

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "C", MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
AND SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 2010/M/2024 (A.Y. 2013-14)
ITA No. 2005/M/2024 (A.Y. 2014-15)
ITA No. 2217/Mum/2024 (A.Y. 2015-16)**

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| DCIT-5(2)(1), Mumbai | Vs. | Infinite Computer Solutions (India) Limited 155, Somdutt Chamber-II, R.K. Puram (Main), South West Delhi- 110066 PAN: AAACI 5145 D |
| (Appellant) | | (Respondent) |

**C.O. No.113/M/2024 (A.Y. 2013-14)
C.O. No.114/M/2024 (A.Y. 2015-16)
C.O. No. 115/M/2024 (A.Y. 2014-15)**

**(Arising out of ITA 2010, 2217, 2005/Mum/2024)
Assessment Year: 2013-14 to 2015-16**

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| Infinite Computer Solutions (India) Limited 155, Somdutt Chamber-II, R.K. Puram (Main), South West Delhi-110066 PAN: AAACI 5145 D | Vs. | DCIT-5(2)(1), Mumbai |
| (Appellant) | | (Respondent) |

Present for:

Assessee by : Shri Dharan Gandhi a/w Ms. Ritu Punjabi
Revenue by : Ms. Madhu Malati Ghosh, CIT/DR & Shri H.M.
Bhatta, Sr. DR

Date of Hearing : 05.09.2024
Date of Pronouncement : 18.11.2024

ORDER

PER BENCH:

All these three appeals of the revenue and cross-objection of the assessee are based on similar fact and identical issue therefore for the sake of convenience all these appeals are adjudicated together by taking ITA No. 2010/M/2024 as lead case and its findings will be applied to the other appeals wherever it is applicable.

ITA 2010/M/2024

“1. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was justified in allowing the excess deduction of Rs. 9,97,59,663/- holding that the allocation based on turnover is only a rough and ready presumptive basis and the same need not be resorted to when the actual figures are available, without appreciating the facts that the assessee has derived forex loss from its activity of SEZ businesses both Bangalore and Chennai and non SEZ business.

2. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was justified in allowing the excess deduction of Rs.9,97,59,663/- holding that the AO was not justified in allocating the Forex loss among the Units based on their turn over without appreciating the facts that non apportionment of foreign exchange loss to the SEZ units has resulted in excess deduction of Rs. 9,97,59,663/- w/s 10AA of the Act and such foreign exchange loss ought to be deducted from export turnover while computing deduction u/s 10AA of the Act as the export sales were from these units.

3. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was justified in allowing the excess deduction of Rs.9,97,59,663/- on the basis of documents submitted during the appellate proceedings without calling the remand report which mandated under Rule 46A of the Act.

4. The appellant prays that the order of the CIT(A) on the grounds be set aside and confirm the order of the AO.

5. The appellant craves leave to add, amend or alter all or any of the grounds of appeal.”

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2. In the case of the assessee, the original assessment u/s 143(3) of the Act was completed on 15.12.2016 determining total income at Rs. 55,05,99,440/- under normal and Rs. 121,96,73,982/- under MAT and the tax was computed under the provisions of MAT. The assessee company engaged in the business of computer software development and providing technical services. The case of the assessee was reopened by issuing of notice u/s 148 of the Act on 24.06.2021 and the AO has described the Audit Objection raised in this case as under:

| | <i>SEZ Chennai</i> | <i>SEZ Bangalore</i> | <i>Other non SEZ</i> | <i>Total export turnover</i> |
|------------------------------|-------------------------|---------------------------|--------------------------|------------------------------|
| <i>Export turnover</i> | <i>Rs. 23,01,90,180</i> | <i>Rs. 1,49,29,46,409</i> | <i>Rs. 149,68,59,006</i> | <i>Rs. 3,12,99,95,595</i> |
| <i>Foreign exchange loss</i> | | | | <i>Rs. 19,11,94,853</i> |

3. The AO pointed out that assessee has debited an amount of Rs. 19,11,94,853/- on account of foreign exchange loss to the consolidated profit and loss account and same was not apportioned to the SEZ, Chennai and SEZ, Bangalore. It was further stated that such foreign exchange loss ought to be deducted from export turnover while computing deduction u/s 10AA as the export sales were from this unit. The AO has given the working of foreign exchange loss to the SEZ Unit as under:

| | <i>SEZ Chennai</i> | <i>SEZ Bangalore</i> | <i>Other non SEZ</i> | <i>Total export turnover</i> |
|------------------------------|--------------------------------------|---|--------------------------|------------------------------|
| <i>Export turnover</i> | <i>Rs. 23,01,90,180</i> | <i>Rs. 1,40,29,46,409</i> | <i>Rs. 149,68,59,006</i> | <i>Rs. 3,12,99,95,595</i> |
| <i>Foreign exchange loss</i> | <i>Rs. 1,40,61,098</i> | <i>Rs. 8,56,98,565</i> | | <i>Rs. 19,11,94,853</i> |
| <i>Exchange loss</i> | <i>(19,11,94,853 23,0190,180</i> | <i>(19,11,94,853 1,40,29,46,409</i> | | |

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|--------------------|---|---|--|--|
| <i>apportioned</i> | <i>3,12,99,95,595 =1,40,61,098(A)</i> | <i>3,12,99,95,595 =8,56,98,565(B)</i> | | |
|--------------------|---|---|--|--|

4. The AO was of the view that non-apportionment of foreign exchange loss to the SEZ Unit has resulted in excess deduction under section 10AA of Rs. 997,59,663/- (14061098+85698565). On query, the assesses submitted that the assessee company maintained independent books of account of Bangalore non SEZ Unit, Chennai SEZ Unit & Bangalore SEZ Unit. All three units were audited by an independent Auditors who issued their Audit Report of its true and fair view under Company Act and also issued audit report under Rule 16D in Form No. 56F under Income Tax Act, 1961. Since the income was assessed based on above Audited accounts, therefore, there was no question of further allocation of loss on account of foreign exchange loss between the three units. The assessee submitted that as per the audited accounts followings were the exchange exchanges gain and loss:

| | <i>Gain Rs.</i> | <i>Loss Rs.</i> |
|--|-------------------|---------------------|
| <i>SEZ Chennai exchange gain</i> | <i>35,90,569</i> | |
| <i>SEZ Bangalore exchange gain</i> | <i>69,52,609</i> | |
| <i>Non SEZ Bangalore exchange gain</i> | <i>80,57,444</i> | <i>19,11,94,853</i> |
| <i>Total</i> | <i>186,00,622</i> | <i>19,11,94,853</i> |

5. The AO has not agreed with the submission of the assessee and stated that assessee has furnished only general reply but did not furnish any supporting documentary evidences to support that aforesaid loss pertains to only non SEZ unit and therefore stated that there is an escapement of income chargeable to tax amounting to Rs. 997,59,663/-. The AO further stated that non-apportionment of foreign exchange loss amongst various units resulted in excess deduction u/s 10AA of Rs.

997,59,663/- (14061098+85698565). Therefore, the AO has disallowed the excess deduction of Rs. 997,59,663/- and added to the total income of the assessee.

6. The assessee filed appeal before the ld. CIT(A). The ld. CIT(A) has allowed the appeal of the assessee.

7. Before us, during the course of appellate proceedings, the ld. Counsel filed factual paper book comprising copies of documents and details furnished before the lower authorities and contended that assessee had maintained separate books of account in respect of SEZ unit at Chennai and Bangalore and the AO was not justified in allocating the foreign exchange loss among the unit based on their turnover. He also submitted that in the original assessment as well as in the reassessment, the assessee has been assessed under MAT and the taxes have also been paid under MAT, therefore the question of income escaping does not arise.

8. On the other hand, ld. DR supported the order of lower authorities.

9. Heard both the sides and perused the material on record.

10. The assessee has filed complete details of foreign exchange gain and loss and it had maintained separate books of account in respect of the SEZ Unit at Chennai and Bangalore and these accounts were audited and based upon this the final accounts of the SEZ were drawn up. The ld. CIT(A) held that when actual figures in respect of foreign exchange gain in respect of two SEZ units were available there was no

need to allocate any further loss to the said units. The relevant extract of the Id. CIT(A) is as under:

“6.11 The appellant has filed complete details of Forex gain and loss during the course of appellate proceedings. The contention of the appellant that they maintain separate books of accounts in respect of the SEZ Units at Chennai and Bangalore, these accounts are audited and it is based upon these the final accounts of the SEZ are drawn up. It is from these that the profits derived by the individual SEZ are worked out. Further when actual figures in respect of Forex gains and in respect of the 2 SEZ Units are available there is no need to allocate any further loss to the said unit. The allocation based on turnover is only a rough and ready presumptive basis. The same need not be resorted to when the actual figures are available. Thus the AO was not justified in allocating the Forex loss among the Units based on their turnover. Thus the Ground of the appellant is allowed.”

11. The assessee had maintained separate books of account in respect of SEZ unit located at Bangalore and Chennai respectively. After considering the above material placed on record the action of the assessing officer in allocating the foreign exchange loss among the units based on the turnover of the respective units is not justified as the assessing officer neither controvert the relevant supporting material filed by the assessee in support of its claim nor brought any material on record to demonstrate that assessee had not maintained separate books of account for the respective units. Therefore, we do not find any reason to interfere in the decision of Id. CIT(A). Accordingly, all the grounds of appeal filed by the Revenue are dismissed. In the result, the appeal of the Revenue is dismissed.

ITA 2005/M/2024 (A.Y. 2014-15)

12. Since identical issue on similar fact we have adjudicated vide ITA No. 2010/M/2024 as supra in this order therefore applying the finding mutatis mutandis this appeal of the revenue is dismissed.

ITA 2217/M/2024 (A.Y. 2015-16)

13. Ground no. 1 & 2: Since identical issue and similar fact we have dismissed the appeal of the revenue vide ITA No. 2010/M/2024 therefore applying the finding mutatis mutandis the grounds of appeal of the revenue also dismissed.

14. **Ground no. 3: Whether the ld. CIT(A) was justified in allowing credit claim of Rs. 147,30,132/- u/s 90 of the Act.**

During the course of assessment, the assessee has claimed credit of Rs. 147,30,132/- u/s 90 of the I.T. Act. Since the assessee has failed to produce any documentary evidences in support of the taxes paid therefore assessing officer has disallowed the credit of Rs. 147,30,132/-. In this regard, during the course of appellate proceedings before the ld. CIT(A) assessee has submitted the relevant supporting documentary evidences in respect of deduction of tax in USA along with documentary evidence in form 1042-S issued by the Department of the Treasury, Internal Revenue Service. Since the ld. CIT(A) has allowed the foreign tax credit on the basis of specific evidences issued by the Department of Treasury Internal Revenue Service, USA, therefore, we do not find any infirmity in the decision of ld. CIT(A) without any adverse material

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brought on record. Therefore, this ground of appeal of the Revenue is dismissed.

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C.O. No. 115/M/2024

15. Assessee have filed the cross objection for the A.Y. 2013-14 to A.Y. 2015-16 on the validity of the re-assessment proceedings. Since we have dismissed all the three appeals filed by the revenue for the A.Y. 2013-14 to 2015-16 vide ITA No. 2010/M/2024, 2005/M/2024 & 2217/M2024 on merit as discussed supra in this order therefore the cross objection filed by the assessee for all the three year not required any adjudication and the same are dismissed as infructuous.

16. In the result, all the appeals of the revenue and all the cross-objections filed by the assessee are dismissed.

Order pronounced in the open court on 18.11.2024.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, Dated: 18.11.2024
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The DR

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By Order

Assistant Registrar
ITAT, Mumbai Benches, Mumbai