

**IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI**

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI PAVAN KUMAR GADALE, JM

ITA No. 3815/Mum/2019

(Assessment Year 2013-14)

JT CIT (OSD)
11(2)(2)
421, 4TH Floor,
Aayakar Bhavan,
Churchgate,
Mumbai-400 020

(Appellant)

State Street Syntel Services
Pvt. Ltd.
B-101 to 104, Delphi
Hiranandani Business Park,
Powai, Mumbai-400 076

Vs.

(Respondent)

PAN No. AAICS 0964 Q

Assessee by : None

Revenue by : Shri Jasbir Chouhan, DR

Date of hearing: 11.07.2022

Date of pronouncement : 26.07.2022

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by The Joint Commissioner Of Income Tax (Osd) 11 (2) (2), Mumbai (the learned AO) for the assessment year 2013 - 14 against the order of The Commissioner Of Income Tax (Appeals) - 18, Mumbai dated 18th of March 2019 raising following grounds of appeal:-

1. whether on the facts and in the circumstances of the case, was the Tribunal justified in allowing deduction u/s 10 AA of the income tax

act, 1961 without considering whether the interest income would be held to be derived from the industrial undertaking

2. whether on the facts and in the circumstances of the case, was the tribunal justified in failing to consider that the company itself had shown this interest income as income from other sources where by not making a claim of this interest income as business income
3. whether on the facts and circumstances of the case and in law, the learned CIT (A) was right in holding that bank interest is eligible to be treated as profit of understanding for purposes of Section 10 A and Section 10 AA, when the source of this income is the placement of disposal of funds with a financial institution
4. whether on the facts and in the circumstances of the case and in law, the learned CIT (A) was right in holding that interest income of the respondent company had a direct nexus with the business and development of export of software to be eligible to be includible in the computation of profits for the purpose of deduction u/s 10 A and 10 AA of the act
5. whether on the facts and circumstances of the case and in law, the tribunal was justified in deleting the addition of ₹ 4,390,680/- on

account of late payment of employees contribution to ESIC ignoring the fact that the subsequent decision of the apex court in case of a loam exclusions Ltd (2009) 185 taxman 416 (SC) and the CBDT circular number 22/2015 dated 17/12/2015 had clarified that in case of employers contribution if it is deposited on or before the due date for furnishing the return of income u/s 139 (1) of the act, no disallowance can be made u/s 43B of the act, but at the same time it was further clarified that the circular did not apply to the claim of deduction relating to employees contribution to welfare funds which are governed by Section 36 (1) (va) of the act

6. whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in deleting the addition without appreciating the fact that in the case of ITO versus LKP securities Ltd order dated 17/file/2013 in ITA number 638/M/2012 has made out a clear distinction between the two different provisions i.e. Section 43B in relation to employers contribution and Section 36 (1) (va) in relation to employees contribution after discussing in detail the ratio laid down in cases of CIT versus Alom Extrusion Ltd (2009) 319 ITR 306 (SC)



02. Brief facts of the case shows that assessee is a company engaged in the information technology enabled services as business process outsourcing, it filed its return of income on 28/11/2013 declaring a total income of ₹ 2,525,879,470/- as per the normal computation of income and the book profit was computed at ₹ 3,419,279,337/-.
03. Assessee is eligible for deduction u/s 10 AA of the income tax act, during the course of assessment proceedings assessee stated that it has earned interest income of ₹ 632,849,773/- out of which ₹ 23,29,97,984/- is earned by SEZ unit of the company and therefore assessee is eligible for deduction u/s 10 AA of the act on this sum. Assessee also submitted that identical issue has been decided by the coordinate bench in assessee's own case for assessment year 2008 - 09, 2009 - 10, and 2010 - 11. The learned assessing officer did not accept the contentions of the assessee and denied the deduction u/s 10 AA on interest income. He also treated the interest income of ₹ 632,849,526/- as income from other sources instead of business income.
04. With respect to the employees contribution to employees State insurance scheme, the learned assessing officer found that a sum of ₹ 4,390,680/- has not been deposited within due dates prescribed under the respective employees benefit law and therefore same are disallowable.
05. Accordingly, the total income was computed at ₹ 2,530,270,149/- wherein a sum of ₹ 632,849,526/- being

interest income is considered as income from other sources and disallowance of employee's contribution to the provident fund of ₹ 4,390,680 was made. The assessment order was passed on 23/12/2016 u/s 143 (3) read with Section 92CA (4) of the income tax act 1961.

06. The assessee aggrieved with assessment order preferred an appeal before the learned CIT – A. The learned CIT – A held that the deduction of interest income u/s 10 AA of the income tax is allowable as it has already been decided by the coordinate bench in assessee's own case for assessment year 2008 – 09 to 2012 – 13 and therefore the issue is already covered hence he followed the decision of the coordinate bench. With respect to the disallowance u/s 36 (1) (va) read with Section 2 (24) (tax) of the income tax act he deleted the disallowance holding that since the contribution was deposited before the due date of filing of the return of income following decision of the honourable jurisdictional High Court.
07. Therefore, the learned assessing officer is aggrieved with the order of the learned CIT – A.
08. Despite notice to the assessee, none appeared on behalf of the assessee and therefore the appeal of the learned assessing officer is decided on the merits of the case as per information available on record.
09. The learned departmental representative vehemently supported the order of the learned assessing officer.

010. We have carefully considered the rival contention and perused the orders of the lower authorities. Ground number 1 - 4 is with respect to the allowability of deduction u/s 10 AA of the income tax act on the interest income earned from SEZ Unit. We find that in the present case the assessee is a company, which is eligible for deduction u/s 10 AA of the income tax act. It also received certain interest income on which the deduction was claimed u/s 10 AA of the act. This issue is already decided by the coordinate bench in assessee's own case for earlier years, the learned and CIT - A followed the same and allowed the claim of the assessee. In view of this we do not find any infirmity in the order of the learned CIT - A in holding that assessee is eligible for deduction u/s 10 AA of the income tax act so far as the interest income of ₹ 232,997,984/- is concerned. Accordingly, ground number 1 - 4 of the appeal is dismissed.

011. Ground number 5-6 is with respect to the deletion of the addition of ₹ 4,390,680/- on account of late payment of the employee's contribution to fund. Therefore, the learned assessing officer disallowed the same. The facts clearly show that assessee has paid the contribution for the month of April 2012 of ₹ 1,815,862/- on 25/05/2012, which is required to be deposited as per the respective ESIC law on or before 21/05/2012. Similarly for February 2013, assessee deposited the contribution of ₹ 2,574,818/- on 22/2/2013 which was required to be the deposited on or before 21/2/2013 as per ESIC law. It is undisputed that both the above contribution has been



deposited before the due date of filing of the return of income. The learned CIT - A deleted the disallowance following decision of the honourable jurisdictional High Court in case of CIT versus Ghatge patil transport private limited and CIT versus Hindustan organic chemicals Ltd 366 ITR 1. As the learned CIT - A has deleted the disallowance following the decision of the honourable jurisdictional High Court and no contrary decision is pointed out by the learned departmental representative, we do not find any infirmity in the order of the learned CIT - A in deleting the above disallowance . Accordingly, ground numbers 5 - 6 of the appeal are dismissed.

012. In the result, appeal of the learned assessing officer is dismissed.

Order pronounced in the open court on 26.07.2022.

Sd/-
(PAVAN KUMAR GADALE)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 26.07.2022

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,



True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai