

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "E", MUMBAI**

BEFORE SHRI SHAMIM YAHYA (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 2624/MUM/2016
Assessment Year: 2009-10**

The DCIT – 2(1)(2), Room No. 561, 5 th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020	Vs.	M/s E-Clerx Services Limited, Sonawala Building, 29, Bank Street, Fort, Mumbai - 400023 PAN: AAACE7932L
(Appellant)		(Respondent)

Revenue by : Shri V. Justin (DR)
Assessee by : None

Date of Hearing: 08/02/2018
Date of Pronouncement: 21/02/2018

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the revenue against order dated 13/01/2016 passed by the Ld. Commissioner of Income Tax (Appeals) 4, Mumbai, for the assessment year 2009-10, whereby the Ld. CIT (A) has partly allowed the appeal filed by the assessee against assessment order passed u/s 143 (3) read with section 144C of the Income Tax Act, 1961 (for short 'the Act').

2. Brief facts of the case are that the assessee a public Limited Company engaged in the business of providing Information Technology enabled services, filed its return of income declaring the total income of Rs. 4,97,51,97/-. Subsequently, revised return was also filed declaring the total income of Rs. 5,28,28,287/-. The return was processed u/s 143 (1) determining refund of Rs. 96,02,725/-. Since, the case was selected for scrutiny, AO issued notice u/s 143 (2) of the Act and in response thereof the authorized representative of the assessee filed copies of return of income, statement of income, company audit

report and tax audit report u/s 44AB of the Act. Since, the value of international transactions entered into by the assessee exceeding the ratio limit, a reference was made to the Transfer Pricing Officer (TPO). Notice u/s 142 (1) of the Act was also issued on which the representative of the assessee furnished the details and information sought by the AO. The company had claimed deduction u/s 35AC amounting to Rs. 15,00,000/- and u/s 80G amounting to Rs. 7,55,306/-. The assessee had further claimed exemption u/s 10A amounting to Rs. 47, 61,81,134/- for Software Technology Park at Mumbai Unit and u/s 10AA amounting to Rs. 11,40,31,930/- for Special Economic Zone (SEZ) Unit, Pune. The AO worked out the exemption u/s 10A to Rs. 40,21,80,637/- after disallowing insurance expenses, telephone international charges and technical fee in foreign currency. Accordingly, the AO restricted the exemption u/s 10A to Rs. 40,21,80,637/- as against the claim of the assessee of Rs. 47,61,81,134/-.

3. In the first appeal, the Ld. CIT (A) following the decision of the Hon'ble Bombay High Court passed in the assessee's own case for the A.Ys. 2005-06 and 2007-08 allowed this ground of appeal of the assessee and directed the AO to allow the relief claimed u/s 10A of the Act as claimed in the return of income.

4. Aggrieved by the order of Ld. CIT (Appeals), the revenue has preferred this appeal before the Tribunal on the following effective grounds:-

1. *"The order of the CIT (A) is opposed to law and facts of the case.*
2. *On the facts and the circumstances of the case and in law, the Ld. CIT (A) has erred in holding that insurance charges, Internet charges and telecommunication/telephone charges shall be reduced from total turnover while working out the amount eligible for exemption u/s 10A without appreciating that no provision for deduction of such expenses from total turnover is provided u/s 10A of the I.T. Act, 1961.*

3. *On the facts and the circumstances of the case and in law, the Ld. CIT (A) failed to appreciate that under the provision of Sec. 10A of the I.T. Act, 1961, it is the Export Turnover only and not the total turnover of the business which is to be reduced by the expenses incurred on account of that insurance charges, Internet charge and telecommunication/telephone charges.”*

5. This case was fixed for hearing on 08.02.2018. When the case was called for hearing, none appeared on behalf of the respondent/assessee. Even no application for adjournment was received. Accordingly, we decided to dispose of the appeal on the basis of material on record after hearing the Departmental Representative (DR).

6. The Ld. Departmental Representative (DR) submitted that the order of the Ld. CIT (A) is not in accordance with the law and based on the evidence as the Ld. CIT (A) has erred in holding that insurance charges, internet charges and telecommunication/telephone charges are required to be reduced from total turnover while working out the claim for exemption u/s 10A. The Ld. DR further submitted that under the provisions of section 10A of the Act, it is the export turnover only and not the total turnover of the business, which is to be reduced by the expenses incurred on insurance, internet and telecommunication charges, therefore, the impugned order is liable to be set aside.

7. We further notice that the Ld. CIT (A) has decided the grounds in this case by following the decision of ITAT in the assessee's own case for the A.Y. 2007-08. The operative part of the order reads as under:

“3.3 It is seen that identical issue was involved in the case of the appellant for the A.Y. 2007-08. My learned predecessor CIT (A)-4, Mumbai vide his order dated 27.8.2012 had allowed the appeal. In doing so, he has followed the appellate order dated 22.6.2010 for the A.Y. 2005-06, for both these assessment years, the Departmental appeals filed before Hon. ITAT and Hon. Bombay High Court have been dismissed. Thus, the issue involved is squarely covered by the

decision of the Hon. Bombay High Court in the appellant's own case. Respectfully following these orders, the appeal filed by the appellant on this ground is to be allowed."

8. We notice that the identical issues pertaining to the A.Y. 2007-08 in assessee's own case was dealt with by the then CIT (A) and the Ld. CIT (A) had allowed the said ground by following the earlier orders. The order of the Ld. CIT (A) was challenged before the ITAT. The ITAT dismissed the revenue's appeal and decided the issue in favour of the assessee. The revenue carried the matter to the Hon'ble Bombay High Court and the Hon'ble High Court also dismissed the revenue's appeal. Hence, the issues involved in this appeal are squarely covered by the decision of the Hon'ble Bombay High Court passed in the assessee's own case. Since, the issues raised by the department has already been decided in favour of the assessee by the Hon'ble High Court in the assessee's own case for the earlier years, we find no merit in the appeal of the revenue. Hence, we uphold the decision of the Ld. CIT(A) and dismiss the appeal of the revenue.

9. We further notice that there is an inordinate delay of 1022 days in filing the present appeal and the appellant/revenue has not filed any application for condonation of delay.

In the result, appeal filed by the revenue for assessment year 2009-2010 is dismissed.

Order pronounced in the open court on 21st February, 2018.

Sd/-

(SHAMIM YAHYA)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 21/02/2018

Alindra, PS

Sd/-

(RAM LAL NEGI)

JUDICIAL MEMBER

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**