

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "B" : DELHI

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

ITA.No.7065/Del/2014  
Assessment Year 2010-11

ITO, vs. M/s. FIS Global Recovery Services
Ward-9 (2) India Pvt. Ltd.
Room No. 400-D, S-405(LGF), Greater Kailash, Part-II,
C.R. Building, New Delhi-110 048
I.P. Estate, (PAN-AACCG0720A)
New Delhi-110 001
(Appellant) (Respondent)

Assessee By : Shri Anshu Prakash, Sr. DR.  
Revenue By : Shri Manoneet Dalal, Advocate

Date of Hearing : 25.09.2017  
Date of Order : 27.09.2017

**ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER :**

This appeal by Revenue has been directed against the order of the Ld. CIT(A)-XIII, Delhi, dated 09.10.2014 for A.Y. 2010-2011. Revenue has raised following grounds of appeal.

1. *“On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in directing to allow the deduction u/s 10A of the I.T. Act amounting to Rs. 53,68,155/-.*
2. *The CIT(A) has erred in ignoring the findings of the A.O. that the services rendered by the assessee were that of making telephonic calls for debt and mortgage collection and thus not eligible for deduction u/s 10A of the I.T. Act.*
3. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in directing to work out the deduction u/s 10A without excluding the telecommunication and insurance expenses from the export turnover.*
4. *The appellant craves leave to add, alter or amend any ground of appeal raised above at the time of hearing.”*

2. The first issue raised by the Revenue in ground No. 1 and 2 is that Ld. CIT (A) erred in deleting the addition made by the A.O. for Rs. 53,68,155/- on account of deduction u/s 10A of the Act.

3. Briefly stated the facts are that the assessee is a private Ltd. Company and registered under the Software Technology Parks of India (STPI), in a scheme formulated by the Govt. of India. The assessee during assessment proceedings claimed to have engaged in providing BPO/ outsourcing and call center services related to debt collections to its holding company M/s. Chex Systems Inc. USA.

4. The assessee in the year under consideration has claimed a deduction of Rs. 53,68,155/- u/s 10A of the Act. However the A.O. during the assessment proceedings observed that similar deduction was claimed by the assessee in the assessment year 2008-09 and 2009-10 which was disallowed. The A.O. accordingly following the orders of the earlier years has disallowed the deduction claimed by the assessee for Rs. 53,68,155/- u/s 10A of the Act.

5. Aggrieved the assessee preferred an appeal to Ld. CIT(A) who has allowed the deduction claimed by the assessee u/s 10A of the Act by observing that similar deduction was claimed by the assessee in the earlier assessment years i.e. 2006-07, 2007-08 and 2008-09 which was allowed in these years. Considering the decision of the earlier years Ld. CIT(A) directed the A.O. to allow the deduction claimed by the assessee u/s 10A of the Act.

6. Being aggrieved by the order of Ld. CIT(A) Revenue is in 2<sup>nd</sup> appeal before us.

7. Both Ld. DR and Ld. AR relied on the order of authorities below as favorable to them.

8. We have heard the rival contentions and perused the material available on record. At the outset it was observed that the identical issue came before this Hon'ble Tribunal for the assessment years 2008-09 and 2009-10 in ITA No. 1410 and 4315 / Del/2012 in the own case of the assessee where the Hon'ble Tribunal was pleased to decide the issue in favour of the assessee vide order dated 30<sup>th</sup> September 2016. The relevant extract of the order is reproduced below :-

*4.3 We have heard the rival submissions and perused the material on record including the order of the lower authorities. We find that the learned Commissioner of Income-tax (Appeals), has decided the issue in dispute in para-6.3 of the impugned order with following observations:*

**“6.3 Decision**

*I have very carefully considered the findings recorded by the ASSESSING OFFICER and the detailed submissions made on behalf of the Appellant. Further, in respect of the findings recorded by the ASSESSING OFFICER and discussed above, the following facts are observed:*

- a. *The activities of the Appellant though have been described in different words at the places identified i.e. Form 3CEB, 3CD and submission dated 21 October, 14 ITA Nos. 1410 & 4315/Del/2012 AYs: 2008-09 & 2009-10 2010, however, the nature of business is the same. In nut-shell, the customers of Chex Systems Inc., SA (“CSI”) who are Financial Institutions in USA require debt collection services for their US clients and the appellant provides said*

*services. The appellant has reconciled the nature of activities candidly in its submission dated 21 February 2012. Therefore, in my view there is no inconsistency in nature of services provided by the appellant. The services rendered by the appellant are in the nature of outbound call centre activities for managing accounts receivables and recovery for the international customers, of CSI (who is the customer of the Appellant). Further, the ASSESSING OFFICER in his assessment order on Page 8 has himself stated that Appellant is engaged in the provision of services in the sphere of managing accounts receivable and recovery. The ASSESSING OFFICER further admits that the Appellant is making calls to CSI's International customers, however the ASSESSING OFFICER disputes that the appellant was not using any computer software in the process of making outbound calls to its customers, therefore deduction u/s 10A was disallowed.*

- b. The contention of the ASSESSING OFFICER that there is no application of any computer software whatsoever neither for data processing nor for making any such computerized calls is not correct. The appellant has described in his submission reproduced above wherein it has stated that appellant is using sophisticated software like web application CCC(e-access), AS400, TCS, Predictive Dialler Software, etc. at each and every process right from accessing the information regarding debtors on a real-time basis, making calls to the debtors, updating the system regarding collection, transmitting the information to the customers electronically, etc. The use of all these software in the business process has been elaborately explained by the appellant. Thus, it makes clear that appellant is using computer software especially the Predictive Dialler Software which automatically dials the 15 ITA Nos. 1410 & 4315/Del/2012 AYs: 2008-09 & 2009-10 telephone numbers that have been uploaded on call tables. This software has the ability to recognize a human voice and then transfer the phone call to any available personnel in the call center of the appellant. The said personnel then responds to the call being dialed automatically by the Predictive Dialler Software which is transferred automatically to the said person. The Predictive Dialler Software has a web application interface for the personnel to log-in and start receiving calls. Thus, it is clear that no manual dialing is being made by the Appellant and the calls are being dialed by the Predictive Dialler Software without any human intervention. The ASSESSING OFFICER in his order at Page No. 8 has himself stated that the Appellant uses computers systems connected through*

*dedicated internet lines. It is a known fact that the Computer System includes a complete unit along with the hardware, software and other peripheral devices that are necessary to make the computer function. Computer Software is an essential element in a computer system so that the computer performs the desired functions in the desired manner. Without computer software, the hardware cannot function on its own. A common example would be Microsoft Windows software which is used for running Personnel Computers without which the computer hardware which is a CPU, monitor, keyboard, etc. will not be able to function. It is a matter of record that computers including networking equipments comprise of more than 50% of the total assets of the appellant. It is also an undisputed fact that the appellant does not have any ISD facility and the details of telecommunication expenses are on record. All the calls are made using the Predictive Dialer Software using the internet facility. Thus, the contention of the ASSESSING OFFICER that no software is used by the Appellant is not based on the proper appreciation of the working of outbond call centers. Hence I do not agree with the findings of the ASSESSING OFFICER.*

- c. *The ASSESSING OFFICER has also mentioned that there is no customized electronic lata which is being prepared and sent to the customer and thus, it cannot be said that the Appellant is using computer software for his business activities to make him eligible to deduction u/s 10A. To this also I do not agree with the contention of the ASSESSING OFFICER. Since the Appellant has been using sophisticated software in carrying out its business activities and the same is discussed in detail above. It has been observed that after the call, the personals of the Appellant collect inputs of the relevant information obtained from the debtor of the US Financial Institutions in the real-time system and then transmit the same to the customers outside India electronically using the internet system. Thus, customized data are being transmitted electronically to the customer of the Appellant. In this regard the reference can be made to the decision of Hon'ble ITAT Chennai in the case of ITO v. Accurum India (?) Ltd. [2010] 126 IT'D 69 (CHENNAI) (TM) wherein it has made important observation in respect of customized electronic data as under:*

*".....The requirement of the provision is that there should be a customized electronic data and such data should be exported outside India The data which a customer may require, may be gathered either by manual effort or by electronic means, as for example, through internet. By*

