

आय अधकरण, "बी" ढयायपीठ, चेन्नई  
PELLATE TRIBUNAL 'B' BENCH, CHENNAI

श्री संजय अरोड़ा, लेखा सदस्य एवं श्री धुवु आर.एल रेड्डी, ढयायक सदस्य के समु  
Before Shri Sanjay Arora, Accountant Member &  
Shri Duvvuru RL Reddy, Judicial Member

आयकर अपील सं./I.T.A.No.1294/Mds/2017

ढनधाकरण वष/Assessment Year:2011-12

The Deputy Commissioner of  
Income Tax,  
Corporate Circle 1(1),  
Chennai . 600 034.

M/s. APA Engineering (P) Ltd.,  
Vs. Unit 1, Jem & Jewellery Complex,  
MEPZ-SEZ Tambaram,  
Chennai 600 045.  
[PAN:AACCA9455C]

(अपीलाथ /Appellant)

(ढयथ/Respondent)

अपीलाथ का ओर से / Appellant by : Smt. Veni S. Raj, JCIT

ढयथ का ओर से/Respondent by : Shri T. Banusekar, C.A.

सुनवाई का ताराख/ Date of hearing : 02.08.2017

घोषणा का ताराख /Date of Pronouncement : 31.08.2017

### आदेश /O R D E R

#### PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the Revenue is directed against the order of the Id. Commissioner of Income Tax (Appeals) 5, Chennai dated 21.03.2017 relevant to the assessment year 2011-12. The only effective ground raised in the appeal of the Revenue is that the Id. CIT(A) has erred in allowing the deduction to the tune of .49.64 lakhs under section 10A of the Income Tax Act, 1961 [Act+in short].

2. Brief facts of the case are that the assessee is engaged in the

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software consultants, trading & manufacture of auto parts. The assessee filed its return of income on 08.09.2011 admitting total income of .2,03,900/-. Subsequently, the assessee has filed a revised return admitting an income of .51,44,922/- The assessment was completed under section 143(3) of the Act on 21.03.2014 by assessing the total income of the assessee at .1,00,94,073/-. The Assessing Officer while completing the assessment disallowed the deduction claimed under section 10A of the Act as well as disallowance under section 14A r.w.s. Rule 8D.

3. Against the disallowance of deduction claimed under section 10A of the Act, the assessee carried the matter in appeal before the Id. CIT(A). By accepting the submissions of the assessee and following the decision of the Tribunal in assessee's own case for earlier assessment years, the Id. CIT(A) allowed the claim of deduction under section 10A of the Act and restricted the allowance to 50% in view of the provisions of section 10A(1A) of the Act.

4. On being aggrieved, the Revenue is in appeal before the Tribunal and the Id. DR has contended that the assessee is not carrying out any manufacturing activity and the entire manufacturing activity has been carried out by an outsider. He also contended that the assessee undertakes final assembly and packing before they are exported outside India and therefore, the assessee cannot be termed as a manufacturer to claim deduction under

It is held that the order of the Id. CIT(A) should be reversed and restored that of the Assessing Officer.

5. On the other hand, by filing various decisions including the decision of the Tribunal in assessee's own case for earlier assessment years, the Id. Counsel for the assessee has submitted that the issue is squarely covered in favour of the assessee and prayed for its further confirmation.

6. We have heard both sides, perused the materials available on record and gone through the orders of authorities below. We have also perused various decisions filed in the form of paper book. In the assessment order, the Assessing Officer has noticed that the assessee is involved in preparation of drawings as per the specifications of the overseas customer and placing purchase order with the manufacturers, so that the said manufacturer produces the goods as per such specifications. To be precise, the assessee company receives orders from its overseas customers which are passed on to other manufacturers in India. The assessee company only acts as an intermediary between the overseas customer and the Indian manufacturer. It only facilitates the entire process through which the overseas customers source auto parts in India. The overseas customers do not have an establishment in the form of a branch, etc. in India to identify a reliable and a dependable manufacturer for their orders. For such purposes, they utilize the services of the assessee company. After getting the goods

manufacturers in India, the assessee company undertakes final assembly and packing before they are exported outside India. This process cannot be said to be a manufacturing process and therefore, the Assessing Officer asked the assessee to explain as to why the deduction under section 10A of the Act should not be denied in its case. The assessee company in its submission relied on the decision of the Bombay High Court in the case of *Penwait India Limited* and explained that it has been held in that case that an undertaking would be said to be engaged in manufacturing activity, if it is doing a part of the manufacturing activity by itself and for the rest of it, engages the services of somebody else.

