

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "G" BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

ITA No.7568/Del/2018

[Assessment Years : 2014-15]

Addl.CIT, Special Range-8, New Delhi.	vs	Statestreet HCL Services (India) P.Ltd., 806, Siddharth, 96, Nehru Place, New Delhi-110019. PAN-AAQCS8148G
APPELLANT		RESPONDENT

ITA No.1068/Del/2020

[Assessment Year: 2016-17]

DCIT, Circle-24(2), New Delhi.	vs	Statestreet HCL Services (India) P.Ltd., 806, Siddharth, 96, Nehru Place, New Delhi-110019. PAN-AAQCS8148G
APPELLANT		RESPONDENT
Appellant by	Shri Subhra Jyoti Chakraborty, CIT DR	
Respondent by	Shri Ajay Vohra, Sr.Adv., Shri Aditya Vohra, Adv. & Shri Arpit Goel, Adv.	
Date of Hearing	19.10.2023	
Date of Pronouncement	31.10.2023	

ORDER

PER KUL BHARAT, JM :

Both appeals filed by the Revenue against the separate orders of Ld.CIT(A)-31, New Delhi dated 27.09.2018 for the Assessment Year 2014-15 and against the order of Ld.CIT(A)-8, New Delhi dated 28.01.2020 for the Assessment year 2016-17. The appeals are taken up together for hearing and are being disposed off by way of consolidated order for the sake of brevity and convenience.

ITA No.7568/Del/2018 [Assessment Year : 2014-15]

2. First, we take Revenue's appeal in ITA No.7568/Del/2018 [Assessment Year 2014-15] wherein Revenue has raised following grounds of appeal:-

1. *“Whether on the facts and circumstances of the case, the Ld.CIT(A) was justified in holding that the assessee is eligible for benefits within the meaning of section 10AA of the I.T.Act, 1961 with regard to units at Chennai and at Coimbatore SEZ despite the fact that assessee has not satisfied the conditions mentioned u/s 10AA(4) of the I.T.Act, 1961.*
2. *The appellant craves leave to add, alter or amend any of the ground(s) of appeal before or during the course of hearing of the appeal.”*
3. The only effective ground raised by the Revenue in this appeal is against the eligibility of benefit u/s 10AA of the Income Tax Act, 1961 (“the Act”).
4. Facts in brief are that the assessee company e-filed return of income, declaring total income of INR 1,26,75,220/- on 29.03.2015 and further income was revised on 29.03.2015, declaring income of INR 1,26,75,220/-. The case of the assessee was selected for scrutiny assessment and the assessment u/s 143(3) of the Act, was framed vide order dated 15.12.2016. Thereby, the Assessing Officer (“AO”) disallowed the claim u/s 10AA of the Act, amounting to INR 10,58,45,315/- following his order for Assessment Year 2013-14.
5. Ld.CIT DR for the Revenue vehemently argued that Ld.CIT(A) was not justified in deleting the disallowance. He strongly relied upon the assessment order.
6. On the other hand, Ld. Sr. Counsel for the assessee, Shri Ajay Vohra opposed the submissions of the Revenue and submitted that the issue is covered in favour of the assessee. The finding of the Assessing Authority is not justified. He relied upon the order of Ld.CIT(A).

7. We have heard contentions of Ld. Authorized Representatives of both the parties and perused the material available on record. We find that Ld.CIT(A) has reproduced the order of Ld.CIT(A) passed in Assessment Year 2013-14 who has given a clear finding in respect of eligibility of benefit u/s 10AA of the Act. For the sake of clarity, the relevant contents of the order of Ld.CIT(A) is reproduced as under:-

8. *"I have examined the issue at hand. I find that the facts and position of law is same as was obtaining in assessment year 2013-14 wherein I had adjudicated the appeal in favour of the appellant. I had held in my appeal order dated 15.02.2018 (for A.Y 2013-14), in paras 5,3 till 5.7 as follows-*

"5.3. I have examined the facts at hand. The AO has denied exemption u/s 10AA of the I.T. Act, 1961 to the Two SEZ units viz Chennai and Coimbatore unit. While treating the appellant as ineligible within the meaning of section 10AA of the I.T. Act, 1961, the AO has invoked provisions of sub section (4)(iii) of section 10AA. The AO notes at para 4.12 as follows-

4.12. It is pertinent to mention that as per the provisions of sub-section (4)(iii) of section 10AA unit should not formed by the transfer to a new business of machinery or plant previously used for any purposes. But in the instant case as per note 2.24 of the Audited Financials the asset (computed) of value of Rs.40,72,127/- were transferred to the assessee company from an existing business of a company named AXA Business service Ltd. Thus, it is clear that the assessee company violated the conditions laid down for claiming deduction u/s 10AA.

5.4. The AO is of the view that fixed assets valuing to Rs. 40,72,127/- were transferred to the appellant from an existing

business entity- M/s AXA Business Service Ltd. The AO has inferred that these old fixed assets were used (finding mention in the audited balance sheet at para 2.24) in the formation of new SEZ Units at Chennai and at Coimbatore. However, the AO has not specified as to how and what all assets were used in the two new SEZ undertakings. The appellant has pointed out that the assets of the value of Rs. 40,72,127/- were acquired as part of running business unit of M/s AXA Business Service Pvt. Ltd vide agreement dated 13.04.2012. Para 3.5 of this agreement dated 13.04.2012 reads as follows-

3.5. Subject to the provisions of this Agreement, the Purchaser hereby agrees to purchase and the Vendor hereby agrees to sell, assign, transfer and convey to the Purchaser on the Transfer Date (in the manner and to the extent indicated in Clause 3.7), the Business, free from all Encumbrances, as a slump rate of a going concern, at and for an aggregate purchase price of INR 105, 000, 000 (Purchase Price") (Rupees One Hundred Five Million Only). Such Purchase Price to be reduced with the Working Capital" as determined close to the Transfer Date."

5.5. It has been informed by the appellant that this unit (ie. the acquired unit) is located elsewhere and was acquired as a running unit and continued operations as a non SEZ unit. The AO notes at para 4.6 of the assessment order as hereinafter-

4.6. Vide show cause notice dated 21.03.2016, the assessee was asked to furnish the justification of claim of deduction u/s 10AA alongwith justification of compliance of all the conditions laid down for this purpose. In response to the same the assessee has submitted its reply vide letter dated 28.03.2016 stated that –

“The assessee company fulfills all the requisite conditions mentioned under section 10AA of the Act for the purpose of claiming exemption. Sub-section (4) to section 10AA list out following conditions to be eligible to claim exemption.

<i>Clause of section 10AA(4)</i>	<i>Summary of section</i>	<i>Our submissions</i>	<i>Reference</i>
<i>(i)</i>	<i>It has begun to provide services during the previous year relevant to the assessment year commencing on or after April, 01 2006 in any SEZ</i>	<i>The assessee company has begun its operations during the year under consideration from the SEZ.</i>	<i>Refer From-56F certified by the Chartered Accountant-Copy enclosed as Annexure A 4 and B 4.</i>
<i>(ii)</i>	<i>It is not formed by the splitting up or the reconstruction of a business already in existence</i>	<i>The assessee company has initiated its separate business.</i>	
<i>(iii)</i>	<i>It is not formed by the transfer to a new business of machinery or plant previously used for any purposes.</i>	<i>The assessee company purchased all of the new assets in its 10AA units</i>	<i>Details of new assets are enclosed.</i>

5.6. The appellant before me has taken an alternative plea that even if it is assumed that the computers acquired were used for the Chennai SEZ unit or Coimbatore SEZ unit, the percentage of existing plant and machinery would be 11.15% or 16.72% respectively. On this basis also the appellant cannot be denied eligibility for the purposes of section 10AA of the IT. Act, 1961.

5.7. In light of the aforesaid analysis, I hold that the appellant with regard to units at Chennai and at Coimbatore SEZ is eligible for benefits within the meaning of section 10AA of the IT. Act, 1961. Accordingly grounds 3, 3.1. 3.2 and 3.3 are adjudicated in favour of the appellant."

9. Thus, on the basis of precedence as available, in the form of my own appeal order for A.Y. 2013-14, I adjudicate this issue in favour of the appellant."

8. In view of the finding of Ld.CIT(A), even if it is assumed that existing plant & machinery was used at Chennai SEZ or Commercial SEZ even then the value would be lower than 50%. This finding is not controverted by the Revenue. Therefore, we do not find any merit in the appeal of the Revenue, the same is hereby dismissed. Grounds raised by the Revenue are accordingly, dismissed.

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

ITA No.1068/Del/2020 [Assessment Year : 2016-17]

10. Now, we take Revenue's appeal in ITA No.1068/Del/2020 [Assessment Year 2016-17] wherein Revenue has raised following grounds of appeal:-

1. *“Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was justified in holding that the assessee is eligible for benefits within the meaning of section 10AA of the Income tax Act, 1961 with regard to units at Chennai and at Coimbatore SEZ despite the fact that assessee has not satisfied the conditions mentioned u/s 10AA((4) of the Income Tax Act, 1961.*
2. *The appellant craves leave to add, alter or amend any of the ground(s) of appeal before or during the course of hearing of the appeal.”*

11. Facts are identical as were in ITA No.7568/Del/2018 for the Assessment Year 2014-15. We have decided the issue against the Revenue by observing as under:-

7. *“We have heard contentions of Ld. Authorized Representatives of both the parties and perused the material available on record. We find that Ld.CIT(A) has reproduced the order of Ld.CIT(A) passed in Assessment Year 2013-14 who has given a clear finding in respect of eligibility of*

benefit u/s 10AA of the Act. For the sake of clarity, the relevant contents of the order of Ld.CIT(A) is reproduced as under:-

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"5.3. I have examined the facts at hand. The AO has denied exemption u/s 10AA of the I.T. Act, 1961 to the Two SEZ units viz Chennai and Coimbatore unit. While treating the appellant as ineligible within the meaning of section 10AA of the I.T. Act, 1961, the AO has invoked provisions of sub section (4)(iii) of section 10AA. The AO notes at para 4.12 as follows-

4.12. It is pertinent to mention that as per the provisions of sub-section (4)(iii) of section 10AA unit should not formed by the transfer to a new business of machinery or plant previously used for any purposes. But in the instant case as per note 2.24 of the Audited Financials the asset (computed) of value of Rs.40,72,127/- were transferred to the assessee company from an existing business of a company named AXA Business service Ltd. Thus, it is clear that the assessee company violated the conditions laid down for claiming deduction u/s 10AA.

5.4. The AO is of the view that fixed assets valuing to Rs. 40,72,127/- were transferred to the appellant from an existing business entity- M/s AXA Business Service Ltd. The AO has inferred that these old fixed assets were used (finding mention in the audited balance sheet at para 2.24) in the formation of new SEZ Units at Chennai and at Coimbatore. However, the AO has not specified as to how and what all assets were used in the two new SEZ undertakings. The

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4.6. Vide show cause notice dated 21.03.2016, the assessee was asked to furnish the justification of claim of deduction u/s 10AA alongwith justification of compliance of all the conditions laid down for this purpose. In response to the same the assessee has submitted its reply vide letter dated 28.03.2016 stated that –

“The assessee company fulfills all the requisite conditions mentioned under section 10AA of the Act for the purpose of claiming exemption. Sub-section (4) to section 10AA list out following conditions to be eligible to claim exemption.

<i>Clause of section 10AA(4)</i>	<i>Summary of section</i>	<i>Our submissions</i>	<i>Reference</i>

(i)	<i>It has begun to provide services during the previous year relevant to the assessment year commencing on or after April, 01 2006 in any SEZ</i>	<i>The assessee company has begun its operations during the year under consideration from the SEZ.</i>	<i>Refer From-56F certified by the Chartered Accountant-Copy enclosed as Annexure A 4 and B 4.</i>
(ii)	<i>It is not formed by the splitting up or the reconstruction of a business already in existence</i>	<i>The assessee company has initiated its separate business.</i>	
(iii)	<i>It is not formed by the transfer to a new business of machinery or plant previously used for any purposes.</i>	<i>The assessee company purchased all of the new assets in its 10AA units</i>	<i>Details of new assets are enclosed.</i>

5.6. *The appellant before me has taken an alternative plea that even if it is assumed that the computers acquired were used for the Chennai SEZ unit or Coimbatore SEZ unit, the percentage of existing plant and machinery would be 11.15% or 16.72% respectively. On this basis also the appellant cannot be denied eligibility for the purposes of section 10AA of the IT. Act, 1961.*

5.7. *In light of the aforesaid analysis, I hold that the appellant with regard to units at Chennai and at Coimbatore SEZ is eligible for benefits within the meaning of section 10AA of the IT. Act, 1961. Accordingly grounds 3, 3.1. 3.2 and 3.3 are adjudicated in favour of the appellant."*

9. *Thus, on the basis of precedence as available, in the form of my own appeal order for A.Y. 2013-14, I adjudicate this issue in favour of the appellant."*

8. *In view of the finding of Ld.CIT(A), even if it is assumed that existing plant & machinery was used at Chennai SEZ or Commercial SEZ even then the value would be lower than the 50%. This finding is not controverted by the Revenue. Therefore, we do not find any merit in the appeal of the Revenue, the same is hereby dismissed. Grounds raised by the Revenue are accordingly, dismissed."*

12.1. Therefore, taking the consistent view, grounds raised in this appeal filed by the Revenue are also dismissed.

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

14. In the final result, both appeals of the Revenue in **ITA No.7568/Del/2018 [Assessment Year 2014-15] and ITA No.1068/Del/2020 [Assessment Year 2016-17]** are dismissed.

Order pronounced in the open Court on 31st October, 2023.

Sd/-

Sd/-

**(M.BALAGANESH)
ACCOUNTANT MEMBER**

**(KUL BHARAT)
JUDICIAL MEMBER**

** Amit Kumar **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI