IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad

Before Smt. P. Madhavi Devi, Judicial Member
AND
Shri S.Rifaur Rahman, Accountant Member

ITA No.1100/Hyd/2018
(Assessment Year: 2011-12)

TNS India (P) Ltd Hyderabad PAN:AABCN2278F *(Appellant)*	Vs	Asstt. Commissioner of Income Tax, Circle 2(2) Hyderabad *(Respondent)*

For Assessee : Shri Ravi Bharadwaj
For Revenue : Shri Y.V. S.T. Sai, CIT(DR)

Date of Hearing: 18.04.2019
Date of Pronouncement: 03.07.2019

O R D E R

Per Smt. P. Madhavi Devi, J.M.

This is assessee's appeal against the order of the Pr. CIT-2, Hyderabad, dated 15/03/2018.

2. Brief facts of the case are that the assessee company which is engaged in the business of market research and data processing, filed its return of income for the A.Y 2011-12 on 28.11.2011 admitting total income of Rs.13,69,96,887/- after claiming deduction u/s 10A of the Act of Rs.11,42,74,773/-. Subsequently, a revised return of income was filed on 29.3.2013 admitting total income of Rs.13,50,77,048/- after claiming deduction u/s 10A of the Act of Rs.11,61,94,612/- under the normal provisions of the I.T. Act and Rs.24,99,95,021/- under

115JB of the Act. The case was selected for scrutiny under CASS and the AO, during the assessment proceedings, made certain additions and the total assessed income was Rs.20,37,93,012/-.

3. The CIT, thereafter perused the assessment records u/s 263 of the Act and observed from the P&L A/c of the ORSC Division that profit of Rs.11,61,94,612/- was inclusive of other income of Rs...1,68,77,905/-, but while claiming the deduction u/s 10A, other income was excluded from the total turnover and the export turnover was taken at Rs.65,79,30,795/-. He also observed that the telecommunication charges of Rs.1,08,70,739/- was not reduced from the export turnover which resulted in excess deduction u/s 10A of the Act and the AO has ignored this aspect while completing the assessment. He also observed from the assessment records that the assessee has started business of export of computer software during the financial year 1994-95 relevant to the A.Y 1995-96 and that a part of the DTA Unit was converted into ORSC unit in October, 2004 and ORSC Unit was registered as STPI Unit on 6/9/2005. He observed that the DTA Unit commenced the export of computer software in financial year 1994-95, and that the period of 10 consecutive years from the year of commencement of business of export of software by the domestic tariff unit for claiming the deduction u/s 10A has already expired in the year 2004-05 itself and hence deduction u/s 10A has to be disallowed. He observed that the AO has ignored this aspect while completing the assessment.

4. Therefore, he issued a show-cause notice dated 4/12/2017 u/s 264 of the Act calling for assessee's objections, if

any, for the revision of the assessment order. Subsequently, due to the change of incumbent, a fresh notice dated 20.02.2018 was also issued. In response to the same, the assessee appeared through its representative and vide letter dated 13.02.2018 made various submissions in support of its claim u/s 10A of the Act and also raised objection to the revision order by contending that the impugned order was neither erroneous nor prejudicial to the interest of the revenue. The CIT however was not convinced by the contention of the assessee and held that the assessment order is erroneous as well as prejudicial to the interest of the Revenue for the reasons sated in the show-cause notice. Thereafter, he observed that the ORSC unit was converted from DTA Unit to STPI Unit and therefore, it is treated as formed by splitting up/reconstruction of the existing business and therefore, deduction u/s 10A of the Act is admissible only for the unexpired period. He also observed that the DRP for the A.Y 2008-09, has rejected the objections of the assessee by holding that the ORSC unit has been formed by splitting up or reconstruction of the existing business. He observed that the DRP allowed the alternate plea which sought refuge under the Board's Circular 1/2005 dated 6.1.2005 according to which, the deduction is available only for the remaining period of 10 consecutive assessment years. In view of the Board circular, the CIT has held that the assessment order is not in conformity with the provisions of law and therefore, it is erroneous and prejudicial to the interest of the Revenue. He thus rejected the assessee's objection to the proceedings u/s 263 of the Act. Thereafter, he proceeded to consider the merits of the case and held that the deduction u/s 10A was available only till financial year 2004-05 and therefore, the assessee is not eligible

for 10A deductions subsequently. He accordingly directed the AO to disallow the claim of deduction exemption u/s 10A and to recompute the taxable income of the assessee. Against this order of the CIT, the assessee is in appeal before us by raising the following grounds of appeal:

> *"Based on the facts and circumstances of the case and in law, the learned Principal Commissioner of Income Tax ("PCIT") erred in:*
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> *(a) Violating the principles of judicial discipline by disregarding the directions of the Hon'ble ITAT allowing the claim of deduction under section l0A in the Appellants own case for AY 2006-07.*
>
> *(b) Revising an order which is not prejudicial or erroneous to the interest of the revenue. (c) Reagitating the claim of deduction uls l0A which was accepted by the department thereby violating the principles of consistency.*
>
> *(d) Not appreciating the fact that the business carried on by the Appellant during A.Y 2003-04 and A.Y 2011-12 was substantially different from the business carried by the Appellant during AY 1995-96.*
>
> *(e) Disregarding the fact that the Hon'ble ITAT had held that the ORSC unit was setup in AY 2003-04 and converted from DTA to STPI unit in AY 2006-07".*

5. The learned Counsel for the assessee submitted that the business carried on by the assessee in the year 1994-95 is different from the business carried out by the assessee during the relevant A.Ys. He submitted that the issue as to whether the assessee is eligible for deduction u/s 10A had arisen in the assessee's own case for the A.Y 2006-07 and the Coordinate Bench of the Tribunal has directed the AO to allow the claim of deduction u/s 10A of the Act. He also referred to form 56F which is placed at page 36 of the Paper Book and Annexure A thereto, which is placed at page 38 to demonstrate that this is the 6th year

in which deduction u/s 10A is being claimed. The assessee has also filed the copies of STPI Certificates dated 6.9.2005 wherein the assessee has been registered as a STPI Unit. Therefore, the learned Counsel for the assessee submitted that the assessee is eligible for deduction u/s 10A and the AO having considered the same, has allowed the deduction and the CIT vide order u/s 263 cannot direct the AO to disallow the exemption u/s 10A of the Act. He also placed before us copy of the supplemental agreement for software export by the Units registered with STPI during the period of extension under the scheme dated 22.09.2010 wherein earlier approval of STPI Unit dated 6.9.2005 is referred to and the extension is given for a further period of 5 years from 14.09.2010.

6. The learned DR, on the other hand, supported the orders of the CIT.

7. Having regard to the rival contentions and the material on record, we find that the assessee has been registered as a STPI Unit in the financial year 2005 and has been claiming deduction u/s 10A of the Act successively and the assessment year 2011-12 is the 6th year. We find that on merits whether the assessee is eligible for 10A deduction or not was decided in the assessee's own case for the A.Y 2006-07 i.e. the assessment year in which the domestic tariff unit (DTA) has been converted into STPI Unit and the Tribunal at Para 5 to 8 of its order in ITA No.108/Hyd/2011 dated 27.6.2014 has held as under:

> "8. *We have heard the parties and perused the materials on record as well as the orders of the DRP on this issue. So far as the first contention of the assessee that ORSC is a new unit, we are unable to*

accept such contention in view of the specific finding of the AO, which has not been controverted by the assessee by bringing sufficient material to substantiate its claim. However, so far as alternative contention of the assessee for allowing claim of deduction u/s 10A of the Act due to conversion from DTA unit to STPI unit, we find force in such contention of the learned AR. It is not in dispute that ORSC unit is recognized as a STPI unit. On perusal of the order passed by the DRP for the AY 2008-09, it is seen that in para 12 of the said order, the DRP has held that when ORSC unit is converted from domestic tariff area to STPI unit, it is eligible for deduction u/s 10A of the Act for the remaining period out of 10 consecutive assessment years starting from the year in which it was approved as STPI unit. In view of such finding of the DRP for the AY 2008-09, we direct the AO to allow deduction u/s 10A of the Act for the impugned assessment year also.

8.1 The assessee has raised one more additional ground at the time of hearing before us which is as under:

"With reference to Ground No. 18 and 19, we request the Hon'ble Tribunal to direct the learned AO to consider the appellant's revised claim in respect of deduction u/s 10A of the Act made during the assessment proceedings."

8.2 In this context, learned AR has referred to the working of computation u/s 10A deduction as contained in reply dated 17/12/2005 before the Additional Commissioner of Income-tax, a copy of which is placed at page 119 of the paper book.

8.3 Considering the submissions of the assessee, we remit this issue to the file of the AO with a direction to look into this aspect and take a decision in the matter after verifying the claim of the assessee and after giving due opportunity of hearing in the matter to the assessee".

8. Thus, it is seen that the issue of allowability on conversion of DTA Unit to STPI Unit, had arisen in the first year after formation of STPI Unit and the Tribunal has held that the assessee is eligible for deduction u/s 10A of the Act for a period of 10 consecutive years starting from its approval as STPI Unit. Therefore, we find force in the argument of the assessee that the assessee was eligible for deduction u/s 10A of the Act and therefore, the assessment order was not erroneous and prejudicial to the interest of the Revenue. Since the issue is covered in favour of the assessee on merits, we set aside the order of the CIT u/s

263 of the Act and the original assessment granting deduction u/s 10A of the Act is restored. However, with regard to the computation of deduction u/s 10A of the Act, the CIT has observed that the income from "other sources and telecommunication charges" were not reduced from the export turnover. It has been held by the Courts that when any expenditure is reduced from the export turnover, then it has to be reduced form the total turnover as well. The AO is therefore, directed to recompute the deduction u/s 10A of the Act in accordance with the judicial precedents on the issue.

9. In the result, assessee's appeal is partly allowed.

Order pronounced in the Open Court on 3rd July, 2019.

Sd/-	Sd/-
(S.Rifaur Rahman)	**(P. Madhavi Devi)**
Accountant Member	**Judicial Member**

Hyderabad, dated 3rd July, 2019.

Vinodan/sps

Copy to:

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3 CIT (A)-2 Hyderabad
4 Add. CIT – Range-2 Hyderabad
5 The DR, ITAT Hyderabad
6 Guard File

By Order