6.1 After considering the submission of the assessee, the Assessing Officer was of the opinion that it may be true that a part of the manufacturing activity can be outsourced. However, in the assessee's case, the Assessing Officer has observed that the entire manufacturing activity is carried out by an outsider and the assessee company is not involved in any of the manufacturing activities. As has been brought out in the initial paragraph, the assessee company does not have bed infrastructure to manufacture the goods. The assessee company does not have the plant and machinery to manufacture such goods in India. For producing a product, if a manufacturer carries out some manufacturing activity in his factory and for a portion, he gets the assistance from an outsider; he would still be called a manufacturer and be entitled to deduction under section 10A of the Act. However, this

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on a trader who just procures goods from a manufacturer and exports them. The assessee, in the instant case, should only be termed as a trader who procures goods from outsiders and exports them to overseas entities. Therefore, the decision of the Hon'ble High Court of Bombay cited by the assessee is not applicable to the assessee. Even with regard to IT & ITES activities carried on by the assessee, there is no manufacturing or production of software carried out by the assessee. The assessee company only exports the software developed by others. As has been explained above, the assessee has got the expertise in sourcing auto parts in India.

6.2 Further, the Assessing Officer has noticed that through a web-based interactive tool, the assessee company communicates with its clients situated overseas the details of the Indian manufacturers and their manufacturing schedules. Some of the overseas clients place direct orders on the Indian manufacturers. The assessee company acting as a facilitating agent, international commission and international inspection charges are paid to it by the overseas entities. Such commission cannot be said to have been derived from rendering services in ITES field or through development of computer software. The services rendered are basically sourcing of auto parts. In rendering such services, the assessee company utilizes internet based tools in interacting with its overseas customers. It only facilitates locating a manufacturer, inspects the parts manufactured and gets a

Therefore, the Assessing Officer was of the opinion that the assessee cannot be said to be engaged in development of computer software or rendering ITES services as envisaged in 10A of the Act. On the basis of the above discussion, the Assessing Officer disallowed the claim of deduction under section 10A of the Act in consistent with the stand taken on similar issue in the earlier assessment years 2006-07 to 2010-11.

6.3 By following the consolidated decision in assessee's own case for the assessment years 2006-07, 2007-08, 2008-09 and 2009-10 in I.T.A. Nos. 2306/Mds/2013 & 505, 506 & 1354/Mds/2014, dated 30.4.2015, the Id. CIT(A) held that the assessee is entitled to claim deduction under section 10A of the Act. We have carefully perused the order of the Tribunal. While adjudicating the ground in earlier assessment years, after elaborately discussing various aspects, the Coordinate Benches of the Tribunal has concluded as under:

*"From the above discussions, invoices raised by the assessee and the order of the jurisdictional High Court, it is apparent that the assessee is engaged in manufacturing activity/assembling the products for exports, and also rendering Information Technology enabled services which entitles the assessee to claim deduction u/s 10A of the Act. Thus this ground is answered in favour of the assessee for all the assessment years in appeal before us."*

Further, in the subsequent assessment year 2010-11 also, the Tribunal in I.T.A. No 1623/Mds/2015, dated 16.12.2015 by reproducing the entire order in para 2 to 4.9.1, at para 6, the Tribunal has held as under:

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circumstances being identical for this year also, in the above decision, we hold that the assessee is entitled for deduction u/s 10A of the Act. However the claim shall be restricted to 50% in view of the provisions of section 10A(1A) of the Act."

6.4 As the facts and circumstances are identical for the assessment year under consideration, respectfully following the above stated decisions of the ITAT, Chennai in assessee's own case, the Id. CIT(A) has held that the assessee is entitled for deduction under section 10A of the Act and restricted the claim to 50% in view of the provisions of section 10A(1A) of the Act. The Id. DR could not controvert the above findings of the Tribunal in assessee's own case or filed any higher Court decision having modified or reversed the findings of the Tribunal. Thus, we find no infirmity in the order passed by the Id. CIT(A) has rightly followed the above decisions of the Tribunal in assessee's own case for the assessment year under consideration. Accordingly, the ground raised by the Revenue is dismissed.

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

Order pronounced on the 31<sup>st</sup> August, 2017 at Chennai.

Sd/-

(SANJAY ARORA)  
ACCOUNTANT MEMBER

Chennai, Dated, the 31.08.2017

Vm/-

आदेश का प्रतिलिपि अर्पण/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. प्रभागीय प्रतिलिपि/DR & 6. गार्डफाइल/GF.

Sd/-

(DUVVURU RL REDDY)  
JUDICIAL MEMBER