

**IN THE INCOME TAX APPELLATE TRIBUNAL BENCH, NAGPUR  
BEFORE SHRI P.K. BANSAL, VP AND SHRI AMARJIT SINGH, JM**

**I.T.A. Nos.385/Nag/2012 & 24/Nag/2015  
Assessment Year: 2009-10&2011-12**

ITO, Ward-1(4), Room No. 504, 5 <sup>th</sup> Floor, MECL Building, Seminary Hills, Nagpur.	Vs.	M/s Vista Software 107, Bajiprabhu Nagar, Nagpur Pin:440010
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. : AAFV3086N		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

**C.O. Nos.02/Nag/2013&13/Nag/2015  
Assessment Year:2009-10&2011-12**

M/s Vista Software 107, Bajiprabhu Nagar, Nagpur Pin:440010	Vs.	ITO, Ward-1(4), Room No. 504, 5 <sup>th</sup> Floor, MECL Building, Seminary Hills, Nagpur.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. : AAFV3086N		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

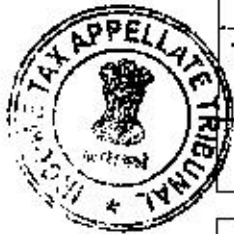
Assessee by:	V.V. Saranjame
Department by:	A.R. Ninawe

**Date of Hearing: 29.06.2017  
Date of Pronouncement: 15.09.2017**

**ORDER**

**PER AMARJIT SINGH, JM:**

The assessee as well as revenue have filed the above mentioned appeals as well as cross-objection against the different orders passed by the Commissioner of Income Tax (Appeals)-I, Nagpur [hereinafter



referred to as the "CIT(A)"] dated 14.08.2012 & 15.10.2014 relevant to the assessment years 2009-10&2011-12 respectively.

**ITA NO.385/M/2012:-**

2. The revenue has filed the present appeal against the order dated 14.08.2012 passed by the Commissioner of Income Tax (Appeals)-(1) Nagpur, [hereinafter referred to as the "CIT(A)"] relevant to the assessment years 2009-10.

3. The revenue has raised the following grounds:-

1. *In facts and Circumstances of the case and in law, the Ld. CIT(A) erred in granting relief u/s 10A even though the condition laid down in Sec. 10A(5), that form No. 56F has to be filed along with the return of income, was not fulfilled.*
2. *In facts and Circumstances of the case and in law, alternate claims whether under section 10A or section 10B, could not have been entertained unless the Claim is statutorily made per decision in 284 ITR 323(SC).*
3. *In facts and Circumstances of the case and in law, the Ld. CIT(A) erred in concluding that the assessee is eligible for deduction u/s 10A without appreciating the fact that the assessee has not set up its business in SEZ as mandated u/s 10A(2)(i)(c) of the Act.*
2. *Any other ground which may be pressed at the time of hearing."*

4. The brief facts of the case are that the assessee filed its return of income on 30.09.2009 declaring income to the tune of Rs. Nil. The return was processed u/s 143(1) of the I.T. Act on 25.01.2011. The case was selected for scrutiny through CASS. Accordingly, notice u/s 143(2) and 142(1) of the Act were issued and served upon the



assessee. The assessee derived its income from business of IT services like business processing unit, data entry, mapping, digit station etc. The assessee claimed the deduction u/s 10B of the Act amounting to Rs.50,74, 131/-. However vide Form 56G, report requisition u/s 10B of the Act, the assessee claimed the deduction u/s 10B of the Act to Rs.49,17,363/-. Further, vide schedule --A to annexure-A of report of form 56G, the Chartered Accountant has shown other profit of Rs.1,35,602/-. It was not disclosed by the assessee while filing the return of income. The claim of the assessee under section 10B of the Act was examined. It was the condition for claiming the deduction u/s 10B that the undertaking should be approved by the Board. The assessee did not comply with the basic condition. The assessee was registered as export oriented unit(E.O.U.) in Software Technology Park of India, Nagpur and a 100% (E.O.U.) under STPI scheme cannot be equated with approval by the Board. Thereafter, the notice was given and after the considering the reply, the claim of the assessee was declined to the tune of Rs.4917363/- and the said amount was treated as income of assessee. Feeling aggrieved, the assessee filed an appeals before the Commissioner of Income Tax Appeal who allowed the claim of the assessec u/s 10A, therefore, the revenue has filed the present appeal before us.



**ISSUE NO.1 to 3:-**

5. All the issues are interconnected therefore are being taken up together for adjudication. Under these issues the revenue has challenged the allowance of exemption u/s 10A of the Act by the CIT(A). It is argued by the Ld. Representative of the revenue that the assessee raised the claim u/s 10B of the Act but the CIT(A) has allowed the claim u/s 10A without giving finding with regard to exemption of u/s 10A and also without giving the finding with regard non-furnishing the Form No. 56F therefore, in the said circumstances order passed by the CIT(A) is wrong and against law and facts therefore the finding of the CIT(A) is liable to be set aside. However, on the other hand the Ld. Representative of the assessee has placed reliance upon the order passed by the CIT(A) in question. After giving the careful thoughts to the argument advanced by the Ld. Representative of the parties and perused the record carefully, we noticed that the assessee raised its claim before the Assessing Officer in connection with Section 10B of the Act. However, the assessee raised alternate claim of same in view of the provision u/s 10A of the Act. The Assessing Officer rejected the claim of the assessee u/s 10B of the Act on account of non-producing the certificate approved by the Board and also declined the claim u/s 10A of the Act on account of non-furnishing of the form 54F. However, the CIT(A) allowed the claim of the assessee u/s 10A of the Act. The contention of the assessee is that the assessee claimed the deduction as export oriented unit (E.O.U.) under the Software Technology Park of India scheme



(E.O.U.) u/s 10B of the Act. The STPI scheme was coming under the rule of Government of India. Therefore the same was having larger applicability within the E.O.U. approved by the Board. The assessee's claim was declined u/s 10B of the Act. The AO also declined the claim u/s 10A of the Act on account of non-furnishing a Form No. 56F. The CIT(A) allowed the claim in view of the provision u/s 10A whereas in the earlier years the claim of the assessee was allowed in view of the provision u/s 10B of the Act. The finding of the CIT(A) is hereby reproduced as under for ready reference:-



*"I have gone through the facts of the case. In this case during the assessment proceedings appellant has made a claim u/s 10B amounting to Rs.50,74,131/-. However vide form no. 56G the appellant had restricted its claim u/s 10B to Rs.49,17,363/-. The main ground on which AO has rejected the claim of the appellant for deduction u/s 10B is that it is an export oriented unit functioning from STPI and not an undertaking that has been approved by the Board for claiming deduction u/s 10B. As regards the alternate claim of appellant that deduction u/s 10A may be allowed it was observed by AO that the prescribed form no. 56F is required to be filed along with return of income. It was mandatorily required that the assessee get a report from the Chartered Account in form no. 56F before the due date of filing of return u/s 139(1). As the assessee has failed to adhere to this criteria, the claim of deduction u/s 10A has been denied.*

*5.1 In the decision of the Hon'ble Karnataka High Court relied upon by the appellant in the case of CIT Vs. Infosys Technologies Ltd. reported in 65 DTR 271 is relevant. It has been held that "concurrent finding arrived at by the AO, appellate authority and the Tribunal that income from sale of software was trading income and not capital gains is unassailable and said sale having taken place after the establishment of STP unit, assessee is entitled to exemption u/s*

*"A fact that the assessee did not claim exemption u/s 10A while filing the return cannot come in the way of holding that assessee is entitled to benefit of section 10A since it was alternatively argued both before the AO and the appellate authority that if the income is treated as trading receipt, exemption u/s 10A may be granted."*

*5.2 In this context it is also worthwhile to consider the order of the Hon'ble ITAT Nagpur bench in ITA No. 176/Nag/2009 dt. 13-08-2009 in the case of Infospectrum Pvt. Ltd. The issue was decided on similar fact whether appellant was entitled to deduction u/s 10A or S 10 B was eligible. There has been a bonafide error on the part of the assessee during the course of assessment proceedings. However it is evident that all the requisite conditions for availing deduction u/s 10A have been fulfilled. In fact it is necessary to note that the appellant's u/s 10B has been allowed in the earlier years from A.Y. 2007-08 to A.Y. 2008-09. In the decision of the ITAT, Hyderabad in the case of M/s Visu International Ltd. Vs. DCIT in ITA No. 696/Hyd/2011 for A.Y. 2006-07 the Hon'ble Tribunal has endorsed the view that once the company has been allowed deduction u/s 10B in previous assessment years, the same cannot be subsequently denied on the presumption that the assessee is not a 100% Export Oriented Unit for the reason that necessary ratification and approval is not available with the assessee company. Therefore considering the facts in totality and relying on the decision of the Hon'ble Karnataka High Court reported in 65 DTR 271 (supra) I direct the AO to allow the appellant deduction u/s 10A."*



6. On appraisal of the above said finding, we noticed that the assessee was seeking the claim u/s 10B of the Act in earlier years which was allowed by the revenue. This year the claim was declined on account of non-furnishing the form non 56F. However, the same was furnished later on which was not considered the claim of the assessee was also justifiable in view of the provision u/s 10A of the Act because the Unit of the assessee is a Export Oriented Unit

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(E.O.U) under the Software Technology Park of India, scheme which false within the rule of Government of India. The case of the assessee is not liable to be declined on account of taken ground if, otherwise the case of the assessee false within the purview of Section 10A or 10B of the Act. While passing the order the CIT(A) has relied upon the decision of the Hon'ble Karnataka High Court in the case of **CIT Vs. Infosys Technologies Ltd. reported in 65 DTR 271** and the decision of the Hon'ble ITAT Nagpur Bench in the ITA. No. 176/Nag/2009 dated 13.08.2009. The CIT(A) has also relied upon the decision of the Hon'ble ITAT in the case of **M/s. Visu International Ltd. Vs. DCIT in ITA. No. 696/Hyd/2011** in which the Hon'ble ITAT was of the view that the case of the assessee was not liable to be declined if, the claim of the assessee had been allowed in earlier years. Taking into account , all the facts and circumstances, we are of the view that the CIT(A) has decided the matter of controversy judiciously and correctly which is not liable to be interfere with at this appellate state. Accordingly, this issue is decided in favour of the assessee against the revenue.



C.O. NO.02/Nag/2013:-

7. The facts of the case are quite similar to the facts of the case as mentioned in ITA. No. 385/Nag/2012 therefore, there is no need to repeat the same.

8. The assessee has raised the following cross-objection:-

1. *On the facts and in the circumstances of the case the Ld. CIT(A), was lawfully justified in granting relief u/s 10A in view of the fact that the respondent was ready with the compliance of the provisions of section 10A(5) during the assessment proceedings vide letter dated 12.12.2011 reproduced by respondent before the Ld. AO appellant as mentioned on page 1 para 2 of his assessment order, wherein an alternative plea was taken by the respondent but sufficient opportunity was not given to him. The amount of claimed allowed by Ld. CIT(A) being Rs.50,74,130/-*
- 2.(a) *That on the facts and in the circumstances of the case in law alternative claims can be raised, if they are lawful and are based by on procedural issue and not substantive issue.*
- (b) *That on the facts and in the circumstances of the case the Ld. AO was erred in law to quote the decision of the Honourable Apex Court in case of Goetze (india) Ltd Vs. CIT reported in 2006 284 ITR 323 (SC) without carefully going through the concluding sentence of the judgment which in fact is in favour of the respondent as the judgment has got restricted application for the assessing officer and said judgment does not transgress the powers of this honourable Tribunal.*
- (c) *That in view of the decision of the Hon'ble Apex Court in case of Jute Corporation of India Vs. CIT reported in 187 ITR 688, the assessee can raise fresh issue before the AAC, which the respondent did.*
3. *On the facts and in the circumstances of the case the Ld. CIT(A) was fully justified in law to allow the deduction u/s 10A to the respondent when the main conditions laid down in the said section are fully satisfied and CIT(A) has powers to appreciate facts which go to prove that the substantial mandatory compliance was made by the respondent."*



**ISSUE NO.1 to 2:-**

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9. Under these issues the assessee took the cross-objection with regard to the lawful finding of the CIT(A) in connection with allowance of exemption u/s 10A of the Act. Since the matter of controversy has already been decided in favour of the assessee therefore, the cross-objection is hereby ordered to be allowed in terms of the decision while deciding issue no. 3 in ITA. NO 385/M/2012. Accordingly, the cross-objection is hereby allowed.



**ITA NO.24/Nag/2015& C.O. 13/Nag/2015:-**

10. The facts of the present case are quite similar to the facts as mentioned in ITA. No. 385/Nag/2012. However, the figure is different. The matter of controversy is also the same as raised in ITA. NO. 385/Nag/2012. Since the matter of controversy has already been decided in favour of the assessee therefore, the present appeal is also hereby ordered to be dismissed in terms of the decision while deciding issue no. 3 in ITA. NO 385/M/2012. Accordingly, the cross-objection is hereby allowed.

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11. In the result, appeals of the revenue are hereby dismissed and cross-objection of the assessee is hereby ordered to be allowed.

Order pronounced in the open court on 15.09.2017

Sd/-

(P.K. BANSAL)

VICE PRESIDENT

NAGPUR; दिनांक Dated : 15.09.2017

*v.p. singh*

Sd/-

(AMARJIT SINGH)

JUDICIAL MEMBER



आदेशकी प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

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, DR, ITAT, Nagpur
6. गार्डफाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रतिलिपि // True Copy //

उप/सहायक पंजीकार सहायक/Asst. Registrar)  
Assistant Registrar  
आयकर अपीलीय अधिकरण, नागपुर  
Income Tax Appellate Tribunal  
नागपुर न्यायपीठ / Nagpur Bench