

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "G", MUMBAI  
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER  
**ITA No. 440/Mum/2023 (A.Y.2018-19)**

**Genesys International Corporation Ltd,**

73A, SDF III, 2<sup>nd</sup> Floor,  
Seepz, Mumbai-400 096

**PAN: AAACA4528L**

..... Appellant

Vs.

**DCIT-CPC**

Bangalore,  
Karnataka-560500

..... Respondent

Appellant by : Shri Nishit Gandhi & Ms. Madhuri Tambe  
Respondent by : Shri Nihal Ranjan Samal, Sr. DR

Date of hearing : 16/05/2023

Date of pronouncement : 10/07/2023

**ORDER**

**PER GAGAN GOYAL, A.M:**

This appeal by assessee is directed against the order of National Faceless Appeal Centre (for short "NFAC") dated 24.12.2022 u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2018-19. The assessee has raised the following grounds (revised) of appeal:-

*1.0. On the facts and circumstances of the case and in law, the Honourable Commissioner of income tax National Faceless Appeal ('the CIT(A)') erred in denying*

*claim of Rs.7,95,83,610 of deduction u/s. 10AA of the Income tax Act, 1961 ('the Act') the Act which was not a Ground of Appeal and was in fact allowed in the intimation order passed u/s. 143(1) of the Act dated 17 11 2019 and ne disallowance of the same was also made in subsequent Assessment order passed u/s. 143(3) read with sections 143(3A) & 143(3B) of the Act dated 22.03.2021.*

*1.1. Without prejudice to the above, on the facts and circumstances of the case and in law, the Honourable Ld. CIT (A) erred in denying claim of deduction u/s. 10AA of the Act, without considering the facts the said claim was allowed in all the earlier years.*

*1.2. Without prejudice to the above, on the facts and circumstances of the case and in law, the Honourable Ld. CIT(A) erred in denying claim of deduction u/s. 10AA of Act, stating that the Form- 56F had no name and signature, without considering the facts the copy of Form 56F was filed before Ld. CIT(A) was downloaded copy from the income tax portal itself which does not show the said name and membership number of the Chartered Accountant signing the Form-56F, rather it reflects the logo of income tax which show the authenticity and genuineness of Form 56F, which Ld. CIT(A) should have verified from the Portal, as all submission of the Forms and Returns are to be filed online.*

*2.0. On the facts and circumstance of the case and in law, the Honourable Ld. CIT(A) erred in not adjudicating the Ground of Appeal for wrongly calculating tax at 30% without considering the fact that the Turnover of the company during the A.Y. 2016-17 (FY 2015-16) was below Rs.50 Crores for calculating the tax rates @25% in A.Y. 2018-19, the same was also not considered @25% in the tax calculation attached to the Assessment order passed u/s. 143(3) of the Act dated 22.03.2021 and First Appeal is filed against the said order u/s. 143(3) of the Act, which is pending before Ld. CIT(A).*

*3.0 The Appellant prays that it may be allowed to add, alter or amend the above grounds of appeals.*

2. The brief facts of the case are that the assessee company filed its return of income on 30-11-2018 declaring an income of Rs 24,33,85,700/- under the normal provisions of the act and an income of Rs 38,42,27,882/- u/s. 115JB of the act. Thereafter assessee filed a revised return on 04-02-2019 at the same income. The return of the assessee was processed u/s. 143(1) vide order dated 17-11-2019. Vide this intimation CPC Bangalore disallowed the amount of employees' contribution made to the PF and other funds. In addition to this CPC Bangalore failed to apply the correct rate of tax i.e. at the rate 25% as the turnover of the company during the A.Y. 2016-17 was below Rs 50 Crores. Moreover, the benefit/ credit of minimum alternate tax of Rs 67, 59,595/- of earlier years were also not granted. Against this intimation assessee preferred an appeal before the Ld.CIT (A) vides dated 24-12-2019.

3. In the meantime, before passing the order u/s. 250 by the Ld.CIT (A) case of the assessee was selected for complete scrutiny and a notice u/s. 143(2) dated 23-09-2019 was issued. Vide this assessment order AO made certain additions but the claim of the MAT credit was duly allowed to the assessee. We have gone through the intimation issued by CPC Bangalore u/s. 143(1) vide dated 17-11-2019 order of the AO u/s. 143(3) r.w.s. 143(3A) and 143(3B) of the Act vide dated 22-03-2021 and at last the order passed by the Ld.CIT(A) u/s. 250 vide dated 24-12-2022. It is pertinent to reproduce the grounds of appeals taken by the assessee before the Ld.CIT (A) as under:

1. *On the facts and circumstances of the case and in law the Deputy Commissioner of Income Tax, CPC, Bengaluru (Ld AO) erred in making disallowance under section 36(1) (va) of the Income tax Act, 1961 (the Act) in respect of employees contribution made to the PF and other Funds which were paid after the due date prescribed under the respective law and were paid before the due date of filling return of income.*
  2. *On the facts and circumstances of the case and in law the Ld AO erred in making disallowance under section 36(1) (va) without considering the various jurisprudence wherein it was held that payment made for the employees PF contribution before due of the filling of return of income should be allowed as deduction including the decision in of Bombay High Court in case of CIT vs. Ghatge Patil Transports Ltd [2014] 368 ITR 749 (Bom).*
  3. *Without prejudice to the above, on the facts and circumstance of the case and in law the Ld AO erred in calculating tax at 30% without considering the fact that the Turnover of the company during the A.Y. 2016-17 (FY 2015-16) was below Rs.50 Crores for calculating the tax rates @25% in A.Y. 2018-19.*
  4. *Without prejudice to the above, on the facts and circumstance of the case and in law the Ld AO erred in not giving credit of Minimum Alternate Tax of Rs. 67,59,595/- of earlier years.*
  5. *The Appellant prays that it may be allowed to add, alter or amend the above grounds of appeal and to make detailed submissions at the time of appeal.*
4. It is observed that during the relevant A.Y., assessee claimed a deduction u/s. 10AA amounting to Rs 7, 95, 83,610 in its return and the same has been duly accepted by the CPC Bangalore while processing the return u/s. 143(1) and by the AO also in complete scrutiny u/s. 143(3) r.w.s 143(3A) and 143(3B) of the Act. As discussed, (supra) the issue of claiming exemption u/s. 10AA was never in dispute neither in this year nor in the previous years. Above this, this issue was not a

subject matter of the grounds of appeal taken by the assessee still the Ld. CIT(A) out of his own whims and fancies disallowed the amount of exemption claimed u/s. 10AA. It's a gross violation of the principle of natural justice and the procedure defined to decide the appeal u/s 246(A) (1). While doing so Ld. CIT (A) ignored his jurisdiction to do so and moreover on merits also this action of Ld.CIT (A) is vitiated by law.

5. This action of Ld. CIT (A) will fall in the category of enhancement of income without assuming jurisdiction hence, void ab initio. In addition to this we rely on the judicial pronouncement of Hon'ble Jurisdictional High Court in the case of **[1995] 79 Taxman 378 (Bom.) CIT v. Paul Brothers**

*"Either in section 80HH or in section 80J there was no provision for withdrawal of deduction for subsequent years for breach of certain conditions. Hence, unless the relief granted for the assessment year 1980-81 was withdrawn, the ITO could not have withheld the relief for the subsequent years."*

**[1979] 2 Taxman 22 (Guj.) Saurashtra Cement & Chemical Industries Ltd. v.CIT**

*"We do not find any justifying reasons to interfere with the order of the Tribunal so far as both these questions are concerned. The Tribunal was perfectly justified in taking the view that if the relief of tax holiday was granted to the assessee-company for the assessment year 1968-69, the assessee was, therefore, entitled to continuance of that relief for the subsequent four years and the ITO would not be justified in refusing to continue the allowance for the assessment year under reference, i.e., 1969-70 without disturbing the relief for the initial year. At this stage, it should be noted that for purposes of entitlement to the relief under section 80J which is corresponding to section 15(c) of the 1922 Act, an industrial unit claiming such relief must be new, in the sense, that new plants and machineries are erected for producing either the same commodities or some*

*distinct commodities— Textile Machinery Corporation Ltd. v. CIT [1977] [107 ITR 195](#) and CIT v. Indian Aluminium Co. Ltd [1977] [108 ITR 367](#). It should be emphasised that it was common ground between the parties that the assessee-company has increased the capacity of its cement manufacturing plant from 600 tonnes per day to 1,600 tonnes per day by setting up new machinery and plant necessary for that purpose. In our opinion, the Tribunal was right when it expressed its view that the question involved was not a question whether there would be no bar to the view which the ITO has taken on principle of res judicata. The neat question to which the Tribunal addressed itself, and in our opinion rightly, was whether the ITO was justified in refusing to continue the relief of tax holiday granted to the assessee-company for the assessment year 1968-69 in the assessment year under reference, i.e., 1969-70 without disturbing the relief granted for the initial year. It should be stated that there is no provision in the scheme of section 80J similar to one which we find in case of development rebate which could be withdrawn in subsequent years for breach of certain conditions. No doubt, the relief of tax holiday under section 80J can be withheld or discontinued provided the relief granted in the initial year of the assessment is disturbed or changed on valid grounds. But without disturbing the relief granted in the initial year, the ITO cannot examine the question again and decide to withhold or withdraw the relief which has been already once granted. The learned Advocate for the Revenue invited our attention to certain observations made by the Gujarat High Court in CIT v. Satellite Engineering Ltd. [1978] [113 ITR 208](#), where the Court was concerned with the question, whether an industrial undertaking which did not satisfy the prescribed conditions so as to entitle itself to the relief under section 80J in the initial year can successfully claim the relief if the prescribed conditions are satisfied in the subsequent years. We do not think that this decision of this Court in Satellite Engineering Ltd's case (supra) can be of any assistance to the cause of the Revenue, because the question with which this Court was concerned in that case was altogether a different one in the context of which the Division Bench was speaking. It should be understood that this is subject to the right of the ITO to adjust the relief by fixing the quantum having regard to the respective capital employed in the*

