

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI
BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

ITA NO.3478/MUM/2023

Assessment Year :2021-22

M/s. Veritas (India) Limited,
Veritas House, 70, Mint Road,
Fort, Mumbai – 400 001
PAN: AAACD-1654-J

---- Appellant

Vs.

Assistant Commissioner of Income Tax,
Central Circle-4(4),Mumbai,
Air India Building, Nariman Point,
Mumbai – 400 021

--- Respondent

ITA NO.3410/MUM/2023

Assessment Year 2021-22

Deputy Commissioner of Income Tax,
Central Circle-4(4),Mumbai,
Air India Building,
Room No.1918, 19th Floor, Nariman Point
Mumbai – 400 021

..... Appellant

Vs.

M/s. Veritas (India) Limited,
Veritas House, 70, Mint Road,
Fort, Mumbai – 400 001
PAN: AAACD-1654-J

..... Respondent

Assessee by : Shri Rakesh Joshi

Revenue by : Shri Surendra Meena

Date of Hearing : 11/06/2024

Date of Pronouncement : 18/06/2024

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER :

These cross appeals are directed against the order dated 31-07-2023 passed by Ld CIT(A)-52, Mumbai and they relate to the assessment year 2021-22. Since the Ld CIT(A) granted partial relief in respect of following issues, both the parties are in appeal challenging the decision of Ld CIT(A):-

- (a) Deduction allowed u/s 10AA of the Act
- (b) Estimation of profit from alleged circular transactions.

2. The assessee is engaged in the business of export of software. It is also engaged in the business of trading and distribution of chemicals, petrochemicals and polymers. A survey operation u/s 133A of the Act was conducted in the hands of the assessee on 23.3.2021. Consequent thereto, the return of income filed by the assessee for AY 2021-22 was taken up for scrutiny.

3. The first issue relates to the disallowance of deduction of Rs.45,66,455/- claimed u/s 10AA of the Act in respect of the business of export of software. This business is carried on from the premises located in Kandla SEZ, Gandhidham. The assessee claimed that it has developed two software named VERIDOC and EASY BILL. The year under consideration was 9th year of operations. The Ld A.R submitted that, in the preceding 8 years, the deduction u/s 10AA of the Act had been allowed.

4. The survey officials noticed that the assessee has exported software to one or two parties only and further the sales has taken place on 3 to 5 days in the month of March. The export made in high quantum to a party was abruptly stopped. It is noticed that the assessee has exported the software to the very same parties from whom chemicals were imported. There was no evidence of after sales service for the software exported. The sale price of software was USD 1400 which also appeared to be very unusual. The books did not reveal any major intangible assets and the cost incurred for development of software was not available. The employee strength was also low and the assessee group has exported software for a value of around Rs.500 crores from AY 2013-14 to 2017-18. An employee named Shri Dinesh Kumar accepted that there were no document related to transporters and application made to the authorities of KASEZ for employees. The IT Head and the Managing director could not give any justification for the

above said deficiencies at the time of survey operations. Hence the AO asked the assessee to explain these deficiencies.

5. In response to the same, the assessee furnished copies of Form 56F, Audited financials, copies of export invoices along with copies of Packing List, Bill of lading, Shipping Bill, Copy of Annual Progress Report submitted to the Development Commissioner of SEZ, Copy of Letter of Approval of SEZ, Copy of Shed allotment letter issued by SEZ etc. It was submitted that the survey officials did not find any evidence to disprove the above documents. The assessee disowned the statement given by a junior employee and also submitted that the survey statement will not have any evidentiary value. It was submitted that the year under consideration is the 9th year of operation and the deduction u/s 10AA has been allowed in the past eight years. Placing reliance on the decision rendered by Hon'ble Bombay High Court in the case of CIT vs. Western Outdoor Interactive P Ltd , it was submitted that once the eligibility for deduction u/s 10A is accepted in the initial year, then it cannot be withdrawn in the subsequent years.

6. The AO did not accept the contentions of the assessee. He expressed the view that the very export of software is doubtful due to the facts observed by the survey officials. He also took support of the decision rendered by Hon'ble Supreme Court in the case of DCIT vs. ACE Multi Axis Systems Ltd (2017)(88 taxmann.com 69) and observed that the eligibility/satisfaction u/s 10A/10AA has to be established every year by the assessee for claiming deduction. Accordingly, the AO disallowed the claim for deduction of RS.45,66,446/- u/s 10AA of the Act.

7. The Ld CIT(A) noticed that the assessee has furnished all the documents to the assessing officer. With regard to the statement given by IT Head, the Ld CIT(A) noticed that he has only expressed his unawareness with regard to the cost, since it is handled by different people. He also noticed that Shri Dinesh Kumar is an employee of another concern and his statement cannot be relied upon. The Ld CIT(A) also referred to the

statement given by another employee Shri Gaurang Dineshbhai Ghancha, wherein he has explained the detailed process adopted for development of software. The Ld CIT(A) also noticed that no adverse finding of customs or SEZ has been brought on record to doubt the actual export of software. The Ld CIT(A) noticed that the assessee was subjected to search action in September, 2015 and at that point of time also, no adverse finding was made as regard deduction u/s 10AA of the Act. With regard to the high profit disclosed by the assessee, the Ld CIT(A) noticed that the Hon'ble Karnataka High Court has held in the case of CIT vs. Vesesh Infotechnics ltd (210 Taxman 522 dated 01-08-2012) that it is perfectly possible for a software unit to earn a profit of 94.80%. Accordingly, the Ld CIT(A) held that the deduction claimed u/s 10AA of the Act should not be denied. However, he directed the AO to verify as to whether the export proceeds were realized within the prescribed time limit.

8. The revenue is aggrieved by the decision of Ld CIT(A) in granting deduction u/s 10AA of the Act. The grievance of the assessee is that the Ld CIT(A) should not have directed the AO to verify the time period of realization of Export proceeds, as the said condition was not available during the year under consideration.

9. We heard the parties on this issue and perused the record. With regard to the condition of realization of export proceeds within a prescribed time period, we notice that the said condition was brought in from 1.4.2024 by inserting sub. Sec. (4A), meaning thereby, the said condition was not available during the year under consideration. Hence the late realization of export proceeds, if any, in this year will not disentitle the assessee from claiming deduction u/s 10AA of the Act. Accordingly, we set aside this direction given by Ld CIT(A).

10. With regard to the deduction allowed u/s 10AA of the Act by Ld CIT(A), we notice that the assessing officer has denied the claim only on the reasoning given by survey officials, which can, at the most, be termed as

suspicious and surmises. We notice that the assessee has furnished all the relevant documents in support of export of software. As observed by Ld CIT(A), either customs or SEZ did not suspect the documents furnished by the assessee. We also notice that the AO did not bring any material on record to disprove the documents furnished by the assessee in support of export of software. We notice that the assessee has exported two standard softwares and hence declared high profits. The Ld CIT(A) has taken support of the decision rendered by Hon'ble Karnatka High Court and held that the high profit declared by the assessee is justified. There is no material available with the AO to suspect the sales price mentioned in the sales bills.

11. We also noticed that the assessee's claim is related to 9th year. In the preceding 8 years, the deduction u/s 10AA has been allowed. We notice that the reliance of the AO on the decision rendered by Hon'ble Supreme Court in the case of ACE Multi Axis Systems Ltd (supra) is misplaced. In the case before the Hon'ble Supreme Court, the assessee claimed deduction u/s 80IB of the Act. The said deduction was available to Small Scale Industries (SSI) and the assessee was a SSI in the earlier years. Later, it ceased to be a SSI, but continued to claim deduction u/s 80IB of the Act. Under these set of facts, the Hon'ble Supreme Court held that the deduction shall be allowed only to SSI units and further, if the assessee ceases to be a SSI unit, then it will not be eligible for deduction, even if the same was allowed in the earlier years when it was a SSI unit. Thus, there is violation of one of the conditions prescribed for availing deduction u/s 80IB of the Act, which is not the case here.

12. In view of foregoing discussions, we are of the view that the Ld CIT(A) was justified in allowing the claim for deduction u/s 10AA of the Act.

13. The next issue relates to the estimation of profit from alleged Circular trading. The AO noticed that the assessee has undertaken repeated purchases and sales transactions with two companies, viz., M/s Yatee Traders P Ltd and M/s Shantranj Trading P Ltd. Those transactions are

called circular transactions and they are entered to boost the sales turnover, so that these companies can show robust picture before the banks and public. Accordingly, the AO took the view that the assessee would have incurred expenses in carrying out circular transactions and he estimated the same @ 1% of the value of circular transactions. It worked to Rs.3,07,33,089/- and the AO added the same to the total income of the assessee u/s 69C of the Act.

14. In the appellate proceedings, the Ld CIT(A) reduced the addition to 0.50% of the value of circular transactions. Both the parties are aggrieved.

15. The Ld A.R submitted that an identical addition was made in the hands of M/s Aspen International P Ltd, which is also alleged to have been involved in circular transactions. In the hands of above said concern also, the AO added 1% of the value of alleged circular transactions, which was reduced to 0.50% by Ld CIT(A). He submitted that the co-ordinate bench of Tribunal has reduced the estimate to 0.25% of the value of circular transactions in its order dated 28-03-2024 passed in ITA No.3465/Mum/2023 passed in the case of M/s Aspen International P Ltd. Accordingly, the Ld A.R prayed that the above said decision of co-ordinate bench may be followed in the instant case also.

16. We heard Ld D.R on this issue. On identical set of facts, the co-ordinate bench has reduced the addition to 0.25% of the value of alleged circular transactions. Accordingly, following the above said decision of the co-ordinate bench, we modify the order passed by Ld CIT(A) on this issue and direct the AO to reduce the addition to 0.25% of the value of alleged circular transactions.

17. In the result, the appeal of the assessee is allowed and the appeal of the revenue is dismissed.

Order pronounced in the open court on 18th June, 2024.

Sd/-

(SANDEEP SINGH KARHAIL)

JUDICIAL MEMBER

Mumbai, Date : 18th June, 2024

Vm

Copy to :

- 1) The Applicant
- 2) The Respondent
- 3) The PCIT/CIT concerned
- 4) The D.R, " F" Bench, Mumbai
- 5) Guard file

Sd/-

(B.R. BASKARAN)

ACCOUNTANT MEMBER

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai