

IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER  
AND SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

IT(TP)A No.1632/Bang/2014
Assessment year : 2009-10

The Deputy Commissioner of Income Tax, Circle 7(1)(1), Bangalore.	Vs.	M/s. Timken India Manufacturing Pvt. Ltd., No.39-42, Electronics City, Phase-II, Hosur Road, Bangalore – 560 100. <b>PAN : AACCT 5280C</b>
APPELLANT		RESPONDENT

Appellant by	:	Shri P. Dhivahar, Jt. CIT(DR)
Respondent by	:	Shri Bharath Agarwal, CA

Date of hearing	:	11.05.2015
Date of Pronouncement	:	26.05.2015

**ORDER**

*Per N.V. Vasudevan, Judicial Member*

This appeal by the revenue is against the order dated 3.9.2014 of the CIT(Appeals)-III, Bengaluru relating to assessment year 2009-10.

2. The assessee is engaged in the business of manufacture and sale of tapered roller bearings and its components from a unit registered under the Special Economic Zones Act at Mahindra World City — Special Economic Zone at Kanchipuram District and entitled for deduction under section 10AA of the Act. The assessee has complied with all the provisions of Section 10AA of the Act and therefore, is eligible to claim deduction under section 10AA of the Act. The Assessing Officer, however, in the assessment order has wrongly proceeded under the impression that the business of the Assessee was development of software and export thereof, thereby computed deduction under section 10A instead of section 10AA of the Act.

3. The AO has recomputed deduction under section 10A of the Act by reducing travel expenses incurred in foreign currency amounting to Rs 90,044,900 from the export turnover on the ground that the Company is engaged in the business of rendering technical services outside India/delivery of software services outside India without considering the fact the Assessee was engaged in the business of manufacture and export of tapered roller bearings and its components.

4. According to the assessee, it was engaged in the manufacture and export of tapered roller bearings and its components and not engaged in the business of rendering services outside India/ delivery of software services outside India and as such, travel expenses incurred in foreign

currency should not be reduced from the export turnover while computing the eligible deduction under section 10AA of the Act.

5. The assessee had incurred expenditure towards telecommunication, freight and insurance amounting to Rs. 7,024,483, Rs. 3,810,473 and Rs. 2,341,410 respectively. The AO has reduced the said amounts in computing the export turnover of the assessee by holding that the same is attributable to the delivery of software outside India, and consequently reduced the amount of deduction claimed under section 10AA of the Act. According to the assessee, the telecommunication, freight and insurance expenses were not incurred for the purpose of delivery of the articles or things outside India. Therefore, there should be no requirement to reduce such expenses from the export turnover of the Company as such expenses are not attributable to delivery of articles or things outside India.

6. Without prejudice to the above stand, the assessee submitted that any adjustment on account of said expenses from Export Turnover, should also be made from the Total Turnover for the purpose of computing deduction under section 10AA of the Act. The assessee submitted that parity should be maintained with regard to items of inclusions and exclusions between numerator and denominator, i.e., Export Turnover and Total Turnover, in the formula prescribed under section 10AA of the Act. The assessee placed reliance on the recent decisions of the of the Hon'ble High Court of Karnataka in the case of *CIT Vs. Tata Elxsi (17 taxmann.com*

100) (Kar.) wherein it was held that expenses should be reduced from the Total Turnover if the same is reduced from Export Turnover, while computing deduction under section 10A of the Act.

7. The CIT(Appeals) agreed with the submissions of the assessee and held as follows:-

“7.1 I have considered the issue before me. It is seen from the copies of the statement of accounts enclosed with the submissions that the assessee is manufacturing tapered roller bearings, cups and cones in a unit established in Mahindra World City, SEZ Kanchipuram. The statements of accounts also contains details of the inventories of opening and closing stock and consumption of raw materials and components in the said manufacturing process. It is therefore not clear as to what was the factual basis for the AO’s observation that the assessee is engaged in the business of export of software. Appellant has also stated that the value of goods exported is the FOB value and therefore it cannot be said that the telecommunication freight and insurance expenses have been incurred for the purpose of export of articles outside India. The appellant’s contentions are borne out from the documentary evidence of the statements of accounts. In my view since the AO’s observations regarding the business of the appellant are misplaced, there is no factual justification for treating the expenditure incurred in foreign currency for telecommunication, freight, insurance and foreign travel as amounts required to be reduced from the export turnover. Alternatively appellant has contended that if the amounts are reduced from the export turnover they are also required to be proportionately reduced from the total turnover. This contention of the appellant is supported by the decision of the jurisdictional High Court in Tata Elxsi reported in 349 ITR 98, which has held as follows:

“In other words, if the export turnover in the numerator is to be arrived at after excluding certain expenses, the same should also be excluded in computing the export turnover as a component of total turnover in the denominator. The reason being the total turnover includes export turnover.

The components of the export turnover in the numerator and the denominator cannot be different. Therefore, though there is no definition of the term 'total turnover' in section 10A, there is nothing in the said section to mandate that what is excluded from the numerator that is export turnover would nevertheless form part of the denominator”

7.2 Considering the fact that AO has acted upon certain erroneous presumptions and the decision cited above, these grounds are allowed. AO is directed to rework the deduction u/s.10AA accordingly.”

8. Aggrieved by the order of the CIT(Appeals), the Revenue is in appeal before the Tribunal.

9. We have heard the submissions of the Id. DR, who reiterated the stand of the Revenue as reflected in the grounds of appeal, which read as follow:-

“2. The learned CIT(A) has erred in directing the AO to reduce the expenditure incurred in foreign currency, both from the export turnover as well as total turnover for the purpose of computation of deduction u/s. 10AA and allowed deduction of Rs.36,065,831/- as claimed by the assessee.

3. The learned CIT(A) has failed to appreciate the fact that the statute allows exclusion of such expenditure only from the ETO by way of specific definition of export turnover as envisaged by sub-clause(i) of Explanation 1 below sub-section 9 of section 10A.”

10. We are of the view that the arguments advanced by the Id. DR are contrary to the facts as recorded by the CIT(Appeals), about which there is

no dispute. The arguments are also contrary to the principles laid down by the Hon'ble High Court of Karnataka in the case of *CIT v. Tata Elxsi Ltd [2012] 349 ITR 98 (Karn)*. We are therefore of the view that the order of the CIT(Appeals) is just and proper and calls for no interference. Accordingly the appeal by the Revenue is dismissed.

11. In the result the appeal by the Revenue is dismissed.

Pronounced in the open court on this 26<sup>th</sup> day of May, 2015.

Sd/-

( ABRAHAM P. GEORGE )  
Accountant Member

Sd/-

( N.V. VASUDEVAN )  
Judicial Member

Bangalore,  
Dated, the 26<sup>th</sup> May, 2015.  
/D S/  
Copy to:

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

By order

Assistant Registrar /  
Senior Private Secretary  
ITAT, Bangalore.