

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई  
IN THE INCOME-TAX APPELLATE TRIBUNAL 'A' BENCH, CHENNAI  
श्री एसएस विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष  
Before Shri S.S. Viswanethra Ravi, Judicial Member &  
Shri Amitabh Shukla, Accountant Member

आयकर अपील सं./I.T.A. Nos.913 and 914/Chny/2023  
निर्धारण वर्ष/Assessment Years: 2010-11 & 2011-12

Renault Nissan Technology &  
Business Centre India Private Limited,  
TP2/1, Ascendas IT Park, Natham  
Sub Post Office, Mahindra World City,  
Kanchipuram District,  
Tamil Nadu 603 004.

Vs. The Assistant Commissioner of  
Income Tax, Corporate Circle 5(1),  
Main Building, Aayakar Bhavan,  
No. 121, M.G. Road,  
Nungambakkam, Chennai 600 034.

**[PAN:AADCR7253E]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri Ashik Shah, C.A.  
प्रत्यर्थी की ओर से/Respondent by : Shri Nilay Baran Som, CIT  
सुनवाई की तारीख/ Date of hearing : 24.04.2024  
घोषणा की तारीख /Date of Pronouncement : 30.04.2024

**आदेश /O R D E R**

**PER S.S. VISWANETHRA RAVI, JUDICIAL MEMBER:**

Both the appeals filed by the assessee against separate orders both dated 23.06.2023 passed by the NFAC [CIT(A)] for the assessment year 2010-11 and 2011-12 respectively.

2. Since issues raised in both the appeals are similar and based on same identical facts, with the consent of both the parties, we proceed to

hear both the appeals together and pass consolidated order for convenience.

**3. Firstly, we shall take up appeal in ITA No. 913/Chny/2023 AY 2010-11.**

4. Brief facts as emanating from the record relating to the case are that the assessee is a joint venture between Renault Group B.V. and Nissan International Holdings B.V. The assessee is engaged in the business of rendering engineering design services, contract research and development, business process outsourcing, sourcing support and information technology services for its group companies. Further, the assessee also renders services out of the Special Economic Zone units. The assessee filed its return of income on 30.03.2011 declaring a total income of ₹.7,64,02,583/-. Under scrutiny, the Assessing Officer determined the same by making adjustment of re-computation of deduction under section 10AA of the Income Tax Act, 1961 ["Act" in short] excluding the foreign currency expenditure, communication and insurance cost from export turnover, re-computation of deduction under section 10AA of the Act by excluding the provisions written back and excess insurance premium received from profits of the undertaking and also disallowance of deposits and other costs written off. As not satisfied with

the order of the Assessing Officer, the assessee preferred an appeal before the Id. CIT(A), wherein, the appeal of the was allowed partly by giving relief regarding exclusion of communication and insurance costs.

5. As aggrieved by the order of the Id. CIT(A), the assessee and the Revenue filed respective appeals before the Tribunal, wherein, the Tribunal remanded all the issues to the file of the Assessing Officer for verification vide its order dated 24.01.2018. In giving effect to the directions of the ITAT, the Assessing Officer, in the remand proceedings, made adjustment on account of re-computation of deduction under section 10AA of the Act by exclusion of foreign currency expenditure from export turnover amounting to ₹.39,05,49,881/-, disallowance of cost and other cost written off amounting to ₹.4,10,97,344/- and double addition of interest from fixed deposits in the computation of income amounting to ₹.71,54,382/- vide order dated 29.12.2018. Again, as not satisfied with the order of the Assessing Officer, the assessee preferred appeal before the Id. CIT(A), wherein, the Id. CIT(A) confirmed the order of the Assessing Officer and no finding rendered to the issue relating to the disallowance of deposits and any other cost written off.

6. Aggrieved by said order in the 2<sup>nd</sup> round of litigation, the assessee is in appeal before us by raising grounds as forming part of Form 36.

7. Ground No. 1 is general in nature and requires no adjudication.
8. Ground No. 2 (2.1 to 2.4) raised challenging the order of the Id. CIT(A) in confirming the order of the Assessing Officer in excluding expenses incurred in foreign currency from export turnover for the purpose of computation of deduction under section 10AA of the Act.
9. Heard both the parties, perused the materials available on record. We note that in the first round of litigation, the Coordinate Bench of the ITAT, vide its order dated 24.01.2018, directed the Assessing Officer to verify the claim of the assessee in respect of four issues, which are reproduced by the Assessing Officer in the giving effect order dated 29.12.2018 is on record at page No. 35 to 39 of the appeal memo. On perusal of the same, we note that the Assessing Officer requested the assessee to file all the details in favour of its claim. The Assessing Officer observed that the assessee could not file proof of expenditure incurred in foreign currency which requires to be excluded from export turnover. The Id. AR Shri Ashik Shah, C.A., drew our attention to page No. 25 of the paper book and contended that all the details relating to the expenditure incurred in foreign currency were furnished to the Assessing Officer as it was part and parcel of financials vide schedule 14.13.3. On perusal of the

same, we note that the particulars relating to travel expenses and information technology & technical support services, professional & consultancy fees, reimbursement of Renault Global Management and reimbursement to Nissan Motor Co. Ltd. were furnished to the extent of ₹.39,05,49,881/-, having on record, the Assessing Officer, without examining the same, excluded the expenditure incurred in foreign currency.

10. The Id. AR submits that the issue is squarely covered by the decision of the Hon'ble Jurisdictional High Court of Madras in assessee's own case for the assessment year 2009-10 and drew our attention to page No. 3 of the paper book containing judicial precedents. He referred to the substantial question of law framed at page No. 2 of the said judgement and argued that the Hon'ble High court found the order of the Tribunal fell in error in reversing the order of the DRP, which directed the Assessing Officer not to exclude the expenses incurred in foreign currency from export turnover. On careful reading of the decision of the Hon'ble High Court, we note that the Hon'ble High Court discussed the issue in detail for the assessment year 2009-10 relating to the same issues which are disputed in the assessment year under consideration. The Hon'ble High Court was pleased to reduce the expenses which were

incurred in foreign currency seeking inclusion by the assessee from the export turnover for the purposes of computing the deduction under section 10AA of the Act. The Hon'ble High Court answered the substantial question framed as "*whether the Tribunal erred in holding that the expenditure incurred in foreign currency by the appellant was to be excluded from export turnover for the purpose of computing deduction under section 10AA of the Income Tax Act, 1961, when the same is against the provisions of the Act?*" Vide para No. 16, we note that the Respondent Revenue relied on the decision in the case of CIT v. Menon Impex (P.) Ltd. [2003] 259 ITR 403 (Mad), which was affirmed by the Hon'ble Supreme Court in the case of India Comnet International Private Ltd. v. ITO [2012] 26 taxmann.com 349 (SC). The Hon'ble High Court while deciding the substantial question of law has held that the said decision in the case of CIT v. Menon Impex (P.) Ltd. (supra) is not applicable to the disputed issue in appeal and accordingly held that the order of the Tribunal in reversing the order of the DRP is not justified.

11. The substantial question of law as framed before the Hon'ble High Court in assessee's own case (supra) reads as under:

*This appeal filed by the assessee under Section 260A of the Income Tax Act, 1961 (the 'Act' for brevity), is directed against the order dated 16.11.2016 in ITA.No.1009/Mds/2014 on the file of the Income Tax Appellate Tribunal, Madras 'D' Bench, Chennai, for the assessment year 2009 - 10.*

2. *The appeal was admitted on 05.06.2018, on the following substantial questions of law.*

*“1. Whether the Tribunal erred in holding that the expenditure incurred in foreign currency by the appellant was to be excluded from export turnover for the purpose of computing deduction under Section 10AA of the Income Tax Act, 1961, when the same is against the provisions of the Act?*

*2. Is the finding of the Tribunal that the expenditure incurred in foreign currency by the appellant needs to be excluded from the export turnover for the purpose of computation of deduction under Section 10AA of the Income Tax Act, 1961 vitiated by perversity and arbitrariness?”*

12. We find that the facts before the Hon'ble High Court concerning the assessee in assessment year 2009-10 are that the assessee is a Private Limited Company incorporated under the Companies Act, on 21st September 2007 as a joint venture between Renault Group B.V (“RGBV”) and Nissan International Holding B.V (“NIHBV”). The assessee is an undertaking registered as a Special Economic Zone (“SEZ”) which is eligible to claim deduction under Section 10AA of the Income Tax Act, 1961 and it renders services out of this SEZ premises in Chennai. The assessee filed its Return of Income for the assessment year 2009 – 10 (hereinafter 'under consideration' for brevity) on 30.09.2009, returning a total income of ₹.5,83,39,429/-, after claiming a deduction of ₹.29,96,00,054/- under Section 10AA of the Act. The assessment was completed under Section 143(3) of the Act and the Assessing Officer proposed to exclude the following expenditure incurred in foreign

currency from the 'export turnover' of the assessee for the purpose of computing deduction under Section 10AA of the Act.

<i>Particulars</i>	<i>Amount</i>
<i>Travel expenses</i>	<i>41,199,254</i>
<i>IT &amp; Technical support services</i>	<i>115,521,782</i>
<i>Professional and consultation fees</i>	<i>5,364,145</i>
<i>Reimbursement to Renault Global Management</i>	<i>69,851,671</i>
<i>Reimbursement to Nissan Motor Co., Ltd. ("NML")</i>	<i>29,635,976</i>
<i>Total</i>	<i>261,572,828</i>

13. The assessee contended that what can be excluded is only expenditures in the nature of freight, telecommunication charges and insurance, if attributable, for delivery of articles or things outside India or any foreign currency expenditures which have been specifically incurred for rendering services outside India and no other expenditure could have been deducted from 'export turnover', while computing deduction under Section 10AA of the Act. This submission made by the assessee did not find favour with the Assessing Officer who passed a draft Assessment Order dated 25.03.2003 under Section 143(3) read with Section 144(c)(i), determining the assessed income at ₹.20,68,24,860/-. The assessee, being aggrieved by the draft Assessment Order, filed an application before the Dispute Resolution Panel (hereinafter 'the DRP' for brevity). The DRP accepted the case of the assessee and issued directions dated 20.12.2013, directing the Assessing Officer not to exclude the said expenditures from the turnover of the assessee, holding that the said

expenditures were not incurred for the purpose of rendering service outside India. The respondent Revenue filed an appeal before the Tribunal. Vide order dated 16.11.2016 in ITA No. 1009/Mds/2014, the Tribunal allowed Revenue's appeal and aggrieved by the same, the assessee is in appeal before the Hon'ble High Court of Madras under section 260A of the Act.

14. Careful reading of the decision of the Hon'ble Madras High Court, we find that the Hon'ble High Court was pleased to observe that the Tribunal did not assign any reason as to why the findings/directions issued by the DRP are not sustainable. Further, we note that the Hon'ble High court was pleased to observe that the Tribunal did not specifically adjudicate the contention of the Revenue that they are either reimbursement or advances to employees which are not in respect of service rendered by the assessee outside India. The Hon'ble High Court did not agree with the submissions of the Id. Standing Counsel of the Revenue demanding to remand the matter to the Tribunal for fresh decision. We note that the Hon'ble High Court proceeded to decide the substantial question of law in affirmative in favour of the assessee by holding that the order of the Tribunal fell in error in reversing the decision of the DRP. Further, it was brought to our notice, that the Assessing

Officer has given relief to the assessee in not excluding foreign currency expenditure from export turnover for the assessment years 2013-14 and 2015-16 which is clear from facts of the case at page No. 31 and 32. The Id. DR did not dispute the same. As we discussed the facts and circumstances of the case and also the issue forming part of substantial question of law before the Hon'ble High Court is as similar basing on the same identical facts concerning the issue raised before us in the year under consideration are same, therefore, respectfully following the decision of the Hon'ble High Court, we hold, the order of the Id. CIT(A) is not justified in confirming the order of the Assessing Officer in excluding foreign currency expenditure from the export turnover for the computation of deduction under section 10AA of the Act. Thus, ground No. 2(2.1 to 2.4) raised by the assessee are allowed.

15. Ground No. 2 (2.5 & 2.6) raised by the assessee becomes academic in view of our decision in ground No. 2 (2.1 to 2.4) and therefore, requires no adjudication.

16. Ground No. 3 raised by the assessee challenging in not including amount of disallowance/addition as profits of the business in the computation of deduction under section 10AA of the Act.

17. The Id. AR submits that the issue raised in ground No. 3 is connected to additional ground raised by the assessee and drew our attention to the memo of additional ground filed on 22.02.2024 which is on record. On perusal of the same, we note that the assessee filed the additional ground stating that the Id. CIT(A) did not specifically deal with the ground relating to disallowance of deposits and other costs written off. Having finding non-disposal of said ground in the impugned order, the assessee made an application on 29.08.2023 requesting the Id. CIT(A) to adjudicate the said issue and rectify the appellate order. It was submitted that so far the Id. CIT(A) did not dispose off the same and the assessee is ready to prosecute the same in case the Id. CIT(A) affords an opportunity. We are of the view that since the application filed by the assessee is pending on the file of the Id. CIT(A) for adjudication, we deem it proper to give a direction to the Id. CIT(A) to dispose off the same by affording an opportunity of being heard to the assessee. Accordingly, ground No. 3 as well as addition ground raised vide application dated 22.02.2024 are disposed as above.

18. Ground No. 4 raised by the assessee challenging double addition of interest from fixed deposits in the computation of income. We find the computation from original assessment order dated 28.02.2014, which is

at page 82 of the paper book, wherein, the interest on fixed deposits to an extent of ₹.71,54,382/- was added by the Assessing Officer which is forming part of profits of business to an extent of ₹.50,34,31,180/-. Whereas, on perusal of the computation of total income in giving effect proceedings in pursuance to the directions of the ITAT, which is at page 35 of appeal memo, the Assessing Officer again added ₹.71,54,382/-, which is clear from page No. 38 of the appeal memo. In this regard, we find that the assessee filed rectification application under section 154 of the Act on 12.02.2019, which is at page 156 of the paper book, and it was submitted by the Id. AR that no decision whatsoever passed by the Assessing Officer as on today. The Id. DR Shri Nilay Baran Som, CIT did not dispute the same, but, however, prayed to give direction to the Assessing Officer to pass orders in this regard. Accordingly, ground No. 4 raised by the assessee is allowed for statistical purposes.

**19. Now, we shall take up appeal in ITA No. 914/Chny/2023 for AY 2011-12.**

20. Ground No. 1 is general in nature and requires no adjudication.

21. Ground No. 2 (2.1 to 2.4) raised by the assessee are similar to the ground No. 2 (2.1 to 2.4) in assessment year 2010-11 challenging action

of the Id. CIT(A) in confirming the order of the Assessing Officer in excluding expenses incurred in foreign currency from export turnover to an extent of ₹.40,31,26,242/- for the purpose of computation of deduction under section 10AA of the Act, the Id. DR has pointed out that the said ground raised by the assessee is not maintainable as the Assessing Officer given relief to the assessee in not excluding the foreign currency from export turnover and drew our attention to the giving effect assessment order dated 29.12.2018, which is at page 32 of the appeal memo. On perusal of the computation of total income at page No. 34 of the appeal memo, we find that the Assessing Officer added foreign currency to the extent of ₹.40,31,26,242/- to the export turnover and granted relief to the assessee. The Id. AR, having realised the same, submitted that the assessee raised ground No. 2 (2.1 to 2.4) by an inadvertent mistake and accordingly not pressed ground No. 2(2.1 to 2.4). Therefore, ground No. 2 (2.1 to 2.4) is dismissed as not pressed.

22. Ground No. 2 (2.5 & 2.6) raised by the assessee becomes academic in view of our decision in ground No. 2 (2.1 to 2.4) and therefore, requires no adjudication.

23. Ground No. 3 raised by the assessee challenging the action of the Id. CIT(A) in confirming the order of the Assessing Officer in excluding

other income to an extent of ₹.41,03,158/- from the profits of Special Economic Zone unit in computing deduction under section 10AA of the Act, without complying with the specific directions of the Tribunal, which held not to exclude the same from the profits of SEZ unit vide order dated 24.01.2018. We find the order of the Tribunal in assessee's own case in first round of litigation for the assessment year 2010-11 and 2011-12 in page 113 of the paper book, wherein, the Tribunal decided the issue of exclusion of provisions no longer required is written back and other income from computation of profits for the purpose of deduction under section 10AA of the Act, directed the Assessing Officer not to exclude other income of ₹.32,35,845/- and others at ₹.8,67,313/- vide para No. 6 of the said order. The Id. DR did not dispute the same. However, the Assessing Officer in giving effect proceedings, in pursuance of direction of the ITAT and excluded the same from the total turnover.

24. Aggrieved, the assessee filed an application under section 154 of the Act, which is at page 177 of the paper book, seeking to rectify the said mistake, which is apparent on record. The Id. AR submits that there was no order passed as on today though the application under section 154 of the Act was filed on 12.02.2019. The Id. DR submits, a direction may be given to the Assessing Officer to dispose off the application under section

154 of the Act filed by the assessee. We note that the assessee filed rectification application on 12.02.2019, which is at page 177 of the paper book and vide para No. 2, sought for to rectify the mistake apparent on record in not excluding other income to the extent of ₹.41,03,158/-. Therefore, the Assessing Officer is directed to pass order in rectification application filed under section 154 of the Act. Thus, ground No. 3 raised by the assessee is allowed for statistical purposes.

25. Ground No. 4 raised by the assessee challenging double addition of interest from fixed deposits in the computation of income. We find the computation from original assessment order dated 20.03.2015, which is at page 80 of the paper book, wherein, the interest on fixed deposits to an extent of ₹.1,55,08,365/- was added by the Assessing Officer which is forming part of profits of business to an extent of ₹.57,62,41,994/-. Whereas, on perusal of the computation of total income in giving effect proceedings in pursuance to the directions of the ITAT, which is at page 32 of appeal memo, the Assessing Officer again added ₹.1,55,08,365/-, which is clear from page No. 35 of the appeal memo. In this regard, we find that the assessee filed rectification application under section 154 of the Act on 12.02.2019, which is at page 177 of the paper book, and it was submitted by the Id. AR that no decision whatsoever passed by the

Assessing Officer as on today. The Id. DR did not dispute the same, but, however, prayed to give direction to the Assessing Officer to pass orders in this regard, we order accordingly, therefore, ground No. 4 raised by the assessee is allowed for statistical purposes.

26. Ground No. 5 raised by the assessee challenging action of the Id. CIT(A) in confirming the order of the Assessing Officer in granting TDS credit only to an extent of ₹.4,33,05,944/- as against ₹.4,44,92,327/-.

27. At the outset, we note that the assessee claimed TDS credit under advance tax paid to an extent of ₹.4,44,92,327/-, which is clear from the return of income at page No. 37 of the paper book. The said credit was given by the Assessing Officer in the original assessment order dated 20.03.2015, which is at page No. 80 of the paper book. Whereas, in giving effect proceedings in pursuance of the directions of the ITAT, the Assessing Officer restricted the said credit only to the extent of ₹.4,33,05,944/-, which is clear from the computation of income at page 36 of the appeal memo. Having aggrieved, the assessee filed rectification application under section 154 of the Act on 12.02.2019. The Id. DR prayed to give a direction to the Assessing Officer to give full TDS credit as was given in the original assessment proceedings order dated

20.03.2015. We order accordingly. Thus, the ground No. 5 raised by the assessee is allowed for statistical purposes.

7. In the result, both the appeals filed by the assessee are partly allowed for statistical purposes.

Order pronounced on 30<sup>th</sup> April, 2024 at Chennai.

Sd/-  
(AMITABH SHUKLA)  
ACCOUNTANT MEMBER

Sd/-  
(S.S. VISWANETHRA RAVI)  
JUDICIAL MEMBER

Chennai, Dated, 30.04.2024

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant,
2. प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त/CIT,
4. विभागीय प्रतिनिधि/DR &
5. गार्ड फाईल/GF.