

**IN THE INCOME TAX APPELLATE TRIBUNAL  
COCHIN BENCH  
KOCHI**

**BEFORE S/SHRI P B BANSAL, VICE PRESIDENT & GEORGE GEORGE K, JM**

**ITA Nos 249 & 334/Coch/2016  
(Asst Years 2010-11& 2011-12)**

The Asst. Commr of Income Tax Circle-1(1), Range-1, Trivandrum.	Vs	M/s. Paragon Biomedical India (P) Ltd., B-16, Gayathri, Technopark Campus, Kariavattom, Thiruvananthapuram-695 581.
<b>( Appellant)</b>		<b>(Respondent)</b>

**ITA No 297/Coch/2016  
(Asst Year : 2010-11)**

M/s. Cliniface Clinical Research (P) Ltd., (Formerly M/s. Paragon Biomedical India (P) Ltd.), B-16, Gayathri, Technopark Campus, Kariavattom, Thiruvananthapuram-695 581.	Vs	The Asst. Commr of Income Tax Circle-1(1), Range-1, Trivandrum.
<b>( Appellant)</b>		<b>(Respondent)</b>

<b>PAN No.</b>	
Revenue By	Sh A Dhanaraj, Sr. DR
Revenue By	Sh Pankajakshan C. Govind, CA
Date of Hearing	03/10/2017
Date of pronouncement	04/10/2017

**ORDER**

**PER GEORGE GEORGE K, JM:**

Two appeals at the instance of Revenue and one appeal filed by the assessee are directed against the order of the CIT(A), Trivandrum dated 29/03/2016. The relevant assessment years are 2010-11 and 2011-12.

2. Since common issue is raised in these appeals, they were heard together and are being disposed of by this consolidated order for the sake of convenience and brevity.

3. We shall first take up for adjudication the Revenue's appeals.

I.T.A Nos.249 & 334/Coch/2016 : A.Y. 2010-11 & 2011-12 (Revenue's appeals)

4. The only issue raised in the Revenue's appeals is whether the CIT(A) is justified in allowing the alternative claim of the assessee u/s. 10A of the I.T. Act.

4.1 Briefly stated the facts of the case are as follows:

The assessee is a company engaged in the business of data management services and clinical research. For the assessment years 2010-11 and 2011-12, the assessee had filed its returns of income claiming deduction u/s. 10B of the Act. The assessments were completed for the assessment years 2010-11 and 2011-12 by rejecting the claim of deduction made u/s. 10B of the Act by relying on the judgment of the Hon'ble Delhi High Court in the case of CIT vs. Regency Creations Ltd. reported in 255 CTR 63. The reasoning of the Assessing Officer to deny the deduction claimed u/s. 10B was that the export oriented unit of the assessee had obtained approval only from the Director of the Software Technology Parks of India which is not a valid approval for the purpose of claim of deduction u/s. 10B of the Act. The export oriented unit according to the Assessing Officer is to be approved by the Central Government through an appropriate

authority constituted u/s. 14 of the Industries (Development and Regulation) Act, 1951.

4.2 Aggrieved by the assessment orders completed for the assessment years 2010-11 and 2011-12, the assessee preferred appeals before the first appellate authority. The CIT(A) held that the Assessing Officer has correctly denied the claim of deduction u/s. 10B of the Act. However, the CIT(A) considered the alternative plea of the assessee namely, whether the assessee is entitled to the benefit of deduction u/s. 10A of the Act and decided the issue in favour of the assessee. The CIT(A) directed the Assessing Officer to work out the deduction u/s. 10A to which the assessee is entitled and to allow the same as pleaded. While allowing the alternative plea of the assessee, the CIT(A) relied on the order of the Tribunal in the case of C.W.P. Taylor vs. DCIT in I.T.A. No. 695/Coch/2008 dated 28/07/2009. Further the CIT(A) relied on the judicial pronouncements which are listed at para 4.3 of the impugned order for the proposition that the powers of the Commissioner of Income-tax are co-terminus with that of the Assessing Officer.

4.3 The Revenue, being aggrieved by the order of the CIT(A) for the assessment years 2010-11 and 2011-12 has filed the appeals in I.T.A. Nos. 249/Coch/2016 and 334/Coch/2016. The Ld. DR submitted that the assessee's unit is not eligible for 10A deduction as it is not situated in Free Trade Zone.

4.4 The Ld. AR on the other hand submitted that the issue in question is directly covered in favour of the assessee by the following orders of the Tribunal:

1. CWP Taylor vs. DCIT in ITA No.695/Coch/2008 dated 28.07.2009
2. ITO vs. Travancore Analytics Pvt. Ltd. in ITA No. 69/Coch/2014 dated 28/08/2014.
3. ACIT vs. QBurst Technologies Pvt. Ltd. in ITA Nos.172 &173/Coch/2015 dated 17/11/2015.
4. ITO vs. Device Driven (India) Pvt. Ltd. in ITA No.282/Coch/2013 dated 29/11/2013
5. Cronos Consulting India Pvt. Ltd. vs. ACIT in ITA No.105/Coch/2014/ dated 06/06/2014.

4.5 We have heard the rival contentions and perused the material on record. The Sec. 10A(2)(i)(b) states that benefit of 10A applies to any undertaking commencing its operation on or after 01<sup>st</sup> day of April 1994 in any Electronic Hardware Technology Park or as the case may be Software Technology Park. The units commencing its operations on or after 01<sup>st</sup> day of April, 1981 in any Free Trade Zone is separately dealt with in sub-clause (a) of Clause (i) of sub-section 2 of section 10A and hence, the submissions of the learned Departmental representative that only units set-up in Free Trade Zone are eligible and are covered by Section 10A of the Income-tax Act, 1961 is not correct. In the Paper Book filed by assessee (Pgs. 83 to 88) the certificate of the Chartered Accountant filed in Form 56F for the financial years 2009-10, and 2010-11 corresponding to assessment years 2010-11 and 2011-12 respectively certifying the compliance of the claim made for deduction under section 10A of the Income Tax Act,

1961 has been enclosed. The certificate of registration issued by Electronic Software Technology Park of India, Thiruvananthapuram in the name of the assessee has been enclosed at pgs. 89 to 96 of the Paper Book (which covers the relevant A.Y's). The eligibility of the unit registered with STPI to claim deduction u/s. 10A of the Act has been discussed at length in the order of the Hon'ble Co-ordinate Bench of this Tribunal in the case of M/s. QBurst Technologies Pvt. Ltd. (supra). The relevant finding of the Tribunal (Para 8 at pg. 28 of the P.B. filed by the assessee) reads as follows:

*"8. We have heard the rival submissions and perused the material on record. In the return of income, the assessee had claimed deduction under section 10B of the Act. The claim of deduction under section 10B of the Act was withdrawn in the assessment order passed for both the assessment years by following the dictum laid down by the Hon'ble Delhi High Court in the case of Regency Creations Ltd. (supra). The first appellate authority has confirmed the action of the Assessing Officer in making the disallowance of deduction under section 10B of the Act based on the judgment of the Hon'ble Delhi High Court, cited supra. However, the first appellate authority has allow the alternative claim for deduction under section 10A of the Act based on the order of the coordinate Bench of the Tribunal in the case of CWP Taylor in ITA No.695/Coch/2008 (order dated 28.7.2009). The CIT(A) has also verified the facts relating to the compliance of all the conditions prescribed under section 10A of the Act (in para 3.6.8 for A.Y. 2010-11). Based on the verification of facts, the CIT(A) directed the Assessing Officer to allow deduction under section 10A of the Act. The following judgment of the Hon'ble Delhi High Court and orders of the ITAT have held that when deduction u/s 10B is denied, it is the duty of the revenue to examine whether the alternative claim of deduction u/s 10A can be granted on facts and circumstances of the case:*

- i) Fast Booking (I) Pvt Ltd vs. DCIT in ITA 334/2015 judgment dated 2.9.2015 (Delhi High Court judgment)*
- ii) M/s. Device Driven (India) P. Ltd. (ITA No. 282/Coch/2013 (order dt 6.6.2014)*
- iii) Cronos Consulting India P Ltd vs. ACIT (ITA No.15/Coch/2014.*

*9. Further, we notice that the Assessing Officer in the remand report has not state that the assessee has not satisfied the conditions precedent to claim deduction under section 10A of the Act. The Assessing Officer has only raised a technical objection namely, the assessee is not entitled deduction under section 10A of the Act, since, the claim was not made in the return of income filed. However, we notice that the claim of deduction under section 10B of the Act was made in the return of income and the revenue was granting the deduction under section 10B of the Act in the previous assessment years. Only when the judgment of the Hon'ble Delhi High Court in the case of Regency Creations Ltd, cited supra, was pronounced, the claim of deduction under section 10B was denied in the assessment concluded. When the claim of deduction under section 10B was denied, the Assessing Officer ought to have examined whether the assessee is*

*eligible for deduction under section 10A of the Act. The CBDT circular no. 14 (XL-35) dated 11.4.1955 has clarified that the revenue shall not take advantage of ignorance of the assessee as to his rights and the officers are duty bound to grant deduction legally available to the assessee. The CIT(A) also relied the judgment of the Hon'ble Delhi High Court in the case of CIT vs. Technovate E Solution P Ltd reported in 354 ITR 110 wherein it was held that registration with Software Technology Parks of India is sufficient to allow deduction under section 10A of the Act. The copies of the certificate of registration issued by STPI and the certificate of the Chartered Accountant in form 56F are also enclosed in the paper book filed by the assessee for the respective assessment years. On examination of the certificates of registration under STPI and the certificate of the Chartered Accountant in form 56F, we are of the view that the CIT(A) is justified in allowing the alternative claim of deduction under section 10A of the Act. It is ordered accordingly."*

4.6 In view of the above order of the Co-ordinate bench of the Tribunal, we hold that the CIT(A) is justified in allowing the alternative plea of the assessee u/s. 10A of the I.T. Act. It is ordered accordingly.

5. In the result, the appeals filed by the Revenue are dismissed.

6. Now we shall take up the assessee's appeal in I.T.A. No. 297/Coch/2016 for the assessment year 2010-11.

6.1 There is a delay of 31 days in filing this appeal. The assessee has filed a petition for condoning the delay. On perusal of the condonation petition, we are satisfied that the delay in filing the appeal cannot be attributable to any laches on the part of the assessee. Hence we condone the delay in filing the assessee's appeal and proceed to dispose of the matter on merits.

6.2 Briefly stated the facts of the case are as follows:

The assessee is a wholly owned subsidiary of its parent company. It is 100% EOU and has no domestic sales. During the financial year relevant to the assessment year 2010-11, an amount of Rs.4,91,26,013/-, being the amount payable to the parent company on account of management fee charges expensed and claimed deduction for tax purposes in the earlier years was treated as no longer payable on the basis of waiver of liability by the parent company. This amount was credited to income in the P&L account for the relevant assessment year. The amount was claimed as deduction u/s. 10B of the Act. However, while completing the assessments, the Assessing Officer did not consider the above income as part of the export turnover but included the same in the total turnover while computing deduction u/s. 10B of the Act. The Assessing Officer however did not allow the claim of deduction u/s. 10B of the Act, by placing reliance on the judgment of the Hon'ble Delhi High Court in the case of CIT vs. Regency Creations Ltd. reported in 255 CTR 63.

6.3 The CIT(A) confirmed the Assessing Officer's action in disallowing the claim of deduction u/s. 10B of the Act as well as the computation made u/s. 10B of the Act. (Refer para 5.1 to 5.4 of the impugned order of the CIT(A)).

6.4 Aggrieved by the order of the CIT(A), the assessee has preferred the present appeal before the Tribunal. The Ld. Counsel for the assessee submitted that when the amounts are reduced from the export turnover, the same are to be reduced also from the total turnover for the purpose of computing deduction u/s. 10B of the Act, in order

to bring about parity between the numerator and the denominator. For the above proposition, the Ld. AR relied on the following judicial pronouncements:

1. CIT vs. Gem Plus Jewellery India Ltd. (2011) 233 CTR 248 (Bom.)
2. CIT vs. Tata Elxsi Ltd. an Others (2011) 247 CTR 334 (Kar.)
3. ITO vs. SAKSoft Ltd. (2009) 121 TTJ 0865 (ITAT,Chennai (SB).
4. Sanyo LSI Technologies India Private Limited vs. DCIT:  
ITA No.977/Bang/2010 dated 13<sup>th</sup> May 2011 (ITAT Bangalore Bench)
5. CIT vs. Pentasoft Technologies Ltd. (2012) 347 ITR 578 (Mad.)

6.5 The Ld. DR supported the orders of Income Tax authorities.

6.6 We have heard the rival contentions and perused the material on record. The CIT(A) in the instant case has confirmed the Assessing Officer's action in denying the benefit of deduction u/s. 10B of the Act. However, the CIT(A) has allowed the alternative plea of the assessee and directed the Assessing Officer to compute deduction u/s. 10A of the Act. The relevant observation of the CIT(A) in allowing the alternative plea of the assessee reads as follows:

*"4.8 Considering all the above, the Assessing Officer is hereby directed to work out the deduction u/s 10A to which the appellant is entitled for and allow the same as pleaded. Thus appeal on this ground is allowed."*

6.7. When the deduction u/s. 10B of the Act is totally denied, the manner in which the computation u/s. 10B of the Act is made is immaterial. What is relevant is only the computation that is yet to be made u/s. 10A of the Act by the Assessing Officer in

consequence of the impugned order of the CIT(A). The Assessing Officer is directed to compute the deduction u/s. 10A of the Act for the assessment year 2010-11 in accordance with law after taking into account the judicial pronouncements cited supra. It is ordered accordingly. Therefore, the appeal of the assessee is allowed for statistical purposes.

7. In the result, the appeals filed by the Revenue are dismissed and the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 04<sup>th</sup>/10/ 2017.

sd/-

sd/-

<b>( P K BANSAL )</b>	<b>(GEORGE GEORGE K )</b>
<b>Vice President</b>	<b>Judicial Member</b>

Cochin: Dated 4/10/2017

**GJ**

Copy to:

1. M/s. Cliniface Clinical Research (P) Ltd., (Formerly M/s. Paragon Biomedical India (P) Ltd.), B-16, Gayathri, Technopark Campus, Kariavattom, Thiruvananthapuram-695 581.
2. The Asst. Commr. Of Income Tax, Circle-1(1), Range-1, Trivandrum.
3. The CIT(A), Trivandrum
4. The Pr. CIT, Trivandrum
5. DR
6. Guard File

By order

Assistant Registrar  
ITAT, COCHIN

