IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH: BANGALORE

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER

ITA No.1530/Bang/2024
Assessment Year : 2013-14

Infosys Limited Plot 44, Konappana Agrahara Hosur Road, Konappana Bangalore – 560100 Karnataka **PAN: AAACI4798L**	**Vs.**	Dy. Commissioner of Income Tax Circle – 3(1)(1) BMTC Building, 80 Feet Road Koramangala, Bangalore – 560095 Karnataka
APPELLANT		**RESPONDENT**

Assessee by	:	Sri Padam Chand Khincha – CA
Department by	:	Smt Srinandini Das – CIT - DR

Date of Hearing	:	09.05.2025
Date of Pronouncement	:	06.08.2025

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

This appeal at the instance of the assessee is directed against the order of the ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short "Ld.CIT(A)/NFAC] vide DIN & Order No. ITBA/NFAC/S/250/2024-25/1066771823(1) dated 16.07.2024 passed u/s.250 of the Income Tax Act, 1961 (in short "the Act") for the A.Y.2013-14.

2. The assessee has raised the following grounds in its appeal: -

> *"**1. General ground:***
>
> *1.1. The learned Commissioner of Income Tax (Appeals), Income Tax Department (hereinafter referred to as CIT (A) for short) has erred in passing the order under section 250 in the manner passed by him. The order so passed to the extent prejudicial to the appellant is bad in law and liable to be quashed.*

2. Ground relating to disallowance of deduction under section 10AA:

2.1. The learned Deputy Commissioner of Income Tax, Circle 3(1)(1), Bengaluru ('AO') and the CIT(A) have erred in not allowing the following incomes from profits of the business of SEZ units in computing deduction under section 10AA for the reason that the said claim had been raised for the first time during the course of proceedings giving effect to the Tribunal's order dated 09.01.2023.

i) Gain on forward contracts amounting to Rs. 68,52,83,845

ii) Interest income of Infosys Consulting India Limited pursuant to amalgamation amounting to Rs.2,16,673

iii) Interest on loan to subsidiaries amounting to Rs. 2,64,49,273

iv) Interest on deposits with banks and other institutions amounting to Rs.1656,82,88,192

2.2. The learned CIT(A) has erred in holding that the AO is not empowered to consider a fresh claim during the course of the proceedings giving effect to the Tribunal's order, as such claim was not subject matter of the order of the Tribunal.

2.3. The learned CIT(A) has erred in relying on section 80A(5) of the Act to deny the fresh claim to allow deduction under section 10AA in respect of interest income and gain on forward contracts, aggregating to Rs. 17,28,02,37,983.

2.4. On facts and circumstances of the case and law applicable, the appellant is entitled for the claim of deduction under section 10AA of the Act on the above incomes included in the profits of eligible SEZ units.

3. Prayer:

3.1. Based on the above grounds and other grounds adduced at the time of hearing, the appellant prays that the order passed under section 250 to the extent prejudicial to the appellant be quashed or in alternative the above grounds and relief prayed thereof be allowed."

3. Brief facts of the case are that assessee is an Indian Company engaged in the business of development and export of computer software. For the AY 2013-14, the original return of income was filed on 30.11.2013 declaring a total income of Rs. 8501,13,54,830/-. Further, the Revised return of income was filed on 31.03.2015 declaring a total income of Rs. 8456,46,03,950/-. Thereafter, the case of the assessee company was selected for scrutiny and the Assessing Officer (AO) passed the assessment order under section 143(3) of the Act on 29.12.2016. Various additions and disallowances were made in the assessment order resulting in an assessed

total income of Rs. 11407,97,47,950/-. Being aggrieved, the assessee filed an appeal before the ld. CIT(A)/NFAC on 17.01.2017 against the said order. The CIT(A)/NFAC passed an order on 21.12.2017, partly allowing the appeal. Again aggrieved by the order of the ld CIT(A), the assessee and the revenue filed the appeal before this Tribunal on 08.03.2018. The cross appeals were disposed of by the Tribunal on 09.01.2023 in ITA No 735/B/2018 and ITA No 809/B/2018, partly allowing the cross appeals for statistical purposes.