*whatever means the data is collected, once it is stored in an electronic form, it becomes a customized electronic data which can be exported to qualify for deduction under section 10A. The process of actually collecting the data need not be IT enabled. What all is required that the data collected should be in an electronic form."*

In the case of the Appellant there is no dispute that there is a call centre engaged in managing accounts receivables and recovery, the calls are made by the Predictive Dialer Software and after the call, the inputs of the relevant information obtained from the debtor of the US Financial Institution in made in the real-time system which is transmitted to the customer outside India electronically using the internet system. Thus, the requirement of a customized electronic data being transmitted outside India electronically stands fulfilled.

*The ASSESSING OFFICER has also mentioned that appellant is just using the Internet lines instead of the traditional telephone lines for making calls to the international customers, the observation of the ASSESSING OFFICER are not correct in view of the detailed discussion made about the working of the appellant company. The appellant is not dialing any calls manually. The calls are being dialed by the Predictive Dialer Software automatically. The business activity of the Appellant i.e. Call Centre is specifically covered under the definition of computer software in terms of clause (b) of item (i) of Explanation 2 to section 10A of the I.T. Act, 1961 read with Notification No. SO 890(E) dated 26 September 2000 issued by the Central Board of Direct Taxes.*

*Considering the business module of the appellant, it is seen that appellant is eligible for deduction u/s 10A of the IT Act. It is also seen that the claim of deduction u/s 10A of the Appellant was accepted in the earlier Assessment Year(s) 2006-07 and 2007-08 and no adverse inference drawn about the deduction claimed u/s 10A of the Income-tax Act, 1961 (hereinafter referred to as "the Act") in those year. The only disallowance in those two earlier years was in respect of restricting the deduction u/s 10A on the amount of export turnover calculated after excluding communication and insurance expenses. The said disallowance has also been deleted by the learned CIT(A) in both the assessment years and the appeal order passed in both the earlier years allowing the claim of the Appellant has been placed on record before me. It is also seen that the nature of business activities of the Appellant remains the same in the year under appeal as well as in the earlier assessment years i.e. 2006-07 and*

*2007-08. Thus, the Appellant is eligible for deduction u/s 10A of the Act. The ASSESSING OFFICER is directed to allow deduction 18 ITA Nos. 1410 & 4315/Del/2012 AYs: 2008-09 & 2009-10 under section 10A of the I.T. Act, 1961 to the Appellant."*

*4.4 According to the Assessing Officer there is no application of any computer software either for the data processing or for making computerized calls. But this contention of the Assessing Officer is not found to be correct as assessee has shown use of sophisticated software like web application CCC (e-access), AS400, and particularly "Predictive Dialer Software" for making outbound calls. The learned Authorized Representative has further explained that the "Predictive Dialer Software" has a web application interface for the personal login and start receiving calls and thus we find that the call dialing is not done manually and calls are being dialed by the "Predictive Dialer Software" using Internet facility.*

*4.5 We find that call Centre activity is specifically covered under the definition of computer software in terms of clause (b) of Item (i) of Explanation-2 to section 10A of the Act read with notification number SO 890 (E) dated 26/09/2000 issued by the Central Board of Direct Taxes. But the Assessing Officer has disputed whether the activity of the assessee can be called as call Centre. From the facts elaborated by the assessee there is no dispute that it is a call Centre engaged in managing accounts receivable and recovery. The calls are made by the "Predictive Dialer Software" and after the call the inputs of the relevant information obtained from the data of the US Financial Institution is made in real-time system which is transmitted to the customer outside India electronically using the Internet 19 ITA Nos. 1410 & 4315/Del/2012 AYs: 2008-09 & 2009-10 system. In view of the explanation of the assessee, it is evident that customized electronic data is being transmitted outside India electronically. The Assessing Officer has also mentioned that assessee is using Internet lines for telephone calls to its international customer rather than traditional telephone lines. This observation also supports that activities of the assessee are in the nature of call Centre and therefore in our considered opinion, the assessee is entitled for deduction under section 10A of the Act. In prior assessment years, the Assessing Officer has accepted the claim of the assessee and deductions have been allowed. In the year under consideration, there is no change in the business activity of the assessee, thus, in our view, the principle of consistency also demand that this deduction should be allowed to the assessee. In view of above discussion, we find the order of learned Commissioner of Income-tax(Appeals) on the issue in dispute, is well reasoned and no interference on our part is required. Accordingly, we uphold the same. The grounds No. 1 and 2 of the appeal are dismissed. "*

