IN THE INCOME TAX APPELLATE TRIBUNAL
BENGALURU BENCH 'A', BENGALURU

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER

AND

SHRI. S. JAYARAMAN, ACCOUNTANT MEMBER

I.T (TP).A No.1454/Bang/2013
(Assessment Year : 2009-10)

Deputy Commissioner of Income Tax,
Circle -12(3), Bengaluru .. Appellant

v.

M/s. Suzlon Wind International Ltd,
201, 2nd floor, God Towers Residency Road,
Bengaluru 560 025 .. Respondent
PAN : AAKCS4713M

Cross objection No.25/Bang/2016
I.T(TP).A No.1454/Bang/2013
(Assessment Year : 2009-10)

Assessee by : Shri. Tata Krishna, Advocate
Revenue by : Shri. Kamaladhar, Standing Counsel

Heard on : 19.10.2016
Pronounced on : 23.12.2016

ORDER

PER S. JAYARAMAN, ACCOUNTANT MEMBER :

These appeal and cross objection are filed by the Revenue and the Assessee , respectively, against the order of the CIT (A)-III, Bengaluru, dt.08.08.2013, for the assessment year 2009-10.

02. Facts in brief are that the Assessee , a manufacturer and exporter of parts of wind turbine generator , set up its unit in Padubidri in Udupi district has been granted approval by the Development Commissioner CSEZ dt 21.9.2007. While computing the deduction u/s 10AA, it has excluded the expenditure incurred in foreign currency from both the export turnover and total turnover & added the amount of scrap sales made by it to the total turnover. In the assessment made, the AO while computing the deduction u/s 10AA has included the expenditure incurred in foreign currency towards freight, insurance etc at Rs. 35,46,86,421/- in the total turnover alone and excluded scrap sales made at Rs.130,90,51,434/- from the total turnover. On an appeal, the CIT (A) relying on the ratio of the Jurisdictional High Court, reported in CIT v. Tata Elxsi Ltd 349 ITR 198, directed the AO to rework the deduction allowable u/s. 10AA after reducing the expenditure incurred in foreign currency from both export turnover and include scrap sales in total turnover. Aggrieved by the order of the Commissioner (Appeals), the Department has filed an appeal which is in ITA No. 1454/Bang-2013 with the following grounds of appeal.

1. The order of the learned CIT(A) is opposed to law and facts of the case.
2. On the facts and in the circumstances of the case the learned CIT(A) erred in law in directing the AO to exclude the reimbursement of expenses incurred in foreign currency both from the export turnover as well as from total turnover for the purpose of computation of deduction u/s 10AA and to include the scrap sales in total turnover, without appreciating the fact that the statute allows exclusion of such expenditure only from export turnover by way of specific definition of export turnover as envisaged by Sub-clause (4) of Explanation 2 below Sub-section (8) of Section 10A/10AA and the total turnover has not been defined in this Section.
3. On the facts and in the circumstances of the case the learned CIT(A) erred in directing the AO to compute deduction u/s 10A/10AA in the above manner by placing reliance on the decision of Hon'ble High Court of Karnataka in the case of M/s Tata Elxsi Ltd., which has not become final since the same has not been accepted by the Department and SLPs are pending before the Hon'ble Supreme Court.

03. The Assessee is also aggrieved by the impugned order of the Commissioner (Appeals) and hence filed its memorandum of cross-objections in No.25/Bang/2016, as under:

1). The Order to the extent it is against the Assessee of the Learned Commissioner (Appeals) is not justified in law and on facts and circumstances of the case .

ii) The Learned Commissioner (Appeals) has failed to appreciate that scrap sales cannot be included in the total turnover for the reason that the assessee is not engaged in trading of scrap and his direction is contrary to the decision of the Hon'ble Supreme Court in the case of CIT v. Punjab Stainless Steel Industries(2014) 364 ITR 144 (SC).

04. We heard the rival submissions. The CIT(A) held that while computing deduction u/s 10 AA, if the export turnover is calculated after excluding certain expenses, then such expenses should also be excluded

from the total turnover following the ratio laid by the Jurisdictional High Court in CIT v Tata Elxsi 349 ITR 98 with which we are in agreement. Hence, the grounds of appeal filed by the revenue are treated as dismissed. The assessee makes out a case in its favour. Following the ratio laid by the Supreme Court in CIT v. Punjab Stainless Steel Industries (2014) 364 ITR 144 (SC), the AO is directed to exclude the amount of scrap sales made by the assessee from the total turnover when determining deduction u/s.10AA. Thus, the grounds of cross objection filed by the assessee are treated as allowed.

05. In the result, Revenue's appeal is dismissed and the cross objection filed by the Assessee is allowed.

Order pronounced in the open court on 23rd December, 2016.

Sd/-

Sd/-

(SUNIL KUMAR YADAV)
JUDICIAL MEMBER

(S. JAYARAMAN)
ACCOUNTANT MEMBER

MCN*

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income Tax
4. The Commissioner of Income Tax (A)
5. DR
6. GF, ITAT, Bangalore

By Order

Assistant Registrar.