

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

**BEFORE SHRI R. C. SHARMA, AM AND SHRI AMARJIT SINGH, JM**

आयकर अपील सं/ I.T.A. No.5308/Mum/2015  
(निर्धारण वर्ष / Assessment Year: 2009-10)

The Income Tax Officer 2(3)(3), Room No. 555, Aayakar Bhavan, M.K. Road, New Marine Lines, Mumbai-400020	<b>बनाम/</b> Vs.	M/s. Transtec Overseas Pvt. Ltd. 70, Podar Chambers, 3 <sup>rd</sup> Floor, S.A. Brelvi Marg, Fort, Mumbai-400001
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCP2309N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:	Shri Ashish Kumar (DR)	
Assessee by:	Shri Vijay Mehta	

सुनवाई की तारीख / Date of Hearing: 11.05.2018  
घोषणा की तारीख /Date of Pronouncement: 11.05.2018

**आदेश / ORDER**

**PER AMARJIT SINGH, JM:**

The revenue has filed the present appeal against the order dated 27.08.2015 passed by the Commissioner of Income Tax (Appeals)-6 Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the AY.2009-10 in which the penalty levied by the AO has been order to be deleted.

2. The revenue has raised the following grounds: -

*I.* on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing relief to the assessee to the extent impugned in the grounds enumerated below:

2. The CIT(A) has erred in deleting the penalty levied without appreciating the fact that the assessee had concealed his income and had filed inaccurate particulars of his income as per the provisions of Section 271(1)(c) read with Explanation 1 thereto of the I.T. Act,1961”

3. The brief facts of the case are that the scrutiny assessment of the assessee was completed u/s 143(3) of the I.T. Act, 1961 on 22.12.2011 assessing the total income to the tune of Rs.1,03,46,350/- against the declared income to the tune of Rs.3,34,877/-. The assessee company has claimed the deduction u/s 10AA of the I.T. Act, 1961 of Rs.69,31,997/- in original return of income which was subsequently enhanced to the tune of Rs.1,03,20,914/- in the revised return of income. The enhanced claim of deduction was raised on account of the amendment introduced u/s 10AA of the Act by Finance Act, 2010 w.e.f. 01.04.2016. The Assessing Officer noticed that the sale of the assessee was of Rs.40,108,434/- and cost of material was to the tune of Rs.25,342,939/- in its SEZ division showing the net profit of Rs.10,392,389/-. The AO noticed that the assessee has showed the sale ratio @ 25.9% in its SEZ unit and the profit to sale ratio @1.42% in Mumbai Division. After the verification of the details, the AO restricted deduction u/s10AA of the Act to the tune of Rs.3,09,440/- and disallowed the balance amount of Rs.10,011,474/-. The penalty was initiated u/s 271(1)(c) of the Act for concealment of income. Thereafter, notice was given and penalty to the tune of Rs.33,25,561/- was levied by virtue of order dated 26.03.2014. Feeling aggrieved, the

assessee filed an appeal before the CIT(A) who allowed the claim of the assessee, therefore, the revenue has filed the present appeal before us.

4. We have heard the argument and advanced by the Ld. Representative of the parties and perused the record. There is a delay of 15 day's in filing the appeal. Since, the period of the delay is not so long, therefore, we condoned the delay in the interest of justice because the case is required to be decided on merits. The Ld. Representative of the Department has argued that the assessee has raised the wrong claimed in view of the provision u/s 10AA of the Act which was declined by the AO, therefore, the AO has rightly levied the penalty in accordance with law but the CIT(A) has wrongly deleted the same. Therefore, the order of the CIT(A) in this regard is liable to be set aside in view of the law settled in the case of **CIT Vs. Zoom Communications Pvt. Ltd. 233 CTR 465 (Del)**. On the other hand, the Ld. Representative of the assessee has refuted the said contention and strongly relied upon the order passed by the CIT(A) in question. Before going further, we deemed it necessary to advert the finding of the CIT(A) on record: -

*“7 I have carefully considered the facts of the case and the submission of the AR. I have also gone through the assessment order u/s 143(3) order of the ld. CIT(A) and the penalty order u/s 271(1)(c) passed by the AO. I have also gone through the decisions relied upon by the AO and the Ld. AR. The AO has levied penalty on the ground that assessee had claimed enhanced deduction u/s 10AA amounting to Rs.1,03,20,914/- as against the deduction of*

*u/s 10AA amounting to Rs.1,03,20,914/- as against the deduction of Rs.69,31,997/- claimed in the original return. He concluded that with an intention to reduce its profits, the assessee has enhanced the deduction by including the local sales as export sales and tried to justify the same by relying on the amendment in the Rule. However, the basic character for availing the deduction is export out of India which is not the case of the assessee. Since the assessee had not exported but claimed the enhanced deduction with an intention only to reduce the profits and taxable income, the provisions of section 271(1)(c) are clearly applicable. He relied on the decision in the case of CIT Vs. Rakesh Suri (2010) 233 CTR (All) 184. CIT Vs. Zoom Communication P. Ltd. (233 CTR 465 (Del), Indian Seafoods 105 ITR 708 and CIT Vs. HCIL Kalindee Aprsspl. 37 taxmann. 347 (Delhi). On the other hand, the Ld. AR has argued that rejection of a legal claim for deduction u/s 10AA does not amount to concealment. He also stated that deemed export were held to be allowable in some cases by the Hon'ble ITAT. Hence the present case is a debatable one. It was further stated that enhanced claim was made on the basis of CA certificate and due to the amendment in the Rules. He stated that all facts material to computation of income was disclosed in the return of income and financial statements. The Ld. AR also stated that facts of the appellant are different from the decisions relied on by the AO. He has relied on a number of decisions which have been detailed in para 6 above.”*

5. On appraisal of the above mentioned order, we noticed that the assessee raised the claim u/s 10AA of the Act on the advice of its CA. The assessee raised the claim the deduction of Rs.69,31,997/- u/s 10AA of the Act in the original return of the income. The said return was supported by auditor's report in form No. 56F. In both the returns assessee has disclosed the material facts before the Authority. There was no concealment of income nor assessee furnished the inaccurate particular of income. Undoubtedly, the claim of the deduction u/s 10AA was not accepted and the suitable disallowance by itself does

not attract penalty in view of the provision of 271(1)C of the Act.. In this regard we relied upon the decision in the case of **Reliance Petroproducts 321 ITR** and in the case of **Union of India Vs. Dharmendra Textiles (supra)**. However while passing the order, the CIT(A) has also relied upon the numbers of cases discussed above in his order which has been passed by the authority on similar lines. So far as the case i.e **CIT Vs. Zoom Communications Pvt. Ltd. 233 CTR 465 (Del)**, relied by the revenue is concerned, the same is not in connection with disallowing of the claim u/s 10AA of the Act etc. In the said case, a sum of Rs.1,21,49,861/- was debited under the head of equipment return which was not added back in computation of income. Accordingly, the factual position is different. Therefore, the law relied by the Ld. Representative of the revenue is not applicable to the facts of the present case. The CIT(A) has passed the order on the basis of the factual position of the case as well as by relying upon the relevant law discussed above. In view of the said circumstances, we are of the view that the CIT(A) has passed the order judiciously and correctly which is not liable to be interfere with at this appellate stage. Accordingly, we dismissed the appeal of the revenue.

**6.** In the result, the appeal filed by the **revenue is hereby ordered to be dismissed.**

Order pronounced in the open court on 11.05.2018.

Sd/-

Sd/-

(R. C. SHARMA)  
ACCOUNTANT MEMBER

(AMARJIT SINGH)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 11.05.2018

*vijay*

**आदेश की 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**