9. We find that the issue involved in the present appeal exactly identical to the issue raised in the earlier years as discussed above. The Id. DR has also not brought anything contrary to the finding of Id. CIT-A. Therefore we have no alternate except to confirm the order of Id. CIT-A. Respectfully following the order this Hon'ble Tribunal for the assessment years 2008-09 and 2009-10 in ITA No. 1410 and 4315 / Del/2012 in the own case of the assessee, we do not find any reasons to interfere in the order of Ld. CIT(A). Hence the issue raised by Revenue is dismissed.

**Second issue**

10. The second issue raised by Revenue in this appeal is that Ld. CIT(A) erred in directing the A.O. to work out the deduction u/s 10A of the Act without excluding the turnover of telecommunication and insurance expenses for the purpose deduction u/s 10A of the Act.

The AO during assessment proceedings worked out the deduction under section 10A of the Act without excluding the amount of telecommunication and insurance expenses.

11. Aggrieved the assessee preferred an appeal before the Ld. CIT(A) who allowed the appeal of the assessee by observing as under :

*"As the facts are identical in the year under appeal as well as in the earlier AY(s) 2006-07, 2007-08 and 2008-09, therefore I am in agreement with the views of the CIT(Appeals)-V, New Delhi and assessing officer is therefore directed to allow deduction u/s 10A of the I.T. Act without excluding the telecommunication and insurance expenses from export turnover."*

*The facts of the case in this year are identical and I tend to agree with the findings given by my predecessor in the appellate order for the A.Y. 2009-10. In view of the above, the Assessing Officer is directed to allow the claim of deduction u/s 10A of the Act without excluding the communication and insurance expenses from the export turnover and modify the assessment order accordingly."*

12. Being aggrieved by the order of Ld. CIT(A) Revenue is in second appeal before us.

13. Before us both Ld. AR and Ld. DR relied on the order of authorities below as favorable to them.

14. We have heard the rival contentions and perused the materials available on records. At the outset it was observed that similar issue came up for consideration before this Hon'ble Tribunal in the own case of the assessee in ITA No. 1410-4315/Del/2012 for the assessment year 2008-09 and 2009-10 wherein this Tribunal was pleased to decide the issue in favour of assessee vide order dated 30<sup>th</sup> September, 2016. The relevant extract of the order is reproduced below :-

*"5.4 From the above observations, we find that in the case of the assessee, the expenses on communication and insurance have not been incurred in foreign exchange and also not included in the invoices issued to the foreign customer. Apropos the above discussion, since the assessee has not changed the expenses on telecommunication and insurance from its customers, the same are not required to be excluded while computing the export turnover for the purpose of determining deduction u/s 10A of the Act. Once, the telecommunication insurance expenses are not part of export turnover, in our considered opinion, there is no reason for reducing the expenses incurred on communication and insurance from the export turnover for the purpose of computation of deduction under section 10A of the Act. We find that order of the learned Commissioner of Income-tax (Appeals) on the issue in dispute is well reasoned and no interference on our part is required. Accordingly, we uphold the same. The ground No. 3 of the appeal is dismissed."*

15. As the issue involved in the present appeal is exactly identical which has already been decided by the Hon'ble Tribunal in favour of the assessee in its own case in ITA No. 1410-4315/Del/2012 (*supra*). Therefore, respectfully following the same we do not find any reason to interfere in the order of Ld. CIT(A) hence this appeal of revenue is dismissed.

Order pronounced in the open Court on 27/9/2017.

Sd/-  
(AMIT SHUKLA)  
JUDICIAL MEMBER

sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER

Dated :27.9.2017

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned

4.	CIT concerned
5.	D.R. ITAT 'B' Bench, Delhi
6.	Guard File.