

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"G" Bench, Mumbai**

**Before Shri B.R. Baskaran, Accountant Member  
and Shri Amarjit Singh, Judicial Member**

**ITA No. 181/Mum/2017**  
(Assessment Year: 2011-12)

Income Tax Officer-9(3)(3) Room No. 471, 4th Floor Aayakar Bhavan, M K Road Mumbai 400020	Vs.	M/s. Gebbs Healthcare Solutions P. Ltd. MindSPACE Building No. 3 1st Office Level, Thane- Belapur Road, Airoli Navi Mumbai
PAN – AALCS4978H		

**Appellant**

**Respondent**

**ITA No. 182/Mum/2017**  
(Assessment Year: 2007-08)

Income Tax Officer-9(3)(3) Room No. 471, 4th Floor Aayakar Bhavan, M K Road Mumbai 400020	Vs.	M/s. Gebbs Infotech Ltd. (Now Gebbs Technology Ltd.) MindSPACE Building No. 3 1st Office Level, Thane- Belapur Road, Airoli Navi Mumbai
PAN – AALCG2949P		

**Appellant**

**Respondent**

Appellant by: Shri Suman Kumar  
Respondent by: Shri Mahesh O. Rajora

Date of Hearing: 18.06.2018  
Date of Pronouncement: 18.06.2018

**ORDER**

**Per B.R. Baskaran, AM**

Both the appeals filed by the Revenue related to two different assesseees and they are directed against the orders passed by the learned CIT(A)-16 Mumbai.

2. Since the issues urged in these appeals are identical in nature, they were heard together and are being disposed of by this common order, for the sake of convenience.

3. We shall first take up the appeal filed in the case of Gebbs Healthcare Solutions P. Ltd., wherein the following issues are urged: -

- (a) Whether the assessee is entitled for deduction under Section 10B of the Income Tax Act (hereinafter "the Act").
- (b) Whether the assessee is entitled for deduction under Section 10B of the Act in respect of interest income of ₹76,262/- and miscellaneous income of ₹3,650/-.
- (c) Whether the assessee is entitled for deduction under Section 10AA of the Act on sundry balances written back of ₹34,998/- and interest income of ₹5,23,615/-.
- (d) Whether the income of the assessee from unit located SEZ is to be included for computing profit under Section 115JB of the Act.
- (e) Whether the assessee is eligible for deduction of employees' contribution to PF and ESCI paid beyond the due date prescribed in the respective Acts.

The assessee company is engaged in the business of providing business process outsourcing services onsite/offshore.

4. The first issue related to deduction claimed by the assessee under Section 10B of the Income Tax Act (hereinafter "the Act"). The AO rejected the claim under Section 10B of the Act for the reason that the assessee company did not employ its own manpower and it got the work done on job work basis and further the assessee was doing business by restructuring its old Unit. Even though it was pointed out to the AO that the assessee's claim for deduction under Section 10B of the Act was allowed by the Tribunal in assessment years 2003-04 to 2007-07 and 2008-09, the AO refused to follow the same for the reason that the Revenue has challenged the order passed by the Tribunal by filing appeal before the Hon'ble Bombay High Court. The learned CIT(A), however, allowed the claim of the

assessee for deduction under Section 10B of the Act by following the order passed by the Tribunal in A.Y. 2010-11.

5. We have heard both the parties on this issue and perused the record. We noticed that the Tribunal has consistently held that the assessee is eligible for deduction under Section 10B of the Act. The same view has been expressed by the Coordinate Bench in assessee's own case in ITA No. 101/Mum/2016 relating to A.Y. 2010-11, vide its order dated 05.01.2018. Following the order passed by the Coordinate Bench, we uphold the order passed by the CIT(A) on this issue.

6. Next issue relates to allowability of assessee's claim under Section 10B of the Act on interest income of ₹76,262/- and miscellaneous income of ₹3,650/-. The interest income was earned from fixed deposits kept with banks. The AO disallowed the claim for deduction u/s 10B of the above said income on the reasoning that they cannot be considered as income derived from export business. The learned A.R. submitted that the income was earned from fixed deposits kept with banks, which was a pre-requisite for carrying out hedging transactions with bank in order to protect the assessee from fluctuations in foreign currency realised on exports. The learned A.R. submitted that an identical issue was considered in assessee's own case in A.Y. 2010-11 (supra) and it was held by the Coordinate Bench that interest income is directly related to export business of the assessee. He submitted that the miscellaneous income represents sundry balances written back and the same has also been considered as part of export business of the assessee by the Coordinate Bench in A.Y. 2010-11 (supra).

7. We have heard the parties on this issue and perused the record. We noticed that the Coordinate Bench has decided this issue in favour of the assessee in A.Y. 2010-11 and the Ld CIT(A) has followed the same. Accordingly, following the order passed by the co-ordinate bench, we hold that the assessee is eligible for deduction 10B of the Act in respect of interest income earned from bank deposits and also miscellaneous income

relating to sundry balance written back. Accordingly we uphold the order passed by the CIT(A) on this issue.

8. Next issue relates to the eligibility of the assessee to claim deduction under Section 10AA of the Act in respect of interest income from FDI and sundry balances written back. For the reasons stated in the immediately preceding paragraphs, we hold that the assessee is entitled for deduction under Section 10B of the Act in respect of both the amounts and accordingly we uphold the order passed by the learned CIT(A) on this issue.

9. Next issue relates to computation of book profit under Section 115JB of the Act. The AO refused to deduct the profit arising from Unit located in SEZ from the net profit for the purpose of computing book profit under Section 115JB of the Act. The learned A.R. submitted that the profit arising from the Unit located in SEZ is liable to be excluded as per provisions of Section 115JB(6) of the Act. He also submitted that an identical issue was considered by the Coordinate Bench in A.Y. 2010-11 and the same was decided in favour of the assessee by following the decision rendered by another Coordinate Bench in the case of Genesys International Corporation Ltd. (80 DTR Mum. Tribunal 4). Accordingly, following the decision rendered by the Coordinate Bench on identical issue in A.Y. 2010-11, we uphold the order passed by the learned CIT(A) in holding that the profit arising from Unit located in SEZ is eligible to be excluded for the purpose of computing book profit under Section 115JB of the Act as per sub-section (6) of sec. 115JB.

10. The last issue relates to disallowance of belated payment of employees contribution of PF and ESIC. The AO disallowed the above said claim on the reasoning that the assessee has paid the above said amounts beyond the due date prescribed in the respective Acts. The learned CIT(A) noticed that the assessee has however, paid the amount before the due date prescribed for filing the return of income. Accordingly, following the decision rendered by the by the Hon'ble Bombay High Court in the case of CIT vs. Hindustan Organic Chemicals Ltd. (ITA No. 399 of 2012) and CIT vs. Ghatge Patil

Transports Ltd. (ITA No. 2001 of 2012 and 1034 of 2012), the learned CIT(A) deleted the disallowance. Since the CIT(A) has followed the binding decision rendered by the Hon'ble Bombay High Court on this issue, we do not find any reasons to interfere with his order passed on this issue.

11. Now we shall take up the appeal filed by Gebbs Infotech Ltd. The first issue relates to allowability of deduction under Section 10B of the Act. We noticed that this issue has been decided in favour of the assessee by the Tribunal in assessment years 2003-04 to 2005-06 (ITA No. 3370/Mum/2007, ITA No. 7738/Mum/2017 and ITA No. 7196/Mum/2018) respectively. Further, the Tribunal has decided identical issue in favour of the assessee in A.Y. 2006-07 in ITA No. 6147/Mum/2009. We noticed that the learned CIT(A) has decided this issue in favour of the assessee by following the decision rendered by the ITAT in A.Y. 2006-07. Accordingly we do not find any reason to interfere with the order passed by the learned CIT(A) on this issue. We uphold the same.

12. Next issue relates to eligibility of the assessee to claim deduction under Section 10B of the Act in respect of interest income, sundry balances written off and exchange rate fluctuations. We noticed that the learned CIT(A) has allowed the claim of the assessee by following the decision rendered by him in the sister concern namely, Gebbs Healthcare Solutions P. Ltd. for assessment years 2009-10 and 2010-11. We earlier noticed that the view taken by the CIT(A) in the case of Gebbs Healthcare Solutions P. Ltd. (supra) has been upheld by the Coordinate Bench of the Tribunal. Accordingly, by following the decision rendered by the Coordinate Bench of the Tribunal, we uphold the decision rendered on this issue by the CIT(A), since the facts are identical in nature.

13. The last issue relates to disallowance of employees contribution to PF and ESIC. The learned CIT(A) has decided this issue by following the decision rendered by the Hon'ble Bombay High Court in the case of Hindustan Organic Chemicals Ltd. (supra) and Ghatge Patil Transports Ltd. (supra) since the assessee has paid the amount before the due date

prescribed for filing the return of income. Since the learned CIT(A) has followed the binding decision rendered by the Hon'ble Bombay High Court on this issue, we do not find any reason to interfere with the order passed by the learned CIT(A) on this issue.

14. In the result, the both the appeals filed by the Revenue are dismissed.

Order pronounced in the open court on 18<sup>th</sup> June, 2018.

Sd/-  
**(Amarjit Singh)**  
**Judicial Member**

Sd/-  
**(B.R. Baskaran)**  
**Accountant Member**

Mumbai, Dated: 18<sup>th</sup> June, 2018

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -16, Mumbai*
4. *The Pr. CIT - 9, Mumbai*
5. *The DR, "G" Bench, ITAT, Mumbai*

*By Order*

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*Assistant Registrar*  
*ITAT, Mumbai Benches, Mumbai*

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