आयकर अपीलीय अधिकरण "K" न्यायपीठ मुंबई मे।

IN THE INCOME TAX APPELLATE TRIBUNAL "K" BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री राजेश कुमार लेखा सदस्य के समक्ष।

BEFORE SRI MAHAVIR SINGH, JM AND SRI RAJESH KUMAR, AM

आयकर अपील सं./ ITA No. 2113/Mum/2017

(निर्धारण वर्ष / Assessment Year 2011-12)

The Dy. Commissioner of Income Tax, Circle-11(2)(2), 421, 4th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020	Vs.	M/s Syntel International Pvt. Ltd., Plot No. B-1, Software Technology Park, MIDC, Talwade, Pune-412114
(अपीलार्थी / Appellant)	..	**(प्रत्यर्थी / Respondent)**
स्थायी लेखा सं./PAN No. AAICS0960L		

अपीलार्थी की ओर से / **Appellant by** : Shri V. Jenardhanan, DR

प्रत्यर्थी की ओर से **/ Respondent by** : Shri Ms. Meena, AR

सुनवाई की तारीख **/ Date of hearing:**	14-06-2018
घोषणा की तारीख **/ Date of pronouncement :**	14-06-2018

आदेश / O R D E R

PER MAHAVIR SINGH, JM:

This appeal by the Revenue is arising out of the order of Commissioner of Income Tax (Appeals)-18, Mumbai, [in short CIT(A)] in appeal No. CIT(A)-18/IT-03/DCIT-11(2)(2)/15-16 dated 30-12-2016. The

Assessment was framed by the Deputy Commissioner of Income Tax, CC,11(2)(2), Mumbai (in short DCIT) for the assessment year 2011-12 order dated 24.02.2015 under section 143(3) read with section 143(3) of the Income Tax Act, 1961(hereinafter 'the Act').

2. The first issue in this appeal of Revenue is against the order of CIT(A) allowing the claim of deduction under section 10A of the Act on interested earned treating the same as profit derive from export of computer software. For this Revenue has raised the following grounds: -

> *"i) 0n the facts and circumstances of the case and in law, the CIT(A) has erred in allowing the deduction u/s.10A of the I.T Income-tax Act. 1961 ignoring the fact that the assessee had not claimed the same in the validly filed return of income and as such scrutiny assessment proceedings are not meant for the admission of fresh claim benefiting the assessee.'*
>
> *ii) On the facts and circumstances of the case and in law, the CIT(A) has erred in allowing interest income of Rs 27,59,491/- as profits eligible for deduction u/s.1OA & 10AA of the Act without appreciating the fact that the said income was not derived from export of computer software and hence was not eligible for deduction under the said sections."*
>
> *iii) 0n the facts and circumstances of the case and in law, the CIT(A) has erred in not*

appreciating the ratio of the judgment of the Hon'ble Apex Court in the case of Liberty India Ltd. Vs CIT (317 ITR 218) wherein it is held that though certain income may constitute profit from business u/s 28, yet the same cannot be construed as profits derived from an industrial undertaking and hence would not be eligible for deduction u/s 10A/10AA of the Act.

iv) on the facts and circumstances of the case and in law, the CIT(A) has erred in allowing interest income earned from EEFC account as profits eligible for deduction u/s.10A & 10AA of the Act relying upon the decision of ITAT in assessee's own case without appreciating that Hon'ble Bombay High Court in the case of CIT Vs Shah Originals 327 ITR 19 (2010) had categorically held that the interest accrued to the assessee on the deposits held in EEFC account falls for classification as income from other sources and cannot be treated as business income. "

v) On the facts and circumstances of the case and in law, whether the CIT(A) was correct in relying upon decision of Hon'ble ITAT in the assessee's sister concern M/s Syntel Ltd. case for assessment years 2003-04, 2004-05, 2006-07, 2007-08 & 2008-09 which has not been

accepted by the Department on merits which was pending before High Court for adjudication."

3. Briefly stated facts are that the assessee has claimed deduction under section 10A and 10AA and also filed form No. 56F in respect of the same. The assessee company has earned interest income of ₹ 27,59,491/- and claimed the same in the nature of business income eligible for deduction us/ 10A of the Act. We find that the CIT(A) following Tribunals decision in assessee's own case for previous assessment years allowed the claim of the assessee by observing in Para 2.4 as under: -

"2.4 I have considered the submissions of the appellant, order of the Assessing Officer and facts of the case carefully, it is noticed that this issue has been decided by the Hon'ble Tribunal in favour of appellant sister concern MIs. Sintel Limited A.Y. 1997-98 to 2008-09. The Hon'ble High Court has also dismissed the appeal of the department for late filling of appeal for 1997-98, 1998-99 and 2001-02 and confirmed the order passed by Hon'ble ITAT, Mumbai as under: -

Para 2 of the Order "The substantial question of law sought to be raised which reads as under:

Whether in the facts and circumstances of the case and in law, the Tribunal erred in holding that exemption is allowable 071 exchange fluctuation gain, interest income and reversal of provision.

> *Para 7. On the above premise, having examined the issue, the submission made by Mr. Vyas deserves acceptance. We do not see any substantial question of law arising in these appeals. hence, appeals are liable to be dismissed with no order as to costs. Order accordingly*
>
> *2.4 Since the issue has already been decided by the Ld. CIT(A) and the Hon'ble Tribunal in favour of the appellant sister concern "M/s. Syntel Limited", therefore respectfully following the same, the ground of appeal is allowed*."

Aggrieved, Revenue came in appeal before Tribunal.

4. At the outset, the learned Counsel for the assessee filed Tribunal's order in assessee's sister concern case for AY 2009-10 in ITA No. 5850/Mum/2013 vide order dated 26.08.2016, wherein similar issue was allowed by following the earlier year's decision by observing as under: -

> *"2. The only issue in appeal is regarding allowability of interest income of Rs.14,26,60,079/- as profits eligible for deduction u/s.10A/10B of the Act. ITAT Mumbai 'E' Bench in case of State Street Syntel Services Private Limited vs. DCIT in ITA No.6912/Mum/2014 by following assessee's own case for A.Y.2009-10 on similar issue held as under:*

"7. No material difference in fact for the impugned assessment year has been brought to our notice by the Learned Departmental Representative. Therefore, respectfully following the decision of the co-ordinate bench rendered in assessee's own case referred to above, we allow assessee's claim of deduction under section 10A. However, it is observed that the Assessing Officer had disallowed claim of deduction under section 10A for an amount of Rs.1,17,23,282, being the interest income, whereas, as per the ground of appeal raised before us and the order of the learned Commissioner (Appeals), the interest income referred to therein is Rs.1,70,23,282. The Assessing Officer is directed to allow assessee's claim of exemption under section 10A after verifying the exact amount of interest income.

There being no material difference in facts brought to our notice by the learned Departmental Representative, respectfully following the consistent view of the Tribunal in assessee's own case, we allow assessee's claim of deduction under section 10A in

respect of interest income of Rs.4,46,09,912. Ground raised by the assessee is allowed."

2.1 Nothing contrary was brought to our knowledge on behalf of Revenue. Facts being similar, so following same reasoning, we allow the assessee's claim of deduction u/s.10A of the Act in respect of interest income as raised by assessee."

2.1 Nothing contrary was brought to our knowledge on behalf of Revenue. Facts being similar, so following same reasoning, we are not inclined to interfere with the order of CIT(A) who has allowed the assessee's claim by allowing interest income of Rs.14,26,60,079/- as eligible profit for deduction u/s.10A/10B of the Act."

5. As the issue is squarely covered in favour of assessee by Tribunal's decision in assessee's own case, respectfully following the same, we dismiss the appeal of Revenue and confirmed the order of CIT(A). This issue of Revenue's appeal is dismissed.

6. The second issue in this appeal of Revenue is against the order of CIT(A) allowing the claim of loss/ unabsorbed depreciation. For this Revenue has raised the following ground No. vi and vii as under: -

"vi) On the facts and circumstances of the case and in law, the CIT(A) has erred in holding that the loss/ unabsorbed depreciation incurred by one of the SEZ units was not eligible for set off

against eligible profits of SEZ units for the purpose of computation of deduction u/s 10A of the Act."

vii) On the facts and circumstances of the case and in law, the CIT(A) has erred in not appreciating that the deduction u/s 10A is to be allowed after computing the overall profits and gains of SEZ units and as such, the AO was justified in setting off the unabsorbed depreciation pertaining to rental business of SEZ units."

7. At the outset, the learned Counsel for the assessee stated that this issue is also covered by Tribunal's decision in assessee's own case for AY 2008-09 in ITA No 6861/Mum/2012 dated 01.01.2016 vide para 5 as under: -

"5. We have heard the rival submissions and perused the material before us. We find that the aa had during the course of assessment proceedings requested the AO to adjust the unabsorbed depreciation against the non-10A income, that the AO rejected the claim made by the assessee, that the FAA following the judgments of the Jurisdictional High Court allowed the appeal filed by the assessee. We find that the Hon'ble High Court in the case of Black & Veatch Consulting Pvt. Ltd.(supra), had decided the issue as under :-

"Section 10A of the Income-tax Act, 1961, is a provision which is in the nature of a deduction and not an exemption. The deduction under section 10A has to be given effect to at the stage of computing the profits and gains of business. This is anterior to the application of the provisions of section 72 which deals with the carry forward and set off of business losses. A distinction has been made by the Legislature while incorporating the provisions of Chapter VI-A. Section 80A(1) stipulates that in computing the total income of an assessee, there shall be allowed from his gross total income, in accordance with and subject to the provisions of the Chapter, the deductions specified in sections 80C to 80U . Section 80B(5) defines for the purposes of Chapter VI-A "gross total income" to mean the total income computed in accordance with the provisions of the Act, before making any deduction under the Chapter. Therefore, the deduction under section 10A has to be given at the stage when the profits and gains of business are computed in the first instance. The Tribunal was right in holding that the deduction under section 10A in respect of the allowable unit under section 10A has to be allowed before setting off brought forwarded losses of a non-section 10A unit. ….

Respectfully following the above judgment, we confirm the order of the FAA and decide the effective ground of appeal against the AO.´

8. Respectfully following the Tribunal decision in assessee's own case for earlier year, we dismiss this issue of Revenue's appeal.

9. **In the result, the appeal of Revenue is dismissed.**

Order pronounced in the open court on 14-06-2018.

Sd/-	Sd/-
(राजेश कुमार /RAJESH KUMAR)	(महावीर सिंह /MAHAVIR SINGH)
(लेखा सदस्य / ACCOUNTANT MEMBER)	(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 14-06-2018

सुदीप सरकार, व.निजी सचिव / *Sudip Sarkar, Sr.PS*

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

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 (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**