

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

ITA No.45/PUN/2018

निर्धारण वर्ष / Assessment Year : 2011-12

M/s. Polybond India Pvt. Ltd. GAIA Apex, S.No.33/1/1/2, Plot D, First Floor, Viman Nagar Road, Pune – 411014 PAN : AABCP1261E	Vs.	Jt.CIT, Range 4, Pune
Appellant		Respondent

Assessee by Shri Kishor Phadke
Revenue by Shri Suhas Dabade

Date of hearing 12-05-2022
Date of pronouncement 13-05-2022

आदेश / ORDER

PER R.S. SYAL, VP :

This appeal by the assessee is directed against the order passed by the CIT(A), Pune-3 on 10-11-2017 in relation to the assessment year 2011-12

2. The first issue is against the inclusion of DEPB entitlement of Rs.48,28,152 in 'total turnover' in the computation of deduction u/s 10B of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').
3. Briefly stated, the facts of the case are that the assessee claimed deduction u/s 10B of the Act. Insofar as the issue under

consideration is concerned, the Assessing Officer (AO) observed that in the computation of deduction u/s 10B of the Act, the export incentive in the shape of DEPB entitlement amounting to Rs.48,28,452 was though correctly excluded by the assessee from the export turnover, but was not included in the total turnover as well. He, therefore, included the DEPB entitlement in the 'total turnover'. The Id. CIT(A) affirmed the decision of the AO.

4. Having heard the rival submissions and perused the relevant material on record, it is seen that the assessee claimed deduction u/s 10B of the Act. In the computation of deduction, the assessee *inter alia*, excluded DEPB entitlement of Rs.48.28 lakhs from the 'export turnover' which amount was also excluded from the amount of 'total turnover'. The authorities below have opined that though the assessee was correct in excluding DEPB benefit from the 'export turnover' but ought to have retained it in the 'total turnover'. In our considered opinion, this proposition is ill-founded. 'Total turnover' comprises of 'export turnover' and domestic turnover. If a particular constituent of 'export turnover' is not rightly includible in it, that obviously ceases to be a part of export turnover and hence cannot be included in the amount of

`total turnover' because it is the amount of export turnover, which forms a part of total turnover. The Hon'ble Supreme Court in *CIT vs. HCL Technologies (2018) 404 ITR 719 (SC)* has held to this extent in the context of section 10A. We, therefore, overturn the order of the Id. CIT(A) on this score.

5. The only other ground which survives is against confirmation of addition 10% of Director's foreign travelling expenses at Rs.2,39,124. The factual matrix of the issue is that the assessee incurred Rs.23.91 lakh as foreign travel expenses. The AO made the disallowance at 10% on the ground that the relevant details were not submitted, which came to be affirmed in the first appeal.

6. We have heard the rival submissions and perused the relevant material on record. The Id. AR fairly admitted that this issue has been considered by the Tribunal in the immediately next A.Y. 2012-13 in which the disallowance has been restricted to 5% of foreign travel expenses. A copy of such order dated 02.11.2018 in ITA No.2174/PUN/2016 restricting the disallowance at 5% of total foreign travelling expenses has been placed on record. He argued that the view taken by the Tribunal in the assessee's own case for the immediately succeeding year be followed. No serious

objection was taken by the Id. DR. Without going into the evaluation of the issue on legal parameters and accepting the contention of Id. AR, based on the Tribunal order, we sustain the disallowance at 5% as against 10% upheld in the first appeal.

7. The additional ground was not pressed by the Id. AR, which is hereby dismissed.

8. In the result, the appeal is partly allowed.

Order pronounced in the Open Court on 13th May, 2022.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 13th May, 2022
GCVSR

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A), Pune-3
4. The Pr.CIT-2, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "B" / DR 'B', ITAT, Pune
6. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	12-05-2022	Sr.PS
2.	Draft placed before author	12-05-2022	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

*