IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC - A" BENCH : BANGALORE

BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER

ITA No.2032/Bang/2016
Assessment year : 2008-09

M/s. Synchronoss Technologies India Pvt. Ltd., (Formerly Known as M/s. Wisor Telecom India Pvt. Ltd.) 6/7 Floor, Tower B, No. 12, Subramaniam Arcade, Bannerghatta Road, Bangalore – 560 029. **PAN: AAACW 3870F**	Vs.	The Deputy Commissioner of Income tax, Circle – 12(5), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri V.K. Gurunathan, Advocate
Respondent by	:	Shri A.R.V. Sreenivasan, JCIT(DR)

Date of hearing	:	16.02.2017
Date of Pronouncement	:	23.02.2017

O R D E R

This is an assessee's appeal directed against the order of the ld. CIT (Appeals), Bengaluru-6, Bengaluru dated 17.08.2016 for the assessment year 2008-09.

2. The grounds raised by the assessee are as under:-

"**1.0 Ground No. 1:**

1.1 On facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals) ('CIT (A)') has misinterpreted the fact that the Appellant is a SEZ unit while the Appellant had clearly stated in its submission that it is an STPI unit.

1.2 On facts and circumstances of the case and law, the learned CIT (A)/AO has erred in not providing any opportunity to the Appellant to furnish document evidencing that it is an STPI unit and has erred in stating that no evidence has been filed or produced to show that it functions from a SEZ unit, thus violating the principle of natural justice.

1.3 On facts and circumstances of the case and law, the learned CIT(A)/AO has erred in re-computing exemption u/s 10A by reducing the amount of export proceeds realized after 6 months amounting to Rs. 1,65,03,053/- without considering the amendment made to RBI notification no. FEMA 23/2000, Foreign Exchange management (Export of goods and services) Regulations, 2000 dated 3 May 2000, vide AP (DIR) Circular No. 25 dated 01 November 2004, whereby the period of export realization by units in STPI was extended from six months to twelve months.

All the above grounds are without prejudice to one another. Your Appellant craves leave to add, alter, amend or withdraw all or any of the above grounds of appeal herein on or before hearing of the appeal."

3. It was submitted by the ld. AR of assessee that ground Nos.1.1 & 1.2 are not pressed and accordingly these grounds are rejected as not pressed.

4. Regarding ground No.1.3, it was submitted by the ld. AR of assessee that as per the Tribunal's order rendered in the case of *HCL EAI Services Ltd. v. DCIT* as reported in 35 taxmann.com 146 (Bangalore Trib.)

(copy available on pages 53 to 77 of PB), the export proceeds brought into India within the extended time permitted by RBI should not be excluded from the export turnover for the purpose of computation of the deduction allowable u/s. 10A of the I.T. Act, 1961 ["the Act"]. He has drawn our attention to paras 34 to 36 of this Tribunal's order.

5. The ld. DR of revenue supported the orders of authorities below.

6. I have considered the rival submissions. I find that in the present case, it is noted by the AO on page 3 of the assessment order that a sum of Rs.1,65,03,053 (FIRC # 934797) has been received after six months from the end of relevant financial year and hence, it has to be excluded from the export turnover for the purpose of computation of deduction u/s. 10A of the Act. As per the Tribunal's order cited by the ld. AR of assessee as noted above, it was held by the Tribunal that the period of bringing export proceeds into India has been extended by RBI and if the export proceeds have been brought into India within such extended time, such exports should not be reduced from the export turnover for the purpose of deduction allowable u/s. 10A of the Act. For the sake of ready reference, I reproduce paras 34 to 36 of this Tribunal's order:-

> "34. Ground No.4 raised by the assessee reads as follows:-
>
> "<u>Foreign receipt not received within stipulated time</u>
>
> (i.) The assessee submits that the foreign receipt has been received within the time permitted by Reserve Bank of India and hence should not be excluded. The assessee points out that Section 155(11A) of the Act also permits rectification of the same.

(ii.) In any event, if such amount is excluded from export turnover it should also be excluded from the total turnover (CIT v. M/s. Tata Elxsi Ltd. 2011-TIOL-684-HC-IT)."

35. It is the stand of the assessee that in view of the RBI Circular dated 01.11.2004, the assessee who is a unit set up under the STP Scheme, is allowed to realize and repatriate the full value of export profits within a period of 12 months from the date of exports. Our attention was drawn to the provisions of section 10A(3) of the Act whereby RBI is a competent authority to prescribe the period within which the sale proceeds from export are to be brought into India. In view of the above, it was submitted that the AO should be directed to add the sum of foreign exchange brought into India by the assessee within the extended period of 12 months permitted by the RBI Circular [Ref: RBI/2004-05/264 A.P.(DIR Series) Circular No.25 dated November 1, 2004].

36. We have considered the submission of the ld. counsel for the assessee and we find that in the light of the RBI Circular and the provisions of section 10A(3) of the Act, the amount of export proceeds brought into India within the extended time permitted by RBI should not be excluded from the export turnover. We hold and direct accordingly. Ground No.4 is allowed."

7. From the above paragraphs reproduced from the Tribunal's order, it is seen that it is noted by the Tribunal in this case that as per RBI Circular No.25 dated 01.11.2004, the period of bringing export proceeds into India has been increased to 12 months. But as per the facts available on record, it is seen that as per FIRC No.934797 available at page 51 of PB, the export proceeds of Rs.1,65,02,661 was received in India on 23.10.2008, but it is not clear as to what was the date of relevant export for which this remittance was received, to find out as to whether such receipt is within the extended period of one year or not. Hence, I feel it appropriate to set aside the order of ld. CIT(Appeals) on this issue and restore the matter back to the file of Assessing Officer for a fresh decision. Accordingly, I set aside

the order of CIT(Appeals) on this issue and restore the matter back to the AO for a fresh decision with a direction that the AO has to examine this aspect as to whether this receipt of Rs.1,65,02,661 as per FIRC # 934797 is within the extended period of one year from the date of export or not and if it is found that this receipt is within this extended period of one year from the date of relevant export, then the same should not be excluded from the export turnover for the purpose of computing deduction allowable u/s. 10A of the Act. The AO has to pass necessary order as per law as per the above discussion, after providing adequate opportunity of being heard to the assessee.

8. In the result, the appeal of the assessee stands partly allowed for statistical purposes.

Pronounced in the open court on this 23rd day of February, 2017.

Sd/-
(A.K. GARODIA)
Accountant Member

Bangalore,
Dated, the 23rd February, 2017.

/ Desai Smurthy / MS /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.