*new undertaking in the year with which he is concerned. In that view of the matter, therefore, the Tribunal was perfectly justified in taking the view as it did and we answer Question No. 1 in the affirmative, that is against the Revenue and in favour of the assessee.”*

**[2012] 25 taxmann.com 340 (Bom.) CIT-2 v. Western Outdoor Interactive (P.) Ltd.**

*“Where a benefit of deduction is available for a particular number of years on satisfaction of certain conditions under the provisions of the Act, then without withdrawing as setting aside the relief granted for the first assessment year in which the claim was made and accepted, the Income-tax Officer cannot withdraw the relief for subsequent years. It is particularly so, when the department has not even suggested that there was any change in the facts necessitating a different view for subsequent years. In this case for the assessment years 2000-01 and 2001-02 the relief granted under section 10A to SEEPZ unit has not been withdrawn.*

*There is no change in the facts which were in existence during the assessment year 2000-01 vis-à-vis the claim to exemption under section 10A. Therefore, the department cannot deny the benefit of section 10A for subsequent assessment years i.e., assessment years 2002-03 to 2004-05.*

*Besides that, neither the Commissioner (Appeals) nor the Tribunal have recorded a finding of fact that the SEEPZ unit is not formed by splitting up of the first unit. [Para 6]*

*In view of the above, the question as formulated in the present facts, does not give rise to any substantial question of law. Therefore, the appeal is dismissed. [Para 7]”*

6. It's a settled position of law as discussed (supra) that reversal of exemption claimed u/s. 10A/10AA can only be done from the very first year itself once the claim of the assessee is allowed in the previous years, no rejection of the claim can be done in the balance succeeding years. In view of this we found the order of

Ld. CIT (A) on this issue highly arbitrary, against law and bad on count of merits also. In the result ground no.1 along with its sub grounds is allowed.

7. Ground no. 2 pertains to wrong application of tax rate. In the relevant A.Y. assessee company was entitled to pay tax @ 25% instead of 30% as provided in the Act, if the turnover of the company in A.Y. 2016-17 is less than 50 cr. There is no new claim for contention raised by assessee rather assessee claim the same in its return of income and both CPC Bangalore and AO ignored this claim of CPC Bangalore. Assessee in turn claims the same before the Ld.CIT (A) also but in vein. Now this issue is before us for adjudication. We found the claim of the assessee to be correct. In its submission, assessee categorically mentioned the figure of turnover in the relevant AY i.e. 46.95 crores which makes assessee eligible for lower rate of tax. As w.e.f. A.Y. 2018-19 as a measure to boost the industry the Hon'ble Finance Minister reduce the tax rate for the companies having turnover less than 50 crore in A.Y. 2016-17. We found the contentions raised by the assessee as correct as there is no challenge to this figure at any stage by the department as the matter of the assessee already 3 barriers i.e. CPC Bangalore u/s 143(1), assessment order u/s. 143(3) and order passed by Ld. CIT (A) u/s 250. No adjudication on this issue has been done by the Ld. CIT (A) despite the fact that assessee has taken this ground before him also. Based on above discussion and non adjudication of the same by the Ld. CIT (A), we allow the claim of the assessee for statistical purposes by restoring the matter back to the file of Jurisdictional AO for verification of the claim of the assessee considering the figure of turnover at Rs. 46.95 crore for this purpose, which is not under challenge by the department including hearing before us. AO is directed to give assessee a

reasonable opportunity of being heard. Resultantly ground no. 2 raised by the assessee is allowed for statistical purpose.

**8. In the result appeal of the assessee is allowed for statistical purposes.**

Order pronounced in the open court on 10<sup>th</sup> day of July, 2023.

Sd/-

(KULDIP SINGH)  
JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 10/07/2023

*Sr. PS (Dhananjay)*

Sd/-

(GAGAN GOYAL)  
ACCOUNTANT MEMBER

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

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BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai