

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "H", MUMBAI

Before Shri G S Pannu, Accountant Member
& Shri Sandeep Gosain, Judicial Member

ITA No.5384/Mum/2012
Assessment Year : 2005-06

M/s. Hikal Ltd., 717/718, Maker Chambers V, Nariman Point, Mumbai 400 021. PAN AAACH0383A (Appellant)	Vs.	Dy. CIT 14(2)(2), Mumbai (Respondent)
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Appellant By : Shri Sanjay Parikh
Respondent By : Shri Rahul Raman & Shri Omi Ningshen

Date of Hearing : 31.05.2018	Date of Pronouncement :31.07.2018
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ORDER

Per G S Pannu, Accountant Member

This appeal is directed against the order of the CIT(A)-7, Mumbai, dated 03.04.2012, which in turn has arisen out of the order passed by the Assessing Officer u/s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") relating to A.Y. 2005-06.

2. Although in the Memo of Appeal, the assessee has raised multiple Grounds of appeal, but essentially, the grievance of the assessee is on three counts, which we shall deal in seriatim.

3. The appellant before us is a company incorporated under the Companies Act, 1956 and, is inter alia, engaged in the business of manufacturing and marketing of agro chemicals. As per the orders of the authorities below, it transpires that the assessee has six manufacturing units and one of them (viz. Talaja Unit) was eligible for exemption u/s. 10B of the Act. The learned representative explained that Talaja unit was set up as 100% Export Oriented Unit (EOU) during the previous year

relevant to A.Y. 1999-2000 and so far as the entitlement for exemption u/s. 10B of the Act is concerned, there is no dispute. The only grievance is that while computing the profits eligible for the claim of deduction u/s. 10B of the Act, the Assessing Officer excluded an amount of ₹ 5,74,496/- being the interest earned on bank deposits. The CIT(A) has also affirmed the said action of the Assessing Officer, and not being satisfied with the order of the CIT(A), the assessee is in further appeal before us.

4. Before us, the learned representative explained that interest of ₹ 5,74,476/- was earned on deposits which have been kept with the bank as margin money to obtain facility of Letter of Credit or Bank Guarantees. It was explained that assessee has a 100% buy back arrangement with Merck & Co., in USA, with regard to its production at Taloja unit. In terms of the said arrangement assessee was to give a performance guarantee, which was issued by the bank. In order to obtain the same, assessee has placed the requisite bank deposit, which earned the impugned income. It was therefore contended that earning of such interest income was directly linked to the activities of EOU, whose profits have been subject to deduction u/s. 10B of the Act. The learned representative pointed out that so far as this dispute is concerned, in the case of the assessee itself for A.Ys. 2003-04 and 2004-05, the Tribunal, vide order dated 16.07.2010, in ITA Nos. 1039 & 1040/Mum/2007, has upheld assessee's entitlement of the benefits of section 10B of the Act. It has also been pointed out that in the instant year, the CIT(A) has denied claim by relying on the judgment of Hon'ble Supreme Court in the case of Liberty India [2009] (317 ITR 218), which is distinguishable. It was pointed out that in the following decisions the claim of deduction u/s. 10B/10A of the Act has been allowed after considering the decision of Hon'ble Supreme Court in the case of Liberty India (supra):

- CIT vs. Hewlett Packard Global Soft Ltd. (2017)87 taxmann.com 182(Kar) (FB)
- CIT vs. Arts & Crafts Exports (2012) 66 DTR (Bom) 85
- CIT vs. Hindustan Gum & Chemicals Ltd. (2016) 241 Taxman 0401 (Calcutta)
- Riviera Home Furnishing vs. Additional CIT (2016) 138 DTR (Del) 149

- Wipro Ltd. vs. DCIT (2016) 382 ITR 179.

Therefore, under these circumstances the claim of the assessee be allowed.

5. On the other hand, learned DR has reiterated the stand of the lower authorities, which is to the effect that the interest income in question is not derived from exports and, therefore, the same is not includible for the purpose of deduction u/s. 10B of the Act.

6. We have carefully considered the rival submissions. The short point before us is with regard to interest income earned by the assessee on Fixed Deposits kept with bank in order to obtain the facility of Bank Guarantees. It is not disputed that the facility of Bank Guarantee obtained by the assessee is in relation to the sales effected from its 100% EOU at Talaja, which is entitled to the benefits of section 10B of the Act. In somewhat similar situation the Hon'ble Karnataka High Court in the case of CIT vs. Motorola India Electronics (P) Ltd. (98 DTR 81), considered eligibility of interest derived from deposits in the EEFC account and the interest income earned on inter-corporate deposits for the benefits of section 10A and 10B of the Act. The Hon'ble High Court after taking into consideration the mechanics of section 10A and section 10B of the Act, which are quite *pari materia*, held that such interest income would be entitled to benefits provided the same has a nexus with the business of the eligible undertaking. In that light of the matter, in our view, the claim of the assessee is on a sound footing in as much as factually speaking it is not disputed that interest has been earned on deposit with bank and used for furthering the business of its 100% EOU, which is eligible for benefits of section 10B. So long as such income constitutes profits and gains of business of the eligible undertaking, the same would fall within the scope of expression 'Income from profits and gains' incorporated in section 10B(4) of the Act. In view of the aforesaid and also the order dated 16.07.2010 of the Tribunal in assessee's own case for A.Ys 2003-04 and 2004-05, claim of the assessee deserves to be accepted. We hold so. At this point we may also note that the Hon'ble Karnataka High Court in the case of CIT vs. Motorola India Electronics (P) Ltd. (*supra*) considered and distinguished the case of

Liberty India, which has since been relied upon by the CIT(A) before us. In this background, we allow the claim of the assessee and, accordingly, assessee succeeds on this ground.

7. The second grievance of the assessee in this appeal arises from the action of the Assessing Officer of scaling down the carry forward losses of non-10B units by the amount of exemption u/s. 10B of the Act. On this aspect, we find that the CIT(A) has directed the Assessing Officer to verify the claim of the assessee and allow it as per law. Pertinently, before the CIT(A) the assessee has relied on various decisions of the Tribunal as well as the judgment of Hon'ble Karnataka High Court in the case of Yokogawa India Ltd. (ITA NO.78 dated 09.08.2011). In our considered opinion, the manner in which the CIT(A) has decided the issue does not require any interference from our side as the matter has already been set aside to the file of the Assessing Officer for decision as per law. We hereby affirm the order of the CIT(A) on this aspect.

8. The third grievance of the assessee is regarding quantification of carry forward of losses, which is consequential to the decision on the issue raised by the assessee in second Ground, which has already been set aside to the file of the Assessing Officer. Therefore, no separate adjudication is required on the said issue.

Thus, the appeal of the assessee is partly allowed as above.

Order pronounced in the open court on this day of 31st July, 2018

Sd/-
(Sandeep Gosain)
JUDICIAL MEMBER

Mumbai, Dated : 31st July, 2018.

Sd/-
(G S Pannu)
ACCOUNTANT MEMBER

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Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mumbai.
4. The CIT , Mumbai.
5. The DR, 'H' Bench, ITAT, Mumbai

BY ORDER

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(Assistant Registrar)
Income Tax Appellate Tribunal, Mumbai