

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES “B”, BANGALORE**

**Before Shri George George K, JM & Shri Jason P.Boaz, AM**

ITA No.1774/Bang/2016 : Asst.Year 2009-2010

Dy.Commissioner of Income-tax, Circle 7(1)(1) Bangalore.	Vs.	M/s.Tata Elxsi Limited ITBP, Hoody, Whitefield Bangalore – 560 048 <b>PAN : AA ACT7872Q.</b>
(Appellant)		(Respondent)

Appellant by : Shri Farahat Qureshi, CIT-DR

Respondent by : Shri P.C.Khincha, CA

<b>Date of Hearing : 24.10.2017</b>	<b>Date of Pronouncement : 03.11.2017</b>
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**ORDER**

**Per George George K, JM**

This appeal at the instance of the Revenue is directed against CIT(A)'s order dated 29.02.2016. The relevant assessment year is 2009-2010.

2. The effective grounds raised read as follows:-

*“2. Whether on the facts and circumstances of the case, the CIT(A) was justified in law in placing reliance on the jurisdictional High Court in the case of CIT (LTU) v. Yokogawa India Ltd., [(2013) 341 ITR 0385], wherein it was held that “income of an unit claiming deduction u/s 10A of the Act has to be excluded at source itself”, which has not reached finality since the Department has not accepted and appeal is pending before the Hon’ble Supreme Court of India?*

*3. The CIT(Appeals) ought to have considered that the expenditure incurred in foreign currency, towards telecom charges and rendering technical services outside India, to be excluded only from export turnover and not from total turnover for the purpose of computation of deduction u/s*

*10A of the Act, since such exclusion is permitted to arrive at the export turnover only as per the definitions given in Sec. 10A and total turnover has not been defined in the same.”*

We shall adjudicate the issue ground-wise as under.

3. **Ground No.2**

Brief facts in relation to the above ground are as follows:-

3.1 The assessment u/s 143(3) of the Act was completed for the assessment year 2009-2010 vide order dated 30.11.2011. In the assessment completed, deduction u/s 10A was recomputed by the Assessing Officer in respect of profits of the STPI Unit at Bangalore. The loss of STPI Unit at Mumbai was set off against the profits of STPI Unit at Bangalore and thereafter deduction u/s 10A was computed.

3.2 Aggrieved by the set off of the loss of STPI Unit at Mumbai against the profits of STPI Unit at Bangalore, assessee preferred an appeal to the first appellate authority.

3.3 The CIT(A) following the Tribunal's order in assessee's own case, decided the issue in favour of the assessee. The relevant finding of the CIT(A) reads as follow:-

*“5. The aforesaid submissions pertaining to the facts of the case were given due consideration. The details of 18 STP units formed by the appellant on different dates and the respective years of claim of exemption u/s.10A were obtained and examined. With regard to the legal position on the appellant's claim hat loss incurred by the STP unit at Mumbai should not be set off against the profits of the*

*STP unit at Bengaluru, the honorable ITAT, Bangalore Bench, in the case of same appellant i.e., Tata Elxsi Ltd. Vs. ACIT and vice versa vide ITA No.1074/B/2012 and ITA No.1295/B/2012 [decision dated 12.6.2013 for the AY 2007-08] held that deduction under section 10A should be allowed in respect of profits of the STPI units before setting off the losses of STPI unit at Mumbai. Revenue's appeal against the aforesaid decision was later dismissed by the honorable Karnataka High Court vide order dated 25<sup>th</sup> April 2014 in ITA No.625/2013. Therefore, respectfully following the decisions of the honorable ITAT, Bengaluru Bench and jurisdictional High Court, the second ground of appeal is allowed."*

3.4 Aggrieved by the order of the CIT(A), the Revenue has raised this issue in appeal before the Tribunal.

3.5 The learned Departmental Representative relied on the order of the assessment. The learned AR, on the other hand, submitted that the issue in question is squarely covered by the judgment of the Hon'ble Apex Court in the case of *CIT v. Yokogawa India Ltd. [(2017) 391 ITR 274 (SC)]*.

4. We have heard the rival submissions and perused the material on record. The Assessing Officer had allowed deduction u/s 10A in respect of profits of STPI Unit at Bangalore after setting off the loss incurred by STPI Unit at Mumbai. The Hon'ble Apex Court in the case of *Yokogawa India Ltd. (supra)* had categorically held that profits of the STPI Units is to be computed on a stand alone basis. It was held by the Hon'ble Supreme Court that the losses of other non-STP Units and STPI Units cannot be set off against the profits of the STPI Unit. The Hon'ble Apex Court was considering the following question of law:-

*“Whether losses of other 10A Units or non 10A Units can be set off against the profits of 10A Units before deductions under Section 10A are effected?”*

*Whether brought forward business losses and unabsorbed depreciation of 10A Units or non 10A Units can be set off against the profits of another 10A Units of the assessee.”*

5. In adjudicating the above question of law, the Hon’ble Apex Court had rendered the following findings :-

*“16. From a reading of the relevant provisions of Section 10A it is more than clear to us that the deductions contemplated therein is qua the eligible undertaking of an assessee standing on its own and without reference to the other eligible or non-eligible units or undertakings of the assessee. The benefit of deduction is given by the Act to the individual undertaking and resultantly flows to the assessee. This is also more than clear from the contemporaneous Circular No.794 dated 9.8.2000 which states in paragraph 15.6 that,*

*“The export turnover and the total turnover for the purpose of sections 10A and 10B shall be of the undertaking located in specified zones or 100% Export Oriented Undertakings, as the case may be and this shall not have any material relationship with the other business of the assessee outside these zones or units for the purposes of this provision.”*

*17. If the specific provisions of the Act provides [first proviso to Sections 10A(1); 10A(1A) and 10A (4)] that the unit that is contemplated for grant of benefit of deduction is the eligible undertaking and that is also how the contemporaneous Circular of the department (No.794 dated 09.08.2000) understood the situation, it is only logical and natural that the stage of deduction of the*

*profits and gains of the business of an eligible undertaking has to be made independently and, therefore, immediately after the stage of determination of its profits and gains. At that stage the aggregate of the incomes under other heads and the provisions for set off and carry forward contained in Sections 70, 72 and 74 of the Act would be premature for application. The deductions under Section 10A therefore would be prior to the commencement of the exercise to be undertaken under Chapter VI of the Act for arriving at the total income of the assessee from the gross total income. The somewhat discordant use of the expression "total income of the assessee" in Section 10A has already been dealt with earlier and in the overall scenario unfolded by the provisions of Section 10A the aforesaid discord can be reconciled by understanding the expression "total income of the assessee" in section 10A as "total income of the undertaking."*

6. In view of the above judgement of the Hon'ble Apex Court, the profits of the STPI Units at Bangalore is to be computed on a stand alone basis and thereafter deduction u/s 10A is to be granted. It is ordered accordingly. Therefore, we hold that the order of the CIT(A) is correct and in accordance with law on this issue. Hence ground No.2 raised by the Revenue is rejected.

7. **Ground No.3**

7.1 The Assessing Officer had completed assessment u/s 143(3) of the Act by excluding a sum of Rs.83,46,97,000 from the export turnover while computing deduction u/s 10A of the Act. According to the Assessing Officer, the expenses incurred in foreign currency for rendering of technical services outside India are to be excluded from the export turnover by virtue of proviso to Explanation 2(iv) of Sec.10A(8). However, the A.O.

did not reduce the same from the total turnover while computing deduction u/s 10A of the Act.

7.2 Aggrieved by the re-computation of deduction u/s 10A of the Act, the assessee preferred an appeal before the first appellate authority.

7.3 The CIT(A) held that when the expenses are reduced from the export turnover, same also needs to be reduced from the total turnover while computing deduction u/s 10A of the Act. The relevant finding of the CIT(A) reads as follow:-

*“Further, on the alternative ground taken by the appellant that expenses reduced from export turnover should also be reduced from total turnover in computing exemption under section 10A, the honorable Karnataka High Court, in appellant’s own case, i.e., CIT v. Tata Elxsi Ltd. and other group of cases vide their order dated 30<sup>th</sup> August 2011 reported in 349 ITR 98 held that expenses reduced from export turnover should also be reduced from the total turnover while computing exemption under section 10A. Therefore, respectfully following the cited decisions of the honorable ITAT, Bengaluru Bench and that of the jurisdictional High Court, the fifth and sixth grounds of appeal are allowed.”*

7.4 The Revenue being aggrieved, has raised this issue in appeal before the Tribunal.

7.5 At the very outset, the learned Counsel of the assessee submitted that the issue in question is squarely covered in favour of the assessee by the judgment of the Hon’ble High Court in assessee’s own case reported in 349 ITR 98.

7.6 The learned Departmental Representative, on the other hand, was unable to controvert the above submission of the learned AR.

8. We have heard the rival submissions and perused material on record. The Hon'ble High Court in assessee's own case (supra) had held while computing the deduction u/s 10A of the Act, if the export turnover in the numerator is arrived at after excluding certain expenses, the said expenses ought to be excluded also from the total turnover in the denominator. In view of the above judgment of the Hon'ble High Court in assessee's own case, we hold that the CIT(A) is justified in taking the view that expenses reduced from export turnover are also to be reduced from the total turnover, while computing deduction u/s 10A of the Act. It is ordered accordingly. Hence ground No.4 raised by the Revenue is rejected.

9. In the result, the appeal by the Revenue is dismissed.

Order pronounced on this 03<sup>rd</sup> day of November, 2017.

Sd/-  
**(Jason P.Boaz)**  
**Accountant Member**

Sd/-  
**(George George K.)**  
**JUDICIAL MEMBER**

Bangalore ; Dated : 03<sup>rd</sup> November, 2017.  
Devdas\*

**Copy of the Order forwarded to :**

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

True copy

BY ORDER,

(Asstt. Registrar)  
**ITAT, Bangalore**