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

BEFORE SHRI. INTURI RAMA RAO, ACCOUNTANT MEMBER

AND

SHRI. LALIET KUMAR, JUDICIAL MEMBER

I.T.A No.926/Bang/2017
(Assessment Year : 2010-11)

Asst. Commissioner of Income-tax,
Circle – 7(1)(2), Bengaluru .. Appellant

v.

M/s. Vee Technologies P. Ltd,
No.71, Sona Road,Bengaluru .. Respondent
PAN : AABCV0100C

Assessee by : Shri. V. Sinivasan, Advocate
Revenue by : Shri. B. R. Ramesh, JCIT

Heard on : 10.10.2017
Pronounced on : 27.10.2017

O R D E R

PER LALIET KUMAR, JUDICIAL MEMBER :

This appeal filed by the Revenue arises out of the order of the CIT (A) -7, Bengaluru, dt.25.01.2017, for the assessment year 2010-11, on the following grounds :

2. *"Whether on the facts and circumstances of the case, the CIT(Appeals) was justified in law in allowing the benefit of deduction u/s 10B to the EOU even if the sale proceeds receivable in convertible foreign exchange have been partly received and further received beyond the stipulated time"?*

3. *The CIT(Appeals) ought to have considered that that the expenditure incurred in foreign currency, towards telecom charges and other expenses to be excluded only from export turnover and not from total turnover for the purpose of computation of deduction u/s 10B of the Act, since such exclusion is permitted to arrive at the export turnover only as per the definitions given in Sec. 10B and total turnover has not been defined in the same.*

4. *The CIT(A) erred in following the judgments of jurisdictional High Court in the case of CIT Vs Tata Elxsi Ltd reported at (2012) 349 ITR 98 (Karn.), 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?''*

5. *For these and other grounds that may be urged at the time of hearing, it is prayed that the order of the CIT(A) in so far as it relates to the above grounds may be reversed and that of the Assessing Officer may be restored.*

02. Brief facts are that the assessee company is engaged in the business of back office services. The return was filed declaring a total taxable income of Rs. 14,64,7391-. The assessee has claimed exemption u/s 10B of IT Act of Rs.3,89,32,560/-. During the assessment proceeding, the AO observed that the assessee ought to have reduced expenditure on account of expenses incurred on account of communication expenses of Rs.13,54,50/-, freight charges Rs.2,13,396/-, connectivity charges Rs.40,30,1351- and other expenses incurred in Foreign currency toward foreign travel of Rs.96,43,134/-, all totaling to Rs.1,16,41,171/-, from the 'export

turnover' for the computation of deduction u/s 10B of IT Act as these expenses incurred are directly attributable to the delivery of Computer Software outside India. The AO, therefore held that these expenses which are debited to P&L Account ought to have been reduced from 'export turnover' are but has *not* been reduced from export turnover'. The AC) thereafter proceeded to re-compute deduction u/s 10B of IT Act after reducing the amount of Rs.1,16,41,171/- from the 'export turnover'. The AO did not propose any change in the 'total turnover'. The AO also found that as per the Auditors Certificate in Form No.56G, dt 04.03.2013, the appellant has brought the exports sale proceeds in India, in convertible foreign exchange within the stipulated time except for an amount of Rs. 11,21,718/-. The AO opined that the provisions of section 10B(3) of IT Act provides that the sale proceeds from export has to be brought in India within the specified time or within the extended period granted by the competent authority. The AO further observed that for the purpose of computing the proportionate profit of the undertaking as contemplated u/s.10B(4) of IT Act. The provisions of section 10B(3) of IT Act ought to have been complied with which is missing in the case of assessee. The AO thereafter, inferred that the intent of legislation is to ensure that the receipts are brought into the country and to minimise the outflow of foreign exchange and if any portion of receipt is not realized within the stipulated time frame then the concession in the form of deduction n/s 10(l) of IT Act is not available, The AO also examined the fact that the assessee has not sought any extension of time as per the provisions of section 155(11A) of IT Act. Accordingly the claim of assessee for deduction u/s.10B of IT Act *was* disallowed. Aggrieved by this order the

assessee filed an appeal before the CIT (A).

03. The CIT (A), being not convinced with the order of the AO, allowed the assessee's appeal. Being aggrieved, Revenue is in appeal before us with the grounds of appeal reproduced elsewhere in this order.

03. In respect of ground no.2, wherein the Revenue is aggrieved that that the CIT (A) has allowed the benefit of deduction u/s.10B to the EOU even when the sale proceeds receivable in foreign exchange have been partly received and further received beyond the stipulated time.

04. We find no reason to interfere with the finding given by the CIT (A). The CIT (A) in paras 5.1 to 5.5, has held has under :

5.1 The sub-section (1) of section 10B of IT Act provides deduction of such profit and gains which are derived by 100% Export Oriented Undertaking (EOU) from Export of article or thing of computer subject to pre-conditions given in sub-section (2). The sub-section (3) of section 10B of IT Act states that the deduction under sub-section (1) applies only when the sale proceeds are brought into India in convertible foreign exchange within the prescribed period and the sub-section (4) lays down the manner of computing the profits derive from export of the eligible items.

5.2 The term "export" is not defined in the Income-tax Act though the term "export turnover" is explained/defined by four provisions, namely, the Explanations to sections 10A, 10AA, 10B and 80HHC of the Act. Under section 10B of the Act, an assessee can claim deduction of profits and gains as are derived by 100 per cent EOUs from the export of articles or things for a period of 10 years. The language of section 10B(3) of the Act is plain. It does not admit any other meaning than what is conveyed by the language used therein. The benefit under section 10B(1) of the Act is available to 100 per cent EOUs only if the sale proceeds of articles or things exported out of India are received in convertible foreign exchange. Two conditions should be satisfied before the benefit under section 10B(1) of the Act is claimed. There should be export of articles or things or computer software out of India, and the sale proceeds thereof shall be received in convertible foreign exchange. One would not exclude the other nor only one condition would satisfy the eligibility conditionality. The intention of statute, in granting benefit to the units of EOUs, is to allow the benefit of deduction only when the articles or things or computer software are actually and factually exported out of India for foreign currency.

5.3 From the holistic reading of section 10B of IT Act it is evident that the eligible appellant will get deduction under this section 10B of IT Act for the sale proceed which is brought into India within the specified period and from the export of eligible items. The provision of sub-section (3) is not excluding section bur it is an inclusive section which allows deduction u/s 10B(1) of IT Act for the eligible amount. The term 'Export Turnover' as mentioned in sub-section (4) is meant for the amount received in India in convertible foreign exchange. In reference to sub-section (3) of section 10B of IT Act.

5.4 The provision of section 155(11A) of IT Act provides the restoration of deduction under different provision including u/s 10B of IT Act when such income has not been received in convertible foreign exchange in India or not brought in India by the appellant and subsequently it is brought into India in the manner specified. The sub-section specifically says that the deduction may be allowed under the provision of section 154 of IT Act in respect of such income or **part thereof** (emphasis supplied). This provision also manifest that the deduction u/s 10B of IT Act is allowable on the amount of sale proceed received in India even if it is partly received.

5.5 Accordingly I am of the considered view that the appellant is eligible for deduction u/s 10B of IT Act on the amount which is brought into India in accordance with sub-section (3) and there is no requirement that entire export turnover should have been brought into India in convertible foreign currency during the stipulated time to make the appellant eligible for deduction u/s 10B of IT Act. Therefore, the AO is directed to allow deduction u/s 10B of IT Act excluding the amount of Rs.11,21,718/-, not received in India as per Form 56G furnished by the appellant.

From the reading of the above, we find the finding given by the CIT (A) is in accordance with law and no contrary view is possible . However, we would like to add that if the assessee has failed to realise the entire export proceeds then the deduction u/s.10B would be calculated only on the basis of the sum realised, over the total turnover instead of gross export proceeds (realised + unrealised) over the total export turnover. If the total profits are Rs.100 and the sum of Rs.200/- out of the total turnover of Rs.1,000/- has not been realised, the equation to be applied for working out the deduction u/s.10B would be Rs.100 x Rs.800 ÷ Rs.1000. If we take the other formula i.e., Rs.100 x Rs.800 ÷ Rs.800/- then, there will not be any effect on the profit of the assessee. In view of the above, we direct the authorities below to take only the sum realised out of the sale proceeds received in India, instead of the total amount of the sale proceeds of the article / thing exported outside India. Accordingly we uphold the order of the CIT (A). The ground no.2 of the Revenue is dismissed.

05. Ground nos.3 and 4 are in respect of the direction of the AO to exclude from total turnover items like telecom charges and other expenses incurred in foreign currency be deducted from the export turnover as well, for working out the deduction u/s.10A.

06. We have the rival submissions. We find that the CIT (A) had followed the judgment of Hon'ble jurisdictional High Court in the case of Tata Elxsi Ltd v. CIT [349 ITR 98], in directing exclusion of

items which are deducted from export turnover also to be deducted from the total turnover also for working out the deduction u/s.10A of the Act. Just for a reason that appeal has been filed by the Revenue against the judgment of jurisdictional High Court would not be a reason not to follow the jurisdictional High Court's judgment. We do not find any lacunae in the order of CIT (A).

07. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on the 27th day of October, 2017.

Sd/-	Sd/-
(INTURI RAMA RAO)	(LALIET KUMAR)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

MCN*

Copy to:

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

By Order

SENIOR PRIVATE SECRETARY