

**THE INCOME TAX APPELLATE TRIBUNAL
DELHIBENCH 'I', NEW DELHI**

Before Dr. B. R. R. Kumar, Accountant Member

Sh. Yogesh Kumar US, Judicial Member

ITA No. 8091/Del/2019 : Asstt. Year : 2011-12

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| Midland Credit Management India Pvt. Ltd., Regus Business Centre, Level 15, Eros Corporate Tower, Nehru Place, New Delhi-110019 | Vs | Addl. CIT, Special Range-6, New Delhi-110002 |
| (APPELLANT) | | (RESPONDENT) |
| PAN No. AAECM3260F | | |

ITA No. 293/Del/2020 : Asstt. Year : 2011-12

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| ACIT, Circle-7(1), New Delhi-110002 | Vs | Midland Credit Management India Pvt. Ltd., Regus Business Centre, Level 15, Eros Corporate Tower, Nehru Place, New Delhi-110019 |
| (APPELLANT) | | (RESPONDENT) |
| PAN No. AAECM3260F | | |

**Assessee by : Sh. Nageswar Rao, Adv. &
Sh. S. Chakarborty, Adv.
Revenue by : Sh. Rajesh Kumar, CIT DR**

Date of Hearing: 16.11.2022

Date of Pronouncement: 17.11.2022

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal by the assessee and the Revenue are directed against the order of Id. CIT(A)-44, New Delhi dated 31.07.2019.

ITA No. 293/Del/2020 (Departmental Appeal)

Allowability of deduction u/s 10A:

2. The assessee was established as a wholly owned subsidiary of Midland India LLC and is engaged in rendering consumer collections related services to Encore Capital Group by calling identified customers thereby acting as a call centre/back office support centre to Encore US. The assessee is set up as a 100% Export Oriented Undertaking (EOU) approved under Software Technology Parks of India (STPI) scheme with effect from August 8, 2005 for development and export/transmission of computer software/IT enabled services.

3. The issue before us pertains to allowability of deduction u/s 10A. The relevant provisions are as under:

4. Section 10A of the Act was inserted to provide for tax holiday to newly established units in Free Trade zones/ Software Technology Parks of India. With a view to provide impetus to the Information Technology (IT) sector, Finance Act, 2000 enlarged the definition of the term 'computer software' to include customized electronic data or such other service as may be notified by the Board.

5. Section 10A of the Act provides deduction in respect of profits derived from export of any of the following to any place outside India:

- (a) any computer programme; or
- (b) any customized electronic data or any product or service as may be notified by the Board.

Explanation 2 to section 10A of the Act defines the term "computer software" as follows

"For the purposes of this section,-

(i) "computer software" means -

(a) any computer programme recorded on any disc, tape, perforated media or other information storage device; or-

(b) any customized electronic data or any product or service of similar nature, as may be notified by the Board.

which is transmitted or exported from India to any place outside India by any means:"

6. Further , Central Board of Direct Taxes (CBDT), pursuant to sub-clause (b), notified, vide notification no. SO 890(E) dated September 26, 2000, the following IT enabled products or services as the case may be, for the purposes of the said clause, namely:

(i) Back-office Operations;

(ii) Call Centres;

(iii) Content Development or Animation;

(iv) Data Processing;

(v) Engineering and Design;

(vi) Geographic information System Services;

(vii) Human Resource Services;

(viii) Insurance Claim Processing;

(ix) Legal Databases;

(x) Medical Transcription;

(xi) Payroll;

(xii) Remote Maintenance;

(xiii) Revenue Accounting;

(xiv) Support Centres; and

(xv) Website Services

7. The Assessee undertakes the provision of calling services. The role of its software and technology is vital to consider. It uses Call Centre technology named 'Noble's outbound predictive Dialer. This is networked software available across the Assessee's computer network. Dialer technology enhances dialing flexibility, improves right party contacts and ensures reaching the right customers at the right time via the right media. This technology includes speech recognition software to allow computers to handle first level of customer support, text mining and natural language processing to allow better customer handling and customer satisfaction, resulting in technology and software driven value and efficiency to the customer in the provision of its services.

8. This issue in the case of the assessee has been examined during the assessment u/s 143(3) for the first time in the A.Y. 2009-10. The assessee has been claiming deduction from the A.Y. 2006-07. The AO disregarded the claim of the assessee only in the A.Y. 2009-10. The matter came before the Id. CIT(A). The Id. CIT(A) held that the main reason for denying the exemption u/s 10A to the assessee is that, the assessee only using telephone services for the defaulters and hardly any software is used. After perusing the claim for the AO and written submission filed and working model, firstly, the revenue from its AE for these services has been categorized as ITES by the Transfer Pricing Officer while passing order U/s 92CA(3), the Id. CIT(A) held that in fact the AO in the same assessment year has accepted the benchmarking of the international transaction as ITES and made addition in accordance with order

u/s 92CA (3). Therefore at one end the services are considered as the ITES while making adjustment in arm's length price of international transaction whereas for allowing exemption u/s 10A treating the same services not as ITES. The notification SO no. 890(E) dated 26/09/2000 where IT enable services include call centers. The assessee is registered with STP which is prerequisite for claiming exemption u/s 10A. It was held that the functionality of this company has been upheld with the function of software company like TCS-e Serve Ltd. Further in preceding A.Y. while passing the scrutiny assessment the claim of exemption was allowed. Considering entire facts and arguments, the Id. CIT(A) held that the assessee is eligible for exemption U/s 10A for the A.Y. 2009-10.

9. The Id. CIT(A) in AY 2010-11, on the same material facts of the case, had held that the assessee was eligible for exemption under section 10A of the Act as the material facts are same in the instant year also. In accordance with the principle of consistency, the doctrine of judicial discipline and following the order of the CIT(A)-44, New Delhi in his order for AY 2010-11 in Appeal No. 177/2015-14 dated 28.12.2016, it was held that the assessee is eligible for exemption under section 10A of the act.

10. The matter has been a subject matter of the appeal before the Tribunal by the Revenue. The Tribunal vide order dated 14.09.2020 in ITA No. 3765/Del/2017, for the sake of ready reference, the relevant portion of the order is as under:

"37. Next grievance of the revenue relates to allowing the claim of deduction under section 10A of the Act.

38. Claim was denied by the Assessing Officer on the ground that the assessee is running call centre for parent company and there is no export of computer software or ITES. We are of the considered view that the Assessing Officer has blown hot and cold in the same breath. The TPO completed the TP proceedings treating the assessee under the ITES segment. The Assessing Officer himself has assessed the assessee under the ITES segment and when it came to the claim of deduction under section 10A of the Act the Assessing Officer says that the assessee is merely running a call centre.

39. In Notification No. SO 890E dated 26.09.2000, it has been mentioned that ITES include call centres and, therefore, we do not find any reason why the assessee was denied deduction under section 10A of the Act by the Assessing Officer. However the Id CIT(A) has rightly considered the facts of the case in true perspective and allowed the claim and, therefore, we do not any reason to interfere with the findings of the Id. CIT(A). This ground is accordingly dismissed.

40. In the result the appeal of the revenue is dismissed.”

12. In the absence of any material change in the facts and legal proposition, we hereby hold that the appeal of the Revenue for the A.Y. 2011-12 is liable to be dismissed. The order of the Id. CIT(A) is upheld.

ITA No. 8091/Del/2019 (Assessee Appeal)

Allowability of additional deduction u/s 10A:

13. The issue of additional deduction pertaining to the invoices raised in the subsequent year but pertaining to the current Assessment Year. Since the allowability of deduction u/s 10A *per se* is no more in dispute, the additional income offered by the assessee by the way of revised return of income pursuant to additional invoices for the services rendered during the year are also eligible for deduction. The appeal of the assessee on this ground is allowed.

Allowability of deduction u/s 10A on interest & miscellaneous income:

14. With regard to interest income on fixed deposit and miscellaneous income, we find that the matter has been referred to the file of the Assessing Officer in assessee's own case in ITA No. 3892/Del/2017 vide order dated 14.09.2020 has decided the issue and remanded matter to the file of the AO. Hence, we remand the matter back to the file AO for verification and to grant the deduction.

15. In the result, the appeal of the Revenue is dismissed and the appeal of the assessee is allowed for statistical purpose.
Order Pronounced in the Open Court on 17/11/2022.

Sd/-

**(Yogesh Kumar US)
Judicial Member**

Sd/-

**(Dr. B. R. R. Kumar)
Accountant Member**

Dated: 17/11/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR