

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCH ' A '**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER AND  
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

<b>IT(T.P)A No. &amp; Asst. Year</b>	<b>Appellant</b>	<b>Respondent</b>
235/Bang/2014 2009-10	Dy. Commissioner of Income Tax, Circle 12(1), Bangalore.	M/s. Mphasis Limited, 6 <sup>th</sup> Floor, A Block, Bagmane Technology Park, Byrasandra, C.V.Raman Nagar, Bangalore-560 093
242/Bang/2014 2009-10	M/s. Mphasis Limited, Bangalore-560 093	Addl. Commissioner of Income Tax, Range 12, Bangalore.

Assessee By : None.

Revenue By : Shri Kamaladhar, Standing Counsel.

Date of Hearing : 28.09.2016.

Date of Pronouncement : 30.09.2016.

**O R D E R**

**Per Shri Vijay Pal Rao, J.M. :**

These cross appeals are directed against the assessment order dt.31.1.2014 passed under Section 143(3) r.w.s. 144C of the Income Tax Act, 1961 (in short 'the Act') in pursuant to the directions of Dispute Resolution Panel ('DRP') dt.30.12.2013 for the Assessment Year 2009-10.

2. The revenue has raised the only issue regarding exclusion of reimbursement of specific expenses both from export turnover as well as from total turnover for the purpose of computation of deduction under Section 10A/10B of the Act.

3. None has appeared on behalf of the assessee when these appeals were called for hearing despite the assessee caused his appearance on the earlier date of hearing. Accordingly, we propose to hear and dispose of the appeals ex-parte.

4. We have heard the learned Departmental Representative and perused the relevant material on record. On perusal thereof we find that the issue before us for adjudication i.e. if expenditure incurred for the purpose of reimbursement of expenses is to be reduced from export turnover an equal amount should also be reduced from total turnover while computing the deduction under section 10A of the Act, is covered in favour of the assessee by the decision of the Hon'ble Karnataka High Court in the case of Tata Elxsi Ltd. (supra). In this order, the Hon'ble Court held –

*“ The Bombay High Court had an occasion to consider the earning of the word ‘total turnover’ in the context of section 10A, in the case of CIT Vs. Gem Plus Jewellery India Ltd. (2011) [330 ITR P. 175 (Bom)] (2010-TIOL-456-HC-MUM-IT). Interpreting sub-section (4) of section 10A, it is held as under :*

*“Under sub-section (4) the proportion between the export turnover in respect of the articles or things, or as the case may be, computer software exported, to the total turnover of the business carried over by the undertaking is applied to the profits of the business of the undertaking in computing the profits of the business of the undertaking in computing the profits derived from export. In other words the profits of the business of the undertaking are multiplied by the export turnover in respect of the articles, things or, as the case may be, computer software and divided by the total turnover of the business carried on by the undertaking. The formula which is prescribed by sub-section (4) of section 10A is as follows :*

<i>Profits derived from export of articles or things or computer software.</i>	<i>Profits of the business of the undertaking.</i>	<i>Export turnover in respect of the articles or things or computer software.</i>
<i>Total turnover of the business carried on by the undertaking</i>		

*The total turnover of the business carried on by the undertaking would consist of the turnover from export and the turnover from local sales. The export turnover constitutes the numerator in the formula prescribed by*

*sub-section (4). Export turnover also forms a constituent element of the denominator in as much as the export turnover is a part of the total turnover. The export turnover, in the numerator must have the same meaning as the export turnover which is constituent element of the total turnover in the denominator. The legislature has provided a definition of the expression "export turnover" in Expln.2 to s.10A which the expression is defined to mean the consideration in respect of export by the undertaking of articles, things or computer software received in or brought into India by the assessee in convertible foreign exchange but so as not to include inter alia freight, telecommunication charges or insurance attributable to the delivery of the articles, things or software outside India. Therefore in computing the export turnover the legislature has made a specific exclusion of freight and insurance charges. The submission which has been urged on behalf of the revenue is that while freight and insurance charges are liable to be excluded in computing export turnover, a similar exclusion has not been provided in regard to total turnover. The submission of the revenue, however, misses the point that the expression "total turnover" has not been defined at all by Parliament for the purposes of s.10A. However, the expression "export turnover" has been defined. The definition of "export turnover" excludes freight and insurance. Since export turnover has been defined by Parliament and there is a specific exclusion of freight and insurance, the expression "export turnover" cannot have a different meaning when it forms a constituent part of the total turnover for the purposes of the application of the formula. Undoubtedly, it was open to Parliament to make a provision which has been enunciated earlier must prevail as a matter of correct statutory interpretation. Any other interpretation would lead to an absurdity. If the contention of the Revenue*

were to be accepted, the same expression viz. 'export turnover' would have a different connotation in the application of the same formula. The submission of the Revenue would lead to a situation where freight and insurance, though these have been specifically excluded from 'export turnover' for the purposes of the numerator would be brought in as part of the 'export turnover' when it forms an element of the total turnover as a denominator in the formula. A construction of a statutory provision which would lead to an absurdity must be avoided."

The Special Bench of the Tribunal, in the case of ITO Vs. Sak Soft Ltd. (2009) 313 ITR (AT) 353 (Chennai) (SB) (2009-TIOL-187-ITAT-MAD-SB) also had an occasion to consider the meaning of the word 'total turnover'. After referring to the various judgments of the High Court as well as the Supreme Court held as under :

"53. For the above reasons, we hold that for the purpose of applying the formula under sub-section (4) of section 10-B, the freight, telecom charges or insurance attributable to the delivery of articles or things or computer software outside India or the expenses, if any, incurred in foreign exchange in providing the technical services outside India are to be excluded, both from the export turnover and from the total turnover, which are the numerator and the denominator respectively in the formula....."

The formula for computation of the deduction under section 10A would be as under :

$$\text{Profits of the business} \times \frac{\text{export turnover}}{\text{Total turnover}}$$

From the aforesaid judgments, what emerges is that, there should be uniformity in the ingredients of both the numerator and the denominator of the formula, since

*otherwise it would produce anomalies or absurd results. Section 10A is a beneficial section. It is intended to provide incentives to promote exports. The incentive is to exempt profits relatable to exports. In the case of combined business of an assessee, having export business and domestic business, the legislature intended to have a formula to ascertain the profits from export business and domestic business, the legislature intended to have a formula to ascertain the profits from export business by apportioning the total profits of the business on the basis of turnovers. Apportionment of profits on the basis of turnover was accepted as a method of arriving at export profits. In the case of section 80HHC, the export profit is to be derived from the total business income of the assessee, whereas in section 10A, the export profit is to be derived from the total business of the undertaking. Even in the case of business of an undertaking, it may include export business and domestic business, in other words, export turnover and domestic turnover. The export turnover would be a component or part of a denominator, the other component being the domestic turnover. In other words, to the extent of export turnover, there would be a commonality between the numerator and the denominator of the formula. In view of the commonality, the understanding should also be the same. In other words, if the export turnover in the numerator is to be arrived at after excluding certain expenses, the same should also be excluded in computing the export turnover as a component of total turnover in the denominator. The reason being the total turnover includes export turnover cannot be different. Therefore, though there is no definition of the term 'total turnover' in section 10A, there is nothing in the said section to mandate that, what is excluded from the numerator that is export turnover would nevertheless*

*form part of the denominator. Though when a particular word is not defined by the legislature and an ordinary meaning is to be attributed to the same, the said ordinary meaning to be attributed to such word is to be in conformity with the context in which it is used. When the statute prescribes a formula and in the said formula, 'export turnover' is defined, and when the 'total turnover' includes export turnover, the very same meaning given to the export turnover by the legislature is to be adopted while understanding the meaning of the total turnover, when the total turnover includes export turnover. If what is excluded in computing the export turnover is included while arriving at the total turnover, when the export turnover is a component of total turnover, such an interpretation would run counter to the legislative intent and impermissible. If that were the intention of the legislature, they would have expressly stated so. If they have not chosen to expressly define what the total turnover means, then, when the total turnover includes export turnover, the meaning assigned by the legislature to the export turnover is to be respected and given effect to, while interpreting the total turnover which is inclusive of the export turnover. Therefore the formula for computation of the deduction under section 10A, would be as under :*

*Profits of the business of the undertaking x Export turn  
over*

*(Export turnover + domestic turn over)*

*Total Turnover*

*11. In that view of the matter, we do not see any error committed by the Tribunal in following the judgments rendered in the context of section 80HHC in interpreting section 10A when the principle underlying both these provisions is one and the same. Therefore, we do not see*

*any merit in these appeals. The substantial question of law framed is answered in favour of the assessee and against the revenue.”*

Respectfully following the aforementioned decision of the Hon’ble High Court of Karnataka in the case of Tata Elxsi Ltd. (supra), we uphold the order of the learned CIT (Appeals) in directing the Assessing Officer to reduce the expenditure incurred from both export turnover and total turnover for the purpose of computing the deduction under section 10A of the Act in the case on hand. Consequently this ground raised by revenue is dismissed.

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5. None has appeared on behalf of the assessee when this appeal was called for hearing despite the assessee caused his appearance on the earlier hearing. Thus it is apparent that the assessee is not interested in prosecuting the present appeal.

6. In view of the above, we are of the opinion that the assessee is not seriously interested in pursuing the appeal in the case on hand. The law aids those who are vigilant, not those who sleep upon