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

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI PAVAN KUMAR GADALE (JUDICIAL MEMBER)

ITA No. 1972/MUM/2023
Assessment Year: 2016-17

DCIT-3(2)(1), Room No. 608, 6th floor, Aayakar Bhavan, M.K. Road, Mumbai-400020.	***Vs.***	Syntel Private Limited, Unit No. 112 SDF IV, Seepz Andheri East Mumbai-400096. **PAN No. AAACS 8305 D**
Appellant		**Respondent**

Assessee by	**:**	Mr. Harsh M. Kapadia
Revenue by	**:**	Mr. Dr. Kishor Dhule, CIT-DR
Date of Hearing	**:**	06/09/2023
Date of pronouncement	**:**	08/09/2023

ORDER

PER OM PRAKASH KANT, AM

This appeal by the Revenue is directed against order dated 27.03.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short 'the Ld. CIT(A)'] for assessment year 2016-17, raising following grounds:

> *1. On the facts and in the circumstances of the case, the CIT(A) erred in holding that interest income of Rs. 53,64,74,317 / - shown by assessee as 'Other income in its P&L account as business income without appreciating that the assessee on its own had not considered this as the part of business income and had not claimed deduction us 10AA on this income.*

2. On the facts and circumstances of the case, the CIT(A) erred in his decision to delete the addition by not appreciating that the AO did not disallow deduction u/s 10AA in respect of above interest income but had only declined to accept assessee's request to treat it as business income and grant deduction u/s 10AA.

3. On the facts and circumstances of the case, the CIT(A) erred in placing reliance on earlier order of the ITAT/CIT(A) to hold interest income as business income without appreciating that assessee on its own did not treat interest income as business income as it was interest earned on surplus funds and interest did not have direct nexus with export business of the assessee.

4. On the facts and circumstances of the case, the CIT(A) erred in granting deduction u/s 10AA without appreciating that such deduction is not allowable unless claimed in the return of income as per provision of section 80A(5) and this deduction is allowable subject to satisfaction of conditions mentioned in provisions of section 10AA.

2. Briefly stated, facts of the case are that the assessee is a wholly owned subsidiary of US Company namely 'Syntel Corporation',USA. The assessee company was engaged in the business of development and export of computer software services from its various units located in Mumbai, Chennai and Pune, which were eligible for deduction u/s 10AA of the Income-tax Act, 1961 (in short 'the Act'). For the year under consideration, the assessee filed return of income on 29.11.2016 declaring total income of Rs.635,97,49,430/- under the normal provisions of the Act and book profit of Rs.1394,14,47,242/- u/s 115JB of the Act. The return of income filed by the assessee was selected for scrutiny. During the course of the scrutiny proceedings, the Assessing Officer observed that assessee claimed deduction u/s 10AA of the Act on the interest income of Rs.53,64,74,317/- including the interest income of Rs.40,68,16,833/- earned by the SEZ units of the assessee company. It was contended by the assessee that said

interest income was earned from temporary parking of the funds with bank as short term fixed deposits. According to the Assessing Officer said interest income was not derived from the business of software development of the assessee and therefore, same was not eligible for deduction u/s 10AA of the Act. The Ld. Assessing Officer relied on the decision of the Hon'ble Supreme Court in the case of **Pandian Chemicals Ltd. v. CIT 262 ITR 278** and **CIT v. Sterling Foods 237 ITR 579.** The Assessing Officer also relied on the decision of the Hon'ble Supreme Court in the case of **Cambay Electrical Supply Industrial Company Ltd. v. CIT Gujarat-II (133 ITR 84)** to support that the term profit 'derived from' used in section 10AA is having restricted meaning as compared to the term profit 'attributable' used in other sections like 80J etc. The Assessing Officer also relied on the decision of the Hon'ble Madras High Court **India Comnet International v. ITO (2009) 185 Taxman 51 (Mad)** wherein it is held that interest income earned by the assessee being a 100% EOU, on amount of export proceeds kept in foreign currency deposit amount as permitted by FERA under Banking Regulations would not qualify for exemption u/s 10A of the Act. Further, the Assessing Officer relied on the decision of the Co-ordinate Bench of the Tribunal in the case of Tricom India Ltd. v. ACIT wherein it is held interest income generated from FDR and surplus funds cannot be derived from exports and therefore, not eligible for deduction u/s 10B of the Act.

3. On further appeal, the Ld. CIT(A) deleted the disallowance of deduction following the finding of the Tribunal and Hon'ble High Court in the case of the assessee for earlier years. The relevant finding of the Ld. CIT(A) is reproduced as under:

> *"Ground No. 1 relates to the allowability of the interest income of Rs.53,64,74,317/- u/s 10AA of the I.T. Act, 1961. The A.O. has disallowed the interest income of Rs.53,64,74,317/- as business income and added the interest income under the head "income from other sources". It is noticed that this issue has been decide by the Hon'ble Tribunal in favour of the appellant for A.Y 1997-98 to 2010-11 and the CIT(A) held in favour of the appellant for A.Y.s 2004-05 to 2011-12.*
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> *Since the issue has already been decided by the Ld. CIT(A) and the Hon'ble Tribunal in favour of the appellant for earlier A.Y. and as there is no change in facts and law, therefore, respectfully following the same, the ground of appeal.is allowed.*
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> *In view of the Above, tridigfound or appeal is, accordingly, alloved and the addition made by the Ld. A0 on this account is, hereby, deleted."*

4. Before us, the Ld. Departmental Representative (DR) relied on the order of the Assessing Officer and submitted that the interest income being earned from temporary parking of funds in the form of bank deposit is not derived from the business activity of the development and maintenance of the software and therefore, same is not eligible for deduction u/s 10AA of the Act. The Ld. DR filed a copy of the decisions which have been relied upon by the Assessing Officer in the impugned assessment order.

5. On the other hand, the Ld. Counsel of the assessee filed a Paper Book containing orders of the ITAT and order of the Hon'ble High Court in the case of the assessee for earlier years. The Ld. Counsel also relied on the decision of the full Bench of the Hon'ble

High Court of Karnataka in the case of **CIT v. Hewlett Packard Global Soft Ltd. [2017] 87 taxmann.com 182 (Karnataka) (FB).**

6. We have heard rival submission of the parties in the issue in dispute and perused the relevant material on record. We find that in the case of the assessee the Ld. CIT(A) has relied upon the orders of the Tribunal and Hon'ble High Court in earlier years.The Ld. Counsel referred to order of the Tribunal in **ITA No. 2114/Mum/2017 for assessment year 2011-12** available on Paper Book Page 115 to 121. On perusal of the said order, we find that the Tribunal has further relied on the finding of the Co-ordinate Bench for assessment year 1997-98 to 2009-10. The Ld. Counsel further referred to the decision of the Co-ordinate Bench in **ITA No. 3720/Mum/2004 for assessment year 2000-01**. The relevant finding of the Tribunal is reproduced as under:

> *"4. On due consideration of the facts and circumstances we are of the view that interest income in EEFC A/c. as well as interest income on bank deposit has a direct nexus with the business of development and export of software. The assessee has been receiving and making payments in EFC A/c. from the export of the software and in relation to the export. This account has a direct nexus with the business of the assessee. Therefore, in A.Y 1999-2000 the Tribunal after considering the decision of Hon'ble Bombay High Court in the case of Puneet Commercial, 245 IT 550 and Nagpur Engineering, 245 ITR 806 has allowed the claim of the assessee. Similarly in respect of exchange gain the Tribunal has allowed the exemption after following the orders of ITAT in the case of Priyanka Gem, 94 TTJ 557 and Sujata Grover, 74 TTJ 347. The exchange gain has also a direct nexus with the sale proceeds in respect of export of software, hence, such gain would have a character of sales. As far as profit on sale of import licence is concerned the Id. counsel for the assessee was unable of LAid point out as to how a direct nexus is available. At the time of hearing he did ance any arguments on this issue. Taking into consideration all these circumstances we allow this ground of appeal partly in favour of the see. The assessee will be entitled to exemption under section 10A & 10B of the Act Act on interest from bank deposit, interest on balance in*

EEFC A/c. and on the foreign exchange gain. It will not be entitled for exemption on profit on sale of import licence."

6.1 On perusal of the above, we find that here the interest income has been earned in the EEFC account and the Tribunal has held that interest income in said account was having direct nexus with the business of the development and export of the assessee. Whereas, in the instant case before us, the interest income has been claimed from parking of funds temporarily in the bank deposits. Thus, the issue in dispute is whether the interest income earned from parking of the funds with banks for improving its certain business obligation will fall under the conditions of section 10AA of the Act which prescribed for deduction, in respect of profits and gains derived by the 100% export impugned undertaking from the export of article and things computer software. According to the Assessing Officer, the said interest income is not derived from the activity of development of the computer software. The Ld. DR has referred to the decision of the Hon'ble Madras High Court in the case of India Comnet International (supra). The relevant finding of the Hon'ble Madras High Court is reproduced as under:

"5. Heard counsel. In this case, the interest income was earned out of the export realisation and kept in the foreign currency deposit account, as permitted by the FERA under the banking regulations. Hence, it is clear that there is no direct nexus between the interest earned and the industrial undertaking. The interest received by the assessee is on deposit made by it in the banks. It is that deposit which is the source of income. Therefore, the assessee is not entitled to relief under section 10A of the Act. In the case of Menon Impex (P.) Lid. (supra), this Court considered the scope of section 10A of the Act and held as follows :

"In this case the interest received by the assessee was on deposits made by it in the banks. It is that deposit which is the

source of income. The mere fact that the deposit made was for the purpose of obtaining letters of credit which letters of credit were in turn used for the purpose of the business of the industrial undertaking does not establish a direct nexus between the interest and the industrial undertaking." (p. 404)

6. The Tribunal followed the principles enunciated by this Court's judgment cited supra and came to the correct conclusion that the interest income of Rs. 92,06,602 does not qualify for exemption under section 10A of the Act. Also it is seen from the records that the said amount was assessed under the head "Income from other sources". The reasons given by the Tribunal are based on valid materials and evidence and there is a concurrent finding that it is not the export income and that the said interest was rightly assessed under the head "Income from other sources". The assessee also had not brought to our notice any contra judgment or any other valid materials or evidence, to take a different view, except relying on the Supreme Court judgment in the case of Baby Marine Exports (supra), wherein it was held that exemption and beneficial provisions should be construed liberally. There is no quarrel regarding the proposition and the earlier judgment of this Court cited supra, had interpreted section 101 of the Act after hearing the arguments and held that there is no direct nexus between the interest and the industrial undertaking and hence the assessee is not entitled to relief under section 10A of the Act. In the present case, the assessee received the export proceeds and the same was deposited in the bank and the income was derived from the said deposit and hence here also there is no direct nexus between the interest and the industrial undertaking. Hence, this Court judgment in the case of Menon Impex (P.) Lid. (supra) is squarely applicable to the facts of the present case.

7. Under these circumstances, we find no error or legal infirmity in the order of the Tribunal so as to warrant interference. Hence, no substantial question of law arises for consideration of this Court and accordingly, the tax case is dismissed. No costs."

6.2 However, we find that the Hon'ble Karnataka High Court Full Bench decision in the case of **CIT v. Hewlett Packard Global Soft Ltd. (supra)** has held that even the interest income from temporary parking of funds as bank deposits is also derived from the business of the undertaking. The relevant finding of the Hon'ble High Court is reproduced as under:

"34. We are of the considered opinion that the above referred decisions relied upon by the learned counsel for the Revenue, Mr. Aravind do not

cover the cases under Sections 10-A and 10-B of the Act which are special provisions and complete code in themselves and deal with profits and gains derived by the assessee of a special nature and character like 100% Export Oriented Units (EOUs.) situated in Special Economic Zones (SEZs), STPI, etc., where the entire profits and gains of the entire Undertaking making 100% exports of articles including software as is the fact in the present case, the assessee is given 100% deduction of profit and gains of such export business and therefore incidental income of such undertaking by way of interest on the temporarily parked funds in Banks or even interest on staff loans would constitute part of profits and gains of such special Undertakings and these cases cannot be compared with deductions under Sections 80-HH or 80-IB in Chapter VI-A of the Act where an assessee dealing with several activities or commodities may inter alia earn profits and gains from the specified activity and therefore in those cases, the Hon'ble Supreme Court has held that the interest income would not be the income "derived from" such Undertakings doing such special business activity.

35. The Scheme of Deductions under Chapter VI-A in Sections 80-HH, 80-HHC, 80-IB, etc from the 'Gross Total Income of the Undertaking', which may arise from different specified activities in these provisions and other incomes may exclude interest income from the ambit of Deductions under these provisions, but exemption under Section 10-A and 10-B of the Act encompasses the entire income derived from the business of export of such eligible Undertakings including interest income derived from the temporary parking of funds by such Undertakings in Banks or even Staff loans. The dedicated nature of business or their special geographical locations in STPI or SEZs. etc. makes them a special category of assessees entitled to the incentive in the form of 100% Deduction under Section 10-A or 10-B of the Act, rather than it being a special character of income entitled to Deduction from Gross Total Income under Chapter VI-A under Section 80-HH, etc. The computation of income entitled to exemption under Section 10-A or 10-B of the Act is done at the prior stage of computation of Income from Profits and Gains of Business as per Sections 28 to 44 under Part-D of Chapter IV before 'Gross Total Income' as defined under Section 80-B(5) is computed and after which the consideration of various Deductions under Chapter VI-A in Section 80HH etc. comes into picture. Therefore analogy of Chapter VI Deductions cannot be telescoped or imported in Section 10-A or 10-B of the Act. The words 'derived by an Undertaking' in Section 10-A or 10-B are different from 'derived from' employed in Section 80-HH etc. Therefore all Profits and Gains of the Undertaking including the incidental income by way of interest on Bank Deposits or Staff loans would be entitled to 100% exemption or deduction under Section 10-A and 10-B of the Act. Such interest income arises in the ordinary course of export business of the Undertaking even though not as a direct result of export but from the Bank Deposits etc., and is therefore eligible for 100% deduction.

36. We have to take a purposive interpretation of the Scheme of the Act for the exemption under Section 10-A/10-B of the Act and for the object of granting such incentive to the special class of assessees selected by the Parliament, the play-in-the-joints is allowed to the Legislature and the

liberal interpretation of the exemption provisions to make a purposive interpretation, was also propounded by Hon'ble Supreme Court in the following cases:-

> *I] In Bajaj Tempo Ltd., Bombay Vs. Commissioner of Income Tax, Bombay, [(1992) 3 SCC 78], the Hon'ble Supreme Court held that:-*
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> *"5. … ..Since a provision intended for promoting economic growth has to be interpreted liberally, the restriction on it, too, has to be construed so as to advance the objective of the section and not to frustrate it. But that turned out to be the, unintended, consequence of construing the clause literally, as was done by the High Court for which it cannot be blamed, as the provision is susceptible of such construction if the purpose behind its enactment, the objective it sought to achieve and the mischief it intended to control is lost sight of. One way of reading it is that the clause excludes any undertaking formed by transfer to it of any building, plant or machinery used previously in any other business. No objection could have been taken to such reading but when the result of reading in such plain and simple manner is analysed then it appears that literal construction would not be proper. …"*

II] In R.K. Garg v. Union of India, [(1981) 4 SCC 675] = [1982 SCC (Tax) 30 p.690], the Hon'ble Apex Court has held as under:-

"8. Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc. It has been said by no less a person than Holmes, J., that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait-jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved. Nowhere has this admonition been more felicitously expressed than in Morey v. Doud [351 US 457 : 1 L Ed 2d 1485 (1957)] where Frankfurter, J., said in his inimitable style:

"In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events — self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability."

The Court must always remember that "legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent, that laws are not abstract propositions and do not relate to abstract units and are not to be

measured by abstract symmetry"; "that exact wisdom and nice adaption of remedy are not always possible" and that "judgment is largely a prophecy based on meagre and uninterpreted experience". Every legislation particularly in economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid."

37. On the above legal position discussed by us, we are of the opinion that the Respondent assessee was entitled to 100% exemption or deduction under Section 10-A of the Act in respect of the interest income earned by it on the deposits made by it with the Banks in the ordinary course of its business and also interest earned by it from the staff loans and such interest income would not be taxable as 'Income from other Sources' under Section 56 of the Act. The incidental activity of parking of Surplus Funds with the Banks or advancing of staff loans by such special category of assessees covered under Section 10-A or 10-B of the Act is integral part of their export business activity and a business decision taken in view of the commercial expediency and the interest income earned incidentally cannot be de-linked from its profits and gains derived by the Undertaking engaged in the export of Articles as envisaged under Section 10-A or Section 10-B of the Act and cannot be taxed separately under Section 56 of the Act.

38. We therefore affirm and agree with the view expressed by the first Division Bench of this Court in the case of M/s. Motorola India Electronics (P) Ltd.(supra) and we do not agree with the view taken by the subsequent Division Bench on 10/04/2014 in the present case."

6.3 Respectfully following the Full Bench decision of Hon'ble High Court of Karnataka High Court which is higher in judicial discipline as compared to the decision of the Hon'ble Madras High Court in the case of India Comnet International (supra), therefore, we accordingly uphold the finding of the Ld. CIT(A) on the issue in dispute and direct the Assessing Officer to allow the deduction for interest earned from the eligible unit. The Assessing Officer may verify the quantum of the interest earned from the eligible units and allow the deduction accordingly. The grounds raised by the Revenue are accordingly dismissed.

7. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 08/09/2023.

Sd/-	**Sd/-**
(PAVAN KUMAR GADALE)	**(OM PRAKASH KANT)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai;
Dated: 08/09/2023
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

BY ORDER,

//True Copy//

(Assistant Registrar)
ITAT, Mumbai