

आयकर अपीलिय अधिकरण , 'ए' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"A" BENCH, CHENNAI**

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य केसमक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A. Nos. 2260 & 3418/Mds/2016**

**निर्धारण वर्ष/Assessment Years : 2010-11 & 2011-12**

Deputy Commissioner of Income Tax,  
Corporate Circle -5(1),  
Chennai – 34.

M/s. Renault Nissan Technology &  
Business Centre India (P) Ltd.,  
Ascends Mahindra IT Park,  
Natham Sub Post office,  
Mahindra World City,  
Kanchipuram District,  
Tamil Nadu – 603 002.

**[PAN: AADCR 7253E]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

**आयकर अपील सं./I.T.A. Nos. 2500 & 3464/Mds/2016**

**निर्धारण वर्ष/Assessment Years : 2010-11 & 2011-12**

**& CO 138 of 2016 against the order in ITA No. 2260 /Mds/2016.**

M/s. Renault Nissan Technology &  
Business Centre India (P) Ltd.,  
Ascends Mahindra IT Park,  
Natham Sub Post office,  
Mahindra World City,  
Kanchipuram District,  
Tamil Nadu – 603 002.

Vs. Deputy Commissioner of Income Tax  
Corporate Circle -5(1),  
Chennai – 34.

**[PAN: AADCR 7253E]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

Revenue by  
Assessee by

: Shri. Sailendra Mamidi, Pr. CIT  
: Shri. Sriram Seshadri, CA

सुनवाईकीतारीख/Date of Hearing : 27.10.2017  
घोषणाकीतारीख/Date of Pronouncement : 24.01.2018

**आदेश/ O R D E R**

**PER S. JAYARAMAN, ACCOUNTANT MEMBER:**

The Revenue filed these appeals in ITA Nos. 2260 & 3418 /Mds/2016 against the orders of the Commissioner of Income Tax (Appeals)- 3, Chennai in ITA nos. 04/2014-15/CIT(A)-3 & 59 /2015-16/ CIT(A)-3 dated 28.03.2016 & 28.09.2016 for assessment years 2010-11 & 2011-12 , respectively. The assessee filed cross appeals against them in ITA Nos. 2500 & 3464/Mds/2016, respectively. Further, the assessee filed a cross objection in CO 138 of 2016 against the order in ITA Nos. 2260 /Mds/2016.

2. M/s Renault Nissan Technology & Business Centre India Private Limited, the assessee, is engaged in the business of rendering engineering design services, software services, sourcing support services, back office accounting and contract R & D services required for Renault and Nissan group companies, spread across the globe. In the assessment made for assessment year 2010-11, for the purposes of computing deduction u/s. 10AA , the A O excluded the expenditure incurred in foreign currency on communication and insurance expenses from export turnover alone and not from the total turnover. Further, he has excluded the EOU turnover alone from the export

turnover. The assessee treated the provisions no longer required and other income at Rs. 77,56,520/- & Rs. 98,956/-, respectively, as income from business for the purpose of computation of deduction u/s. 10AA. The AO excluded them. The assessee, out of the advance paid by it at Rs. 14,47,57,200/- to Velankanni Information Systems Private Limited (VISPL) to develop factories spaces for manufacturing industry including engineering design studio and engineering workshop facility, R&D facility and software development lab for it, claimed Rs. 4,10,97,345/-, the irrecoverable amount as a deduction. The AO held that it is an investment made to start a new business, so it is a capital loss and hence disallowed it holding that it is not deductible.

3. In the assessment made for assessment year 2011-12 also, the AO excluded the expenditure incurred in foreign currency on communication and insurance expenses from the export turnover alone and not from the total turnover. Further, he has excluded the EOU turnover alone from the export turnover for the purpose of computation of deduction u/s. 10AA. Aggrieved, the assessee filed appeals before the CIT(A)-3 Chennai. In the order passed in ITA No 04/2014-15/CIT(A)-3 dated 28.03.2016 for assessment year 2010-11, the CIT(A) directed the AO not to exclude telecommunication charges and insurance cost from the export turnover as they were incurred in Indian rupees and not in foreign currency. In respect of

all other additions, the CIT (A) dismissed the assessee's appeals. The CIT (A) followed the same decision against the assessee's appeal for assessment year 2011-12 in his order ITA No. 59/2015-16/CIT(A) dated 28.09.2016. Aggrieved against such decisions, the revenue filed these appeals and the assessee filed the above cross appeals, both of them, for the assessment years 2010-11 & 2011-12.

4. For convenience sake, let us first take the assessee's appeal. In respect of exclusion of expenditure incurred in foreign currency from the export turnover, the assessee raised common grounds for both ays and hence its grounds for ay 2010-11 is extracted as under :

*1. The order of the Ld. AO and the Ld. CIT(A) , to the extent prejudicial to the Appellant, are contrary to law, facts, and circumstances of the case.*

*2. Exclusion of expenditure incurred in foreign currency from the export turnover*

*2.1. The Ld. CIT(A) and the Ld. AO erred in excluding expenses incurred in foreign currency from export turnover for the purpose of computation of deduction under section 10AA of the Act by erroneously holding that it is incurred for rendering services outside India.*

*2.2. The Ld. CIT(A) and the Ld. AO failed to consider the favorable decision of DRP on the identical issue in Appellant's own case for the earlier AY 2009-10, by factually distinguishing it on some frivolous grounds.*

*2.3. The Ld. CIT(A) and the Ld. AO have failed to appreciate that the export turnover earned by the appellant does not include any receipts separately recovered towards expenditure incurred in foreign currency for rendering services outside India.*

*2.4. Without prejudice to the above, the Ld. CIT(A) and the Ld. AO have erred in law and facts in excluding the above expenses only from the export turnover without excluding the same from the total turnover for the computation of deduction under section 10AA of the Act.*

4.1 The A R submitted that the assessee had incurred travel expenses, IT & technical support services, Professional & Consultancy Fees, Reimbursement of Renault Global Management and Reimbursement to Nissan Motor Co. Ltd in foreign currency. While determining the deduction under section 10AA, it did not reduce these expenditures from the export turnover as they were not incurred for rendering any services outside India and they represented expenditure incurred by the assessee for availing certain services from its group concern and the cross charge of expenditure incurred by the group companies on behalf of it. The AO excluded the above expenditures from the export turnover for the purpose of computing deduction under section 10AA by placing reliance on the definition of 'Export Turnover'. The AO has also declined the assessee's alternate plea of reducing the said expenditures from total turnover based on the parity principle. The CIT (A) upheld the above exclusion stating that the deduction under section 10AA was provided with an intention to bring in more convertible foreign exchange in to the country and hence, placing reliance on the definition of export turnover, the CIT (A) held that any expenditure incurred in foreign currency, apart from freight,

insurance , telecommunication charges , ought to be excluded for the purpose of claiming deduction under section 10AA . The AR submitted that the Ld. CIT(A) and the Ld. AO failed to consider the favorable decision of the DRP on the identical issue in Appellant's own case for the earlier AY 2009-10, by factually distinguishing it on some frivolous grounds. In the facts and circumstances, let us examine how the DRP decided the matter in the earlier year in its directions u/s 144C (5) rw 144C (8) dt 20.12.2013 , by extracting the relevant portion as under:

*"Direction sought by the Assessee:*

*In the light of the above judicial precedents and interpretation of law, the Assessee pleads that necessary direction may be given to the Assessing Officer to delete the exclusion of the foreign exchange expenditure of Rs. 261,572,828 from the export turnover of the business and the deduction under section 10AA be recomputed accordingly.*

*Direction of this Panel:*

*Explanation 1(i) to section 10AA defines the term Export turnover as consideration in respect of export received in or brought into India by the Assessee in convertible foreign exchange but does not include freight, telecommunication charges or insurance attributable to the delivery of the articles or things or computer software outside India or expenses, if any, incurred in foreign exchange in rendering of services (including computer software) outside India. This Panel, therefore considers it necessary that any expense incurred in foreign exchange by the Assessee should be in respect of services outside India. Therefore, what is pertinent to decide in this regard is as to whether the expenses incurred by the Assessee in foreign currency are in respect to rendering of services outside India. Seen from this perspective, this panel finds that following expenses incurred by the Assessee are not in respect to services rendered by the Assessee outside India.*

**4. Travel expenses**

*The travel expense pertains to advance given for travel and stay expenses of these employees. The employees are sent to France for training purposes and also for business visits.*

**5. IT & Technical support services**

*Renault SAS France has incurred certain cost pertaining to ALCOR implementation on behalf of the Assessee. The cost incurred by Renault SAS France is subsequently reimbursed by the assessee on cost to cost basis.*

**6. Reimbursement to RGM and NML/ Professional and consultation fees**

*RGM and NML had deputed its employees in India. The social security contribution of these expatriates, during their tenure in India, was paid by RGM and NML in the respective home countries.*

*An amount of Rs. 6,98,81,671 and Rs. 2,96,35,976 was paid as social security charges by RGM and NML respectively. These amounts were later recovered from the assessee by RGM and NML on a cost to cost basis.*

*Therefore this panel concludes that above mentioned expenses the Assessee has incurred either to reimbursement its AEs or as advance to its employees towards travel expenses cannot be excluded from Export Turnover. Therefore the AO is directed to delete the exclusion of following foreign exchange expenditure from the export turnover of the business and the deduction under section 10AA be recomputed accordingly.*

<b>Particulars</b>	<b>Amount (INR)</b>
<i>Travel expenses</i>	<i>41,199,254</i>
<i>IT &amp; Technical support services</i>	<i>115,521,782</i>
<i>Reimbursement to Renault Global Management</i>	<i>69,851,671</i>
<i>Reimbursement to Nissan Motor Company Ltd</i>	<i>29,635,976</i>

From the above, it is clear that although the DRP decided this issue elaborately in the immediate earlier ay and allowed in favour of the assessee, neither the AO nor the CIT(A) has examined this issue as is required for these a ys and hence we deem it fit to restore this issue back to the AO for a fresh examination. After affording adequate opportunity to the assessee, the AO shall pass appropriate orders. The corresponding appeal grounds are treated as allowed for both the ays.

***5. The next issue is exclusion of 'Provision no longer required written back and Other Income' from computation of profits for the purpose of computation of deduction under section 10AA :***

5.1 During the AY 2010-11, the assessee had treated provisions no longer required written back & other income attributable to excess insurance premium received at INR 77,56,520 & INR 98,956 , respectively , as income from business for the purpose of computation of deduction under section 10AA . The AO excluded them from the 'profits of the business' for the purpose of computing the deduction under section 10AA by stating that the deduction under section 10AA is available only for the profits 'derived' by the eligible undertaking, which is a narrower term and the said income would not fall within the said term. Before the CIT (A), the assessee pleaded that it has inadvertently considered the export turnover and total turnover without

including these sums for the purpose of computation of deduction under section 10AA and hence pleaded the CIT(A) to direct the AO to include them in the export turnover and total turnover for the purpose of computation of deduction under section 10AA as they were part and parcel of the business undertaking. However, the CIT (A) upheld the action of the A O stating that provision written back and other income does not yield any foreign exchange and hence would not be considered for claiming deduction under section 10AA. In this regard, the assessee's grounds are as under :

*"3. Exclusion of 'Provision no longer required written back and Other Income' from computation of profits for the purpose of computation of deduction under section 10AA*

*3.1. The Ld. CIT(A) and the Ld. AO erred in excluding provisions no longer required written back and other income from profits for computation deduction under section 10AA by erroneously concluding the same are not profits derived by the eligible undertaking*

*3.2. The Ld. CIT(A) erred in confirming the Ld. AO's order for excluding the provisions which had been written back from the 'profits of the business' for the purpose of calculating the deduction under section 10AA of the Act without appreciating the fact that no disallowance was made in regard to the provision created in the previous year.*

5.2 During ay 2011-12, the assessee earned income from Deposits at Rs.1,55,08,365/-, on others Rs.32,35,845 & others at Rs8,67,313/-. While computing the deduction u/s 10AA, the AO relying on the SC decision in Pandian Chemicals 262 ITR 270 excluded these items from the profits of business for the reason that they are not derived from the eligible

undertaking from export of article . The CIT(A) upheld the AO's action. In this regard, the assessee's grounds are as under :

*"3. Exclusion of 'Other Income' from computation of profits for the purpose of computation of deduction under section 10AA*

*3.1. The Ld. CIT(A) and the Ld. AO erred in excluding other income from profits for computation deduction under section 10AA of the Act by erroneously concluding the same are not profits derived by the eligible undertaking."*

5.3 The A R submitted that the AO failed to appreciate the fact that no add-back was made in this regard at the time of creation of the provision in the previous year and excess insurance premium received is part and parcel of the business undertaking and hence pleaded to direct the AO to include them in the export turnover and total turnover for the purpose of computation of deduction under section 10AA. Relying on the Karnataka High Court decision in the case CIT vs M/s Motorola India Electronics P Ltd in IT Appeal nos. 428 of 2007 & 447 of 2007 dt 11.12.2013, wherein it is held that in view of definition of 'Income from profits and Gains' incorporated in Subsection (4), the assessee is entitled to the benefit of exemption contemplated under section 10B as the profits of the business of the undertaking includes the profits and gains from export of articles as well as all other incidental income derived from the business of the undertaking. In view of that the AR pleaded that the exclusion made by the AO needs to be deleted. Per contra, the DR supported the orders of the lower authorities.

6. We heard the rival submissions and find merit in the assessee's submissions which is based on the Karnataka High Court decision ,supra . The relevant portion is extracted as under .

*" By Finance Act, 2001, with effect from 01.04.2001, the present subsection (4) is substituted in the place of old subsection (4). No doubt subsection 10(B) speaks about deduction of such profits and gains as derives from 100% EOU from the export of articles or things or computer software. Therefore, it excludes profit and gains from export of articles. But subsection (4) explains what is the profit derived from export of articles as mentioned in subsection (1). The substituted subsection (4) says that profits derived from export of articles or things or computer software shall be the account which bares to the profits of the business of the undertaking and not the profits and gains from export of articles. Therefore, profits and gains derived from export of articles is different from the income derived from the profits of the business of the undertaking. The profits of the business of the undertaking includes the profits and gains from export of the articles as well as all other incidental incomes derived from the business of the undertaking. It is interesting to note that similar provisions are not there while dealing with computation of income under section 80HHC. On the contrary, there is specific provisions like section 80HHB which expressly excludes this type of incomes. Therefore, in view of the aforesaid provisions, it is clear that, what is exempted is not merely the profits and gains from the export of articles but also the income from the business of the undertaking."*

Hence , we direct the A O not to exclude the impugned these items from the profits of business. With regard to the provisions no longer required is written back and offered as income now and if it was not added back at the time of creation of such provision in the earlier previous year, then such income should be treated as income of the assessee in the year of write back. Similarly, the excess insurance premium received. In the facts

and circumstances, these two issues require re-examination and hence we deem it fit to restore them back to the A O for a fresh examination and to pass appropriate orders, on both issues, after affording adequate opportunity to the assessee . On such examination, if they are found correct as canvassed by the assessee , the AO shall consider them as profits of business for the purpose of computation of deduction under section 10AA, in accordance with law. The corresponding appeal grounds are treated as allowed for both ays.

## **7 The next issue is disallowance of deposits and other costs written off :**

7.1 In this regard , the assessee's grounds are as under :

*4.1. The Ld. CIT (A) and the Ld. AO erred in disallowing the deposits written off along with registration charges and liquidated damages, without appreciating the fact that the same had been incurred for the purpose of business of the Appellant and had been written off due to business and commercial reasons.*

*4.2. Further, the Ld. CIT (A) erred in denying the alternate plea of the Appellant that the said disallowance ought to be adjusted with the profits and gains from business of the undertaking computed for claiming deduction under section 10AA of the Act.*

7.2 The AR submitted that during the ay 2010-11 , the assessee had entered into a tripartite agreement with Mahindra World City and Velankanni Information Systems Private Limited (VISPL) for lease of a plot of land for

construction of a facility to be used for establishing an engineering design studio / research and development facility. The assessee had paid deposit money to VISPL pursuant to the above agreement, however, the project was cancelled due to adverse economic conditions. In the meantime, VISPL had spent initial expenditure at INR 2,95,57,200 towards development of the land as per the project design, INR 46,13,120 towards registration charges and INR 59,80,707 towards liquidated damages. The assessee had to compensate VISPL for such amounts / adjust the same against the deposit money that was recovered, as the case may be. Since, these expenses have been incurred for the purpose of business they were claimed as revenue expenditure by the assessee. During the assessment proceedings, the assessee had provided detailed submissions to the AO towards the above claim and pleaded that there should not be permanent disallowance for the legitimate business expenditure merely because the same was incurred for the purpose of bringing into existence an asset which never came into existence. The AO, however, disregarded our submissions and disallowed the above expenditure by treating them as capital in nature. The CIT (A) found concurrence with the finding of AO that the deposit is utilised for the development of land and building of the factory and consequently becomes a capital expenditure. Further, the CIT (A) also denied the alternate claim of the assessee to adjust the said disallowance with the profits and gains from business of the undertaking computed for claiming deduction under section

10AA , by holding that the said item does not result in any foreign exchange and hence not eligible for deduction. In support of his plea, the AR relied on certain case laws. Per contra, the DR supported the orders of the lower authorities.

8. We heard the rival submissions and gone through relevant material. The AO simply records that the assessee has made a capital expenditure for building / developing a factory premise but claimed the same as revenue expenditure. The AO has not examined whether such activities are in connection with existing business or in new area . Further, the copies of agreement produced in support of the assessee's claim contain certain conditions. It appears that the AO has not examined them as to whether the terms and conditions stipulated are complied and its consequences etc. In the facts and circumstances, we deem it fit to restore this matter back to the A O for a fresh examination and to pass appropriate orders, after affording adequate opportunity to the assessee. The corresponding appeal grounds are treated as allowed for statistical purposes.

**Revenue's appeals in ITA Nos. 2260 & 3418/Mds/2016 for Assessment Years : 2010-11 & 2011-12 & Assessee's CO 138 of 2016 for ay 2010-11.**

9. For these ays, the assessee had incurred travel expenses , IT & technical support services, Professional & Consultancy Fees , Reimbursement

of Renault Global Management and Reimbursement to Nissan Motor Co. Ltd in foreign currency. While determining the deduction under section 10AA, it did not reduce these expenditures from the export turnover as they were not incurred for rendering any services outside India and they represented expenditure incurred by the assessee for availing certain services from its group concern and the cross charge of expenditure incurred by the group companies on behalf of it. The AO excluded the above expenditures from the export turnover for the purpose of computing deduction under section 10AA by placing reliance on the definition of 'Export Turnover'. The AO also declined the assessee's alternate plea of reducing the said expenditures from total turnover based on the parity principle. The CIT (A) upheld the above exclusion stating that the deduction under section 10AA was provided with an intention to bring in more convertible foreign exchange in to the country and hence, placing reliance on the definition of export turnover, the CIT (A) held that any expenditure incurred in foreign currency, apart from freight, insurance, telecommunication charges, ought to be excluded for the purpose of claiming deduction under section 10AA. However, with regard to communication cost and insurance, on the basis of AR's submission that the assessee is engaged in export of services and not producing any article or thing and the telecommunication charges and insurance were incurred in Indian rupees and not in foreign exchange and therefore they could not be

excluded from the export turnover, the CIT(A) directed the AO not to exclude telecommunication charges and insurance cost from the export turnover.

10. The revenue is aggrieved that the CIT (A) has erred in directing the AO not to exclude telecommunication charges and insurance cost , when explanation 1(i) to section 10AA wherein export turnover has been defined as " does not include freight, telecommunication charges or insurance attributable to the delivery of the articles or things outside India". It further pleaded that the CIT (A) has erred in following the decision of the Hon'ble ITAT in the case of M/s. Cognizant Technologies Solutions India (P) Ltd., against which the department has preferred further appeal. The assessee filed a CO in support of the order of the CIT(A).

11. The D R submitted that export turnover has been specifically defined in the explanation 1 to sec. 10AA to exclude freight, telecommunication charges or insurance attributable to the delivery of the articles or things outside India or expenses, if any, incurred in foreign exchange in rendering of services (including computer software) outside India. Therefore, they are required to be excluded from the export turnover for the purpose of deduction u/s. 10AA. Per contra, the A R submitted that the assessee being a service exporter, raises invoices on its customers only for the fee for services. It does not charge any amount in respect of freight, telecommunication or

insurance. Hence, there is no requirement for reducing telecommunication expenses and insurance cost incurred in foreign exchange from the export turnover. In this regard, the A R relied on the decision of ITAT in the case of CIT vs. Saksoft Ltd., the decision of Karnataka High Court in the case of CIT, Central Circle, Bangalore vs M/s. Motorola India Electronics (P) Ltd., Bangalore in ITA No. 447 of 2007 and the special bench decision in the case of Zylog Systems vs. ITO, Company Ward-III reported in [2010] 8 taxmann.com 276 (Chennai) (SB)etc .

12. We heard the rival submissions. In the assessment order, the AO excluded the telecommunication expenses and insurance cost from the export turnover on a finding that they were incurred in foreign exchange . However, on the basis of AR's submission that the assessee is engaged in export of services and not producing any article or thing and the telecommunication charges and insurance were incurred in Indian rupees and not in foreign exchange and therefore they could not be excluded from the export turnover, the CIT(A) directed the AO not to exclude telecommunication charges and insurance cost from the export turnover. The Revenue filed these appeals. For deciding the issue, in which currency the impugned expenditures are incurred is an essential fact on which there are apparent contradictory findings. Further, in the assessee's cross appeals in ITS Nos. 2500 & 3464/Mds/2016 in Para 4.1, supra, the connected issue is restored to

the AO for a fresh examination. In the facts and circumstances, we deem it fit to restore this matter back to the A O for a fresh examination and to pass appropriate orders, after affording adequate opportunity to the assessee. The corresponding Revenue's grounds and the assessee's CO are treated as allowed for statistical purposes.

13. In the result, Revenue's appeal in ITA No. 2260 & 3418/Mds/2016, assessee's appeal in ITA No. 2500 & 3464/Mds/2016 and Cross Objections in CO No. & CO 138 of 2016 against the order in ITA No. 2260 /Mds/2016 are treated as allowed for statistical purposes.

Order pronounced on Wednesday, the 24<sup>th</sup> day of January, 2018 at Chennai.

**Sd/-**

(एन.आर.एस .गणेशन)

**(N.R.S. GANESAN)**

**न्यायिक सदस्य/Judicial Member**

**Sd/-**

(एस जयरामन)

**(S. JAYARAMAN)**

**लेखा सदस्य/Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated: 24<sup>th</sup> January, 2018

**JPV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त) अपील(/CIT(A) |
| 4. आयकर आयुक्त/CIT     | 5. विभागीय प्रतिनिधि/DR  | 6. गार्ड फाईल/GF             |