

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

**BEFORE SHRI SAKTIJIT DEY, HON'BLE JUDICIAL MEMBER &
SHRI Dr. A.L. SAINI, HON'BLE ACCOUNTANT MEMBER**

**ITA No. 6403/MUM/2016
(Asst. Year : 2011-12)**

ACIT, Circle-2(3),
Room No. 552, 5th Floor,
Aayakar Bhavan, M.K.
Road, Mumbai – 400 020

vs. M/s. Mahindra Engineering
Services Ltd. (merged with
Tech Mahindra Ltd.),
Gateway Building, Apollo
Bunder, Mumbai

(Appellant)

PAN No. AADCM 2907 L
(Respondent)

Assessee by : Shri Karthik Natarajan, CA.
Department By : Shri H.N. Singh, CIT - DR

Date of hearing : 25/06/2018.
Date of pronouncement : 27/06/2018.

ORDER

PER Dr. A.L. SAINI, ACCOUNTANT MEMBER

The captioned appeal filed by the Revenue pertaining to Assessment Year 2011-12, is directed against the order passed by the Id. CIT(A)-58, Mumbai in appeal No. CIT(A)/-58/09/2015-16, dated 29/07/2016, which in turn arises out of an assessment order passed by the Assessing Officer under sec. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the "Act"), dated 10/03/2013.

2. The grievances raised by the Revenue are as follows:-

- "1. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the disallowance of Rs. 18,24,47,025/- u/s. 10A & deciding the STP unit as new venture ignoring the fact that assessee is doing the same business in the STPI Unit, which it was earlier doing in the non-STPI unit and hence ineligible for deduction u/s.10A of the I.T. Act, 1961.*
- 2. For these and other grounds that may be urged at the time of hearing, the decision of Id. CIT(A) may be set aside and that of the AO restored."*

3. At the outset itself, when this appeal was called out for hearing, Id. Authorized Representative for the assessee invited our attention to the order dated 20/03/2018 passed by the Division Bench of this Tribunal in assessee's own case for the Assessment Year 2007-08 & 2008-09 in ITA Nos. 2413/MUM/2011 & 1844/MUM/2014, whereby the issue has been decided in favour of the assessee. Therefore, Ld. Authorized Representative for the assessee has submitted that the present appeal is squarely covered by the aforesaid order of this Tribunal, copy of which is placed before the Bench.

4. On the other hand, Ld. Departmental Representative for the Revenue relied on the order passed by the Assessing Officer.

5. We see no reason to take any other view of the matter than the view so taken by the Division Bench of this Tribunal in assessee's own case vide order dated 20/03/2018, in ITA Nos.

2413/MUM/2011 & 1844/MUM/2014 for the Assessment Years 2007-08 & 2008-09 (supra). In this order, the Tribunal has *inter alia* observed as under:-

"12. The Ld. CIT(A) has pointed out that the AO has denied the deduction mainly on the ground that by setting up the STPI Unit, the appellant had not started a new business. The Ld. CIT(A) has further observed that findings of the AO are based on an inadequate premise as the AO has based his findings on the purchase order dated 15.10.2004 and the nature of services in the pre existing non STPI unit and the comparable rates of pre STPI and STPI jobs. We find that the observations of the Ld. CIT(A) are based on the evidence on record. As observed by the Ld. CIT(A) the purchase order dated 15.10.2004 was in connection with only a Pilot Project mounted to test the ability of the appellant company to do business on a magnitude and level compatible to the expectations of ITEC. The work given for the Pilot Project was initially for a sum of Rs. 9.3 crores, however, after signing the contract with International Truck and Engine Corporation (ITEC), the STPI unit earned revenue of Rs. 42.74 crore. As per para 2.3 of the Agreement, with the commencement of joint Venture, the purchase order dated stood terminated. Hence, in our considered opinion, the findings of the Ld. CIT (A) are based on the evidence on record and in accordance with the settled principles of law. We, therefore, do not find any reason to interfere with the findings of the Ld. CIT (A). Accordingly, we uphold the findings of the Ld. CIT(A) and dismiss both the grounds of the revenue's appeal."

6. As the issue is squarely covered in favour of the assessee by the decision of the coordinate bench of this Tribunal in assessee's own case in ITA Nos. 2413/MUM/2011 & 1844/MUM/2014 (supra), and there is no change in facts and law and the Revenue is unable to produce any material to controvert the aforesaid findings and the Id. CIT(A) has allowed the appeal of the assessee, we find no

reason to interfere in the order of the Id. CIT(A) and the same is hereby upheld. Therefore, the appeal filed by the Revenue is dismissed.

7. In the result, appeal filed by the Revenue is dismissed.

Order Pronounced in open Court on this 27th day of June, 2018.

Sd/-
(SAKTIJIT DEY)
Judicial Member

sd/-
(A.L. SAINI)
Accountant Member

Dated :27th June, 2018.

vr/-

1. *The Assessee -M/s. Mahindra Engineering Services Ltd. (merged with Tech Mahindra Ltd.), Gateway Building, Apollo Bunder, Mumbai.*
2. *The Revenue – ACIT, Circle-2(3), Room No. 552, 5th Floor, Aayakar Bhavan, M.K. Road, Mumbai-20*
3. *The CIT-2, Mumbai.*
4. *The CIT(A)-58, Mumbai.*
5. *The D.R., Mumbai.*
6. *Guard file.*

By order

Dy./Asst. Registrar,
ITAT, Mumbai.