3.1. The assessee company thereafter filed a letter with the AO on 13.02.2023 requesting him to pass an order giving effect (OGE) to the order of the Tribunal. Subsequently, the assessee vide letter dated 27.12.2023 furnished the details requested by the AO for the purposes of passing the order. In the said letter, the assessee made a claim that deduction under section 10AA of the Act be allowed in respect of interest income and gains on forward contracts, aggregating to Rs. 17,28,02,37,983/-. The AO passed the order under section 143(3) read with section 254 of the Act on 29.12.2023. In the aforesaid order passed under section 143(3) r.w.s 254 of the Act, the AO recomputed the deduction under section 10AA of the Act after giving relief on various aspects as directed by the Tribunal. The claim raised by the assessee to allow deduction under section 10AA of the Act in respect of interest income and gains on forward contracts, aggregating to Rs. 17,28,02,37,983/- was not addressed by the AO while passing OGE.

3.2 Aggrieved by the said order, the assessee preferred an appeal before the ld. CIT(A)/NFAC. The ld. CIT(A) /NFAC passed the appellate order on 16.7.2024 by partly allowing the appeal directing the AO to compute deduction under section 10AA of the Act qua each unit individually and allowing for statistical purposes the assessee's grounds in relation to (i) foreign tax credit for disputed Australian tax, (ii) deduction under section 80JJAA and (iii) grant of interest under section 244A. The ld. CIT(A) /NFAC, however dismissed the grounds raised by the assessee in relation to claim of

deduction under section 10AA of the Act on interest income and gains on forward contracts, stating that the provisions of section 80A(5) of the Act does not entertain fresh claims being made at this stage of assessment. This was apart from the reason that no claim in this regard was made in the first round of proceedings.

4. Aggrieved by the above order of the ld. CIT(A) /NFAC order dated 16.7.2024, the assessee has filed the present appeal before this Tribunal.

5. The assessee has also filed the additional grounds of appeal at the time of hearing of the appeal with regard to the claim of deduction under section 37(1) of the Act in respect of foreign tax credit not eligible for relief under section 90 or 91 of the Act.

6. The ground No 1 is general in nature & does not require any adjudication.

7. The ground No 2 deals with eligibility of deduction under section 10AA of the Act in respect of gain on forward contracts and certain interest incomes pertaining to SEZ units established by the assessee for which a claim was made before the AO during the proceedings under section 143(3) read with section 254 of the Act for passing the order giving effect to ITAT order dated 9.1.2023.

7.1 During the year under consideration, the assessee earned, among others, the following incomes:

Particulars	**Amount (Rs.)**
Gain/(loss) on forward contracts	68,52,83,845
Interest income of Infosys Consulting India Limited pursuant to amalgamation	2,16,673
Interest on loan to subsidiaries	2,64,49,273
Interest on deposits with banks & other institutions	1656,82,88,192
Total	**1728,02,37,983**

The aforesaid incomes were offered to tax under the head 'Income from other sources' in the return of income filed. During the first round of proceedings before the AO, CIT(A) and ITAT, the assessee did not claim that deduction under section 10AA of the Act should be allowed in respect of the above incomes. Claim for deduction under section 10AA of the Act was made in respect of certain other incomes likes interest on GLES deposit and interest on employee loans. In the absence of any claim, the AO did not adjudicate on the question of allowing deduction under section 10AA of the Act in respect of incomes outlined in the table above. The deduction under section 10AA of the Act on such incomes did not form part of the proceedings before the ld. CIT(A) & ITAT, although other facets of 10AA of the Act deduction, including the eligibility of interest income under section 10AA of the Act, in respect of interest on GLES deposit & interest on loans to employees, was adjudicated in favor of the assessee.

7.2 During the second round of proceedings, the assessee made a claim of enhanced deduction under section 10AA of the Act before the AO, in respect of the above incomes on the basis of the full bench decision of the Hon'ble High Court of Karnataka in CIT v Hewlett Packard Global Soft Ltd [2017] 87 taxmann.com 182 vide letter dated 27.12.2023 [Placed at Page 459 of paper book]. The decision of the full bench of the Hon'ble Karnataka High Court was rendered on 30.10.2017. This decision was pronounced close to the order of the ld. CIT(A) /NFAC dated 21.12.2017, in the first round of proceedings.

7.3 In the impugned order of the AO dated 29.12.2023 giving effect to the Tribunal's directions, the Assessing Officer did not consider the aforesaid claim. There is even no discussion or finding on the aforesaid claim in the impugned order.

7.4 The CIT(A)/NFAC held that the fresh claim made by the assessee was not a subject matter of the Tribunal's order dated 9.1.2023. Hence, it cannot be entertained at this stage. The decisions relied on by the assessee before

the ld. CIT(A)/NFAC was differentiated by concluding that the said claim was not made during the first round of proceedings and further as per section 80A(5) of the Act, the assessee has failed to make the said claim in the return of income and therefore the same cannot be entertained.

7.5 To support the right of an assessee to make a fresh claim in the second round of proceedings, the AR relies on the decision of ITAT in the case of Geodis Overseas (P) Ltd v DCIT (2015) 53 taxmann.com 362 (Delhi-Trib). As regards the applicability of section 80A(5) of the Act, the AR relies on the decision of the ITAT in assessee's own case for AY 2016-17 in ITA No 962/B/2024 dated 13.11.2024 wherein it was held that section 80A(5) of the Act will not be applicable where deduction under section 10AA of the Act was claimed in the return of income but the said claim was sought to be revised upwards during the assessment proceedings. On the merits of the claim, the AR relied on the full bench decision of the Hon'ble Karnataka High Court in Hewlett Packard's case (supra).

7.6 The DR on the other hand relies on the findings of CIT(A).

8. We have considered the rival contentions and perused the material on record. Admittedly, in the present case, various incomes as per the table above aggregating to Rs. 1728,02,37,983 were offered to tax under the head 'Income from other sources' in the return of income filed by the assessee company. The assessee did not claim deduction under section 10AA of the Act in respect of these incomes. In the return of income, the claim of deduction under section 10AA of the Act was limited to interest and other incomes offered to tax as business income. Not having made a claim, the question of allowing deduction under section 10AA of the Act in respect of such income did not arise during the first round of proceedings before the AO, CIT(A) and ITAT.

8.1 The issue as to whether a new claim can be made during the second round of proceedings has been considered and decided in favour of the

Assessee by the co-ordinate bench in the case of Geodis Overseas (P) Ltd v DCIT (2015) 53 taxmann.com 362 (Delhi-Trib) wherein it was held as under-

"6. We are also alive to the fact that the insertion of rule 10 BA, particularly in view of recent Hon'ble Supreme Court's judgment in the case of CIT v. Vatika Townships (P.) Ltd. [2014] 367 ITR 466/49 taxmann.com 249, is required to be held as retrospective in effect. Going by this rule, as we noted in the case of Toll Global Forwarding (supra), the 50:50 business model, as is said to have been adopted by the assessee, would meet arm's length test. It thus appears to be free from doubt that 50:50 business model, as has been adopted by many assessees in logistics and freight forwarding industry, is, as per the recent developments in the legislation and jurisprudence in the transfer pricing, a vital factor in determining the arm's length pricing of assessee's international transactions. We have also noted that the assessee had specifically taken up the issue of appreciation of this unique 50:50 business model before the DRP in the assessment years 2007-08 and 2008-09. **As regards the assessment year 2006-07, it has been noted that the assessee's claim is that the assessee had pleaded for appreciation of this 50:50 business model, which is unique to the assessee's line of business activity, and when the Tribunal did not do so, the assessee even moved a miscellaneous petition under section 254(2), whatever be the inherent limitations of this provision, on that point. That aspect of the matter is, however, academic because whether or not such a miscellaneous petition is accepted or whether or not even such a point was specifically taken up in the first round of proceedings, the assessee does indeed, in our considered view, have a right to raise that aspect of the matter in the second round of proceedings before the Tribunal. In holding this view, we find support from a landmark decision of Hon'ble Bombay High Court, in the case of Inventors Industrial Corpn. Ltd.v.CIT [1992] 194 ITR 548, wherein speaking through Hon'ble Justice T D Sugla, who had also adorned the office of the President of this Tribunal for long years, noted that "the Calcutta High Court has taken a view, in the case of CIT v. Shree Ganesh Jute Mills Ltd. [1977] 109 ITR 562, that any new ground, not necessarily a ground pertaining to jurisdictional aspect, could be taken up for the first time before the Appellate Assistant Commissioner in the second round of proceedings" and that, ".....in the case of G M**

Contractor v Gujarat Electricity Board, AIR 1972 SC 792, at p 793, the Supreme Court has held as under: "It is stated that this ground goes to the very root of the matter but it was not raised before the High Court. The appellants objected to this ground being allowed to be taken up, but we consider that as this ground of goes to the very root of the matter, it should be allowed.....".So far as this particular case before Hon'ble Bombay High Court was concerned, it dealt with a jurisdictional issue being taken up in the second round of proceedings, but in the extended discussions contained in this erudite judgment, Hon'ble Court did specifically deal with non-jurisdictional issues as well, and recognized that even those aspects new grounds could probably be taken up in the second round of proceedings. When such are the views of Hon'ble Courts above, it would indeed be appropriate for us to be swayed by the pedantic issues being raised by the learned Departmental Representative- particularly in a situation in which we are dealing with an emerging area of tax laws where jurisprudence is still in early stages of development, and in a situation in which the plea has been raised due to subsequent developments in legislation and jurisprudence".

7. *In view of the above discussions, as also bearing in mind entirety of the case, we deem it fit and proper to admit the additional ground of appeal in all these three appeals.*

8. *Even as we admit the additional grounds of appeal, we are alive to the fact that all the related aspects of the matter have been examined at the assessment stage. We, therefore, consider it appropriate to remit the matter to the assessment stage for examination of the plea raised by way of the additional ground of appeal as set our earlier in this order, and for examination of all the related facts, as may be necessary, relating to the said ground of appeal."*

8.2 In reaching such a conclusion, the Tribunal relied upon the decision of the Hon'ble Calcutta High Court in a tax matter and decision of the Hon'ble Supreme Court in a non-tax matter. In view of the decision of the

coordinate bench, an assessee can put forth claims in the second round of proceedings even though such claim had not been made in the first round.

8.3 For the AY 2013-14, the Revenue, in the first round of appeal before the ITAT, had challenged the reliance by the ld. CIT(A)/NFAC on the Hon'ble Karnataka High Court's decision in the case of Wipro Limited v. DCIT (ITA No. 879.2008), in adjudicating the deduction under section 10AA. The ITAT's decision is at page 154 of the paper book, with the Revunue appeal discussion commencing from page 214. The CIT(A)/NFAC, following the decision of the Hon'ble Karnataka High Court in Wipro's case, held that the company is entitled to the deduction. The department had also objected to the reliance on the same decision in granting relief under section 90 on incomes which were exempt under section 10AA of the Act. Both these facets formed part of a common ground (Ground no 4). The department, in another ground (Ground no 5), challenged the grant of deduction under section 10AA of the Act, in respect of pure onsite revenue. Before the ITAT, it was argued by the assessee's counsel that ground no 4 is vague i.e., it does not explicitly state the ground which the department is urging. The ITAT proceeded to dispose the ground without adverting to the vagueness as urged.

8.4 The background of facts with respect to interest on GLES deposit, interest on employee loans & incentive from airlines, was recorded by the ITAT. The ITAT upheld the reliance on Wipro's case (supra) in disposing off the entire ground 4. There are no independent reasons of the ITAT as regards the interest income & 10AA deduction. As Wipro's case was relied upon, which the department also believed covered both the issues, it was logical for the assessee company to believe that the said case would confer it the benefit sought for. This was also the belief of the AO, in the OGE to the ITAT's order, where the 10AA deduction was granted in respect of interest on GLES deposits, interest from employee loans, sale of scrap and incentive received from airlines. The OGE is placed at page 39 of the appeal

set with the relevant findings at page 43. As regards the claim of deduction under section 10AA of the Act with respect to pure onsite revenue (Ground No 5), the matter was referred back to the AO "to verify the documents filed by the Assessee and consider the claim according to the law".

8.5 To reiterate, the aspect of 10AA deduction with reference to onsite revenue, was remanded to the AO. There were many other grounds which were remanded to the AO. The directions of remand the ITAT at pages 138, 170, 175 and 182, may be referred to in this connection. Any adverse conclusion on these issues would go to enhance the income, on which as a logical consequence and as a result of the Board circular no. 37 of 2016, would have meant an enhanced deduction under section 10AA of the Act. The aspect of deduction under section 10AA of the Act was therefore not a closed but a live issue.

8.6 More particularly the full bench decision of the Karnataka High Court in the case of Hewlett Packard's case (supra), constituted the base of the claim made in the OGE proceedings to give effect to the Tribunal's order. The decision was rendered about 50 days prior to the order of CIT(A)/NFAC in the assessee's case. The fact of the 10AA deduction was a live issue before the AO, the assessee could have raised a fresh ground. The AO, in the OGE, did grant 10AA benefit on certain interest incomes. The claim of the assessee was to seek a deduction on certain other similar interest & other incomes in respect of which no claim for deduction under section 10AA had originally been made.

8.7 It may also be noticed that the full bench High Court decision in Hewlett Packard's case (supra), upheld 10A benefit on interest from banks & from subsidiaries. Section 10AA, in its scope and formula to give effect to the deduction, is similar to section 10A. The memorandum explaining the provisions of the Finance Bill, 2017, confirms this. Being a decision of the **binding High Court**, the ratio laid down in Hewlett Packard's case, has to be given effect to. The Supreme Court decision in the case of ACIT, Rajkot

vs. Saurashtra Kutch Stock Exchange Ltd [2008] 173 Taxman 322 (SC) held that an order merits rectification to give effect to a High Court decision. In such circumstances, it would not be out of place to permit the assessee company to raise such a claim to the fresh proceedings. The claim was a purely legal one. The facts, being the details of income, are already on record. A fresh investigation into the facts is unnecessary.

8.8 The Karnataka High Court in the Full bench decision has held that interest income from fixed deposits and staff loans are eligible for deduction under section 10A. It was held that **section 10A and 10B are special provisions and complete code in themselves and deals with profits and gains derived by the assessee of a special nature and character like 100% EOUs situated in SEZ, STPI etc**. It was held that **dedicated nature of business or their special geographical locations in STPI or SEZs. etc. makes them a special category entitled to 100% deduction, 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.** It was held that **where the entire profits and gains of the entire undertaking making 100% exports of articles including software, 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**. Relevant extracts from the decision is as under-

*"**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 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. .....

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 an 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."

8.9 The Hon'ble Karnataka High Court in its full bench decision affirmed the decision of the division bench in CIT v. Motorola India Electronics (P.) Ltd. [2014] 46 taxmann.com 167, that profits of the business of the undertaking which forms the basis for 10A deductions, includes incidental incomes derived from the business of the undertaking. In Motorola's case, the benefit of 10A deduction was given to interest of bank deposits, interest from sister concerns, as the funds for such purposes were generated from the business of the export of computer software. The deduction under section 10AA is similar to deduction under section 10A and thus in our opinion the judgements in the above cases will squarely apply.

8.10 The assessee also relies on the decision of the Karnataka High Court in its own case for the AY 2005-06 in ITA No. 348, 349 of 2019 decision dated 22.11.2022 wherein following the full bench decision, deduction under section 10A was allowed in respect of rental income from Infosys BPO Ltd and BSNL Chennai. [Placed at page 611-622 of case law compilation]. Similarly the decision of this Tribunal in assessee's own case for the AY 2014-15 and AY 2015-16 is relied on wherein deduction under section 10AA of the Act was allowed on interest and other incomes.

8.11 The Full bench of the Hon'ble Karnataka High Court endorsed the view that the interest income cannot be divorced from the profits & gains derived by the undertaking and cannot be taxed separately under income from other sources (Para 37). Therefore, the offering of the various incomes by the assessee as income from other sources should not come in the way of putting forth a claim of deduction.

8.12 As regards the allowability of deduction under section 10AA of the Act in respect of gain on foreign exchange forward contracts, the assessee relied on the decisions of the Hon'ble Bombay High Court in CIT v Gem Plus Jewellery India Ltd [2011] 330 ITR 175 (Bom) and CIT v Cognizant Technology Solutions India P Ltd [2023] 151 taxmann.com 451 (Mad) – SLP

dismissed by the Hon'ble Supreme Court, reported in 151 taxmann.com 402.

8.13 Further, the Apex Court in National Thermal Power Corporation v. CIT [1998] 229 ITR 383 held that the purpose of proceedings before various authorities is to assess **correctly the tax liability of an assessee** in accordance with law. If as a result of a judicial decision given, it is noticed that a permissible deduction is denied, then the assessee should be permitted to raise such a ground for the first time before the Tribunal. The relevant facts however should be on record for this purpose. The Tribunal should not be prevented from considering questions of law, although not raised earlier (para 5 of the SC order). This was also the ratio of the Hon'ble Supreme Court in its earlier decision in Jute Corporation's case (187 ITR 688). In this case, the Apex Court had held that change of circumstances or law could justify the raising of a fresh plea (Para 6 of the decision). The decision of the jurisdictional High Court, particularly of a full bench which are binding on us, would constitute change of law meriting the raising of a fresh claim.

8.14 Thus, there is no merit in the contention of the CIT(A)/NFAC that a new claim cannot be entertained during the second round of proceedings. The assessee was justified in making such new claim during the second round of proceedings and the same ought to have been examined by the AO. The issue of an additional claim of deduction appears to be an intricate one. Yet, in the facts prevalent in this case, the aspect of 10AA deduction continues to be alive, basis the ratio of the full bench decision in Hewlett Packard's case. In view of the above, We allow this ground of the appeal of the assessee.

8.15 However, the AO has not adjudicated with regard to allowability of deduction under section 10AA of the Act in respect of interest incomes and gain on forward contracts. In view of the same, the AO is directed to examine, verify and decide the claim of deduction under section 10AA of the

Act in respect of interest incomes and gain on forward contracts as per the table at page 3 (supra) in accordance with the decision of the Full bench decision of the Karnataka High Court in the case of CIT v Hewlett Packard Global Soft Ltd [2017] 87 taxmann.com 182, decision of the Karnataka High Court and this Tribunal in Appellant's own case for AY 2014-15 & 2015-16 and other decisions of Bombay and Madras High Court in respect of deduction under section 10AA on gain on foreign exchange fluctuation gains.

9. As regards the applicability of section 80A(5) of the Act, the said provision reads as under -

"Where the assessee fails to make a claim in his return of income for any deduction under section 10A or section 10AA or section 10B or section 10BA or under any provision of this Chapter under the heading "C.—Deductions in respect of certain incomes", no deduction shall be allowed to him thereunder."

9.1 In the present case, it is an undisputed fact that the assessee made a claim for deduction under section 10AA of the Act in the return of income and the AO has also adjudicated and allowed the said claim in the impugned order with certain variations. During the second round of proceedings before the AO, the assessee additionally sought deduction under section 10AA of the Act in respect of the incomes detailed in the table above, thereby making a claim for enhanced deduction under section 10AA.

9.2 The issue as to whether section 80A(5) of the Act apply for revised claims made before the income tax authorities was considered by the Delhi High Court in PCIT v Oracle (OFSS) BPO Services Ltd [2019] 102 taxmann.com 396 and it was held as under-

"21. *Sub-section 5 to Section 80A states that if assessee has failed to make its claim on return under 10AA or 10B or any other provisions of Chapter VIA, no deduction*

shall be allowed to him thereunder. This bars and prohibits the assessee from claiming the deduction under Sections 10A and 10B and Chapter VIA if no such claim was made in the return of income. It is also mandatory that the return of income for claiming such deduction should be filed within the time stipulated under Section 139 (1) of the Act, as was held in the case of Nath Bros. Exim International Ltd. (supra). In the said case the assessee in the return for the assessment year 2007-08 had not claimed any exemption under Section 10B of the Act. This deduction was claimed for the first time in the revised return. On being denied this claim, constitutional vires of Sub-section 5 to Section 80A, as inserted by Finance Act, 2009 and 4th proviso of Section 10B (1) of the Act, were challenged. The challenge was rejected by the Division Bench of this Court holding that the amendment made cannot be faulted and quashed on the ground that it was discriminatory, arbitrary, unreasonable and violative of Article 14, observing that it was within the legislative domain to prescribe the limitation period and also stipulate that the assessee to claim deduction must file returns during the limitation period, so as to enable the Department to take up these cases for scrutiny assessment. Plea of arbitrariness was rejected. The decision and ratio is distinguishable as the respondent-assessee had claimed deduction under Section 10A of the Act in the return of income filed within the limitation period. It was, therefore, not a new claim. Question of revision of deduction was not the issue and question raised and answered in Nath Brothers Exim International Ltd.'s case (supra).

***22.** Our attention was, however, drawn to the observations of the Division Bench that the objective behind the amendment was to defeat multiple claims of deduction and ensure better compliance. Certainly, the amended provisions ensure better compliance of the statutory provisions. Reference to the expression 'multiple claims of deduction' would be with reference to the stipulation that deduction should be claimed under a particular provision and it cannot be shifted and treated as deduction claimed under the other provision. Language of Sub-section 5 to Section 80 A does not state that the deduction once claimed under a particular section cannot be corrected and modified before the Assessing Officer. Indeed, the Assessing Officer can examine the claim for deduction and can make adjustment/disallowance. We would not read in the amended provision, a stipulation barring and restricting the assessee from revising the computation/claim for deduction made in accordance with Section 80A (5) of the Act."*

9.3 The above decision was followed by the ITAT in assessee's own case for AY 2016-17 in ITA No 962/Bang/2024 decision dated 13.11.2024 wherein under similar facts and circumstances the assessee offered certain types of interest incomes as income from other sources in the return of income, and did not claim deduction under section 10AA of the Act thereon in the return of income but made a claim of deduction under section 10AA of the Act thereon before the AO at the time of assessment. The AO rejected the said claim for the reason that the said claim was not made in the return of income and relied on the decision of the Supreme Court in the case of *Goetze (India) Ltd Vs. CIT [2006] 284 ITR 323*. The CIT(A)/NFAC rejected the said claim for a different reason by relying on section 80A(5) of the Act and by concluding that said claim was not made in the return of income and hence not allowable as per section 80A(5) of the Act. The Tribunal relied on the above decision and held as under-

"19.2 In view of the above, we hold that the assessee cannot be denied the benefit of exemption for the revised claim during the assessment proceedings by invoking the provisions of section 80A(5) of the Act.

19.3 It is also pertinent to note that the similar claims were also made by the assessee in the assessment years 2017-18 and 2018-19, which were allowed by the ld. CIT(A) vide order dated 28.2.2023 and 13.3.2023 and the revenue has not challenged the same. Nevertheless, the ld. CIT(A) has not verified the claim made by the assessee u/s 10AA of the Act for the items of income discussed above on merit. Therefore we are inclined to set aside the issue to the file of the ld. CIT(A) for fresh adjudication as per the provisions of law and in that light of the discussions stated above. Hence, the ground of appeal of the assessee is hereby partly allowed for statistical purposes."

9.4 In view of the above, section 80A(5) of the act cannot be applied for rejecting the claim made by the assessee before the AO during the second round of proceedings for allowing deduction under section 10AA of the Act in respect of interest incomes and gain on forward contracts as per the table

given above. The said claim was for an **enhanced deduction**, the base claim already having been made. **This ground of the assessee is therefore allowed**.

10. The assessee has filed the additional grounds of appeal at the time of hearing of the appeal with regard to the claim of deduction under section 37(1) of the Act in respect of foreign taxes paid amounting to Rs. 9,67,76,097/- which is not eligible for relief under section 90 or 91 of the Act. In its petition, assessee relied on the various decisions in support of the argument that this a pure question of law and hence can be admitted. The assessee has also relied on the decision of Bombay High Court in the case of Reliance Infrastructure Ltd [2016] 76 taxmann.com 257 which was followed by this Tribunal in assessee's own case for the earlier years and subsequent years to justify the allowability of deduction under section 37(1) of the Act in respect of foreign taxes not eligible for relief under section 90 and 91 of the Act.

10.1 The ld. DR strongly objected to the admission of additional grounds of appeal.

10.2 The additional ground on allowability of deduction under section 37(1) of the Act in respect of foreign taxes paid which is not eligible for relief under section 90 or 91 of the Act is a pure legal ground. The quantum of taxes paid overseas is available on record. The relief under section 90 has been claimed and allowed. It is only in respect of the quantum of overseas taxes paid, but not qualifying for relief under section 90, that the claim of deduction under section 37 is now being made. The facts being on record, and the claim being purely legal in nature, merits admission for adjudication. However, the additional ground of appeal needs verification and examination by the AO.

10.3 This Tribunal in Appellant's own case for the AY 2014-15 and AY 2015-16 in ITA Nos 125, 136, 226 and 227/Bang/2019 decision dated

31.1.2023 has remanded the issue of deduction under section 37 of the Act in respect of state taxes paid outside India to the file of the AO for fresh examination of facts and the AO was directed to keep in mind the ratio laid down by the Hon'ble Bombay High Court in the case of Reliance Infrastructure Ltd (supra) which is followed in the decision of the coordinate bench in the case of Onmobile Global Ltd. v ACIT [IT(TP)A Nos. 139 & 2560/Bang/2019 dated 10.08.2022].

10.4 Respectfully following the same, the additional ground of appeal in respect of the claim of deduction under section 37(1) of the Act in respect of foreign taxes paid amounting to Rs. 9,67,76,097/- which is not eligible for relief under section 90 or 91 of the Act, is remanded to the file of the AO for fresh examination and verification. The AO is directed to decide the said claim in the light of the decisions in the case of Reliance Infrastructure Ltd [2016] 76 taxmann.com 257 (Bom), Onmobile Global Ltd. v ACIT [IT(TP)A Nos. 139 & 2560/Bang/2019 dated 10.08.2022] which were followed in assessee's own case for the AY 2014-15 and AY 2015-16. Accordingly, this ground of the assessee is allowed for statistical purposes.

11. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 6th Aug, 2025

Sd/-	**Sd/-**
(Waseem Ahmed)	**(Keshav Dubey)**
Accountant Member	**Judicial Member**

Bangalore,
Dated: 6th August, 2025.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5 Guard file

By order

Asst. Registrar,
ITAT, Bangalore.