

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC - B” BENCH : BANGALORE

BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER

ITA No.1876/Bang/2016
Assessment year : 2007-08

The Deputy Commissioner of Income Tax, Circle 6(1)(2), Bangalore.	Vs.	M/s. Synova Innovative Technologies Pvt. Ltd., Sy.No.7(P) & 93(P), Electronic City Phase II, Industrial Area, Begur Hobli, Bangalore – 560 100. PAN: AAFCS 4915A
APPELLANT		RESPONDENT

Appellant by	:	Ms. S. Praveena, Addl. CIT(DR)
Respondent by	:	Ms. G. Vaidehi, CA

Date of hearing	:	30.11.2016
Date of Pronouncement	:	2.12.2016

ORDER

This appeal at instance of department is directed against CIT (A) order dt 16.08.2016. The relevant Assessment year is 2007-2008.

2. The effective grounds raised read as follows :-

On the facts and in circumstances of the case, the CIT(A) erred in citing the ratio laid down by the Hon'ble High court in the case of CIT vs Yokogawa Ltd. reported in 246 ITR 226 and directing the Assessing Officer to re-compute the benefit allowable u/s 10A without setting off loss of STPI units against the profit of STPI units, without appreciating the judicial precedence in the case of Himatsingke Seide Ltd.

On the facts and in circumstances of the case, the CIT(A) erred in citing the ratio laid down by the Hon'ble High court in the of CIT vs

Tata Elxsi Ltd. reported in 349 ITR 98 and directing the AO to reduce expenses incurred in foreign country, both from Export Turnover as well as from Total Turnover for the purpose of computation of deduction u/s 10A, without appreciation the fact that the statute allows exclusion of such expenditure only from Export Turnover by way of a specific definition for Export Turnover in the Act. On the other hand, there is no specific provision in section 10A warranting exclusion of the above expenses from the Total Turnover also.

3. Briefly stated the facts of the case is as follows:

Assessee is company deriving income from software development and IT enable services. The return of income was filed on 31.10.2007 declaring "Nil" after claiming deduction u/s 10A of IT Act amounting to Rs1,40,70,094/-. The assessment was taken up for scrutiny by issuance of notice u/s 143(2) of the Act and assessment u/s 143(3) was completed vide order dt 30.11.2009. The AO recomputed the deduction u/s 10A by excluding from Export Turnover certain expenses without excluding from the total turnover. The expenses excluded from the export turnover are as follows:-

Tele communication expenses	Rs. 11,93,098/-
Insurance	Rs. 1,39,271/-
Expenditure in foreign currency	Rs. 1,66,651/-

3.1 The AO further adjusted the loss of non-10A unit against profit of the unit before computing deduction u/s 10A of the Act. Consequent to the re-computation of deduction and setting off the losses of non-10A, that the deduction u/s 10A was reduced by AO to Rs.27,23,991 (claimed by assessee at Rs.1,40,70,094).

4. Aggrieved, the assessee preferred on appeal to the First Appellate Authority. The CIT(A) allowed the appeal of the assessee. The CIT(A) followed the judgments of the Hon'ble Jurisdictional High Court in the case of CIT vs. Yokogawa India Ltd. (341 ITR 385) and CIT vs. Tata Elxsi (349 ITR 98).

5. Aggrieved, the revenue has filed the present appeal before the Tribunal, the learned DR relied on the grounds raised. The learned AR submitted that the issues raised are covered in favour of assessee by jurisdictional High Court Judgments, which has been relied on by the CIT (A).

6. I have heard rival submission and perused the material on record. The Hon'ble jurisdiction High Court CIT vs. Yokogawa India Ltd. (supra) has held that the deduction u/s 10A of STPI unit is to be computed on a stand alone basis. In other words, the losses of Non – 10A units are to be ignored, while computing deduction for units liable for 10A deductions. Further Hon'ble High Court in the case of CIT vs. Tata Elxsi (supra) has held that expenditure excluded from Export Turnover, has to be excluded also from the Total Turnover, while computing the deduction u/s 10A of the Act. In the view of above, two judgment of the Hon'ble High Court, I hold CIT(A) is justified in allowing the appeal of the assessee. It is ordered accordingly.

7. In the result, the appeal filed by the department is dismissed.

Pronounced in the open court on this 2nd day of December, 2016.

Sd/-
(GEORGE GEORGE K.)
Judicial Member

Bangalore,
Dated, the 2nd December, 2016.

/N S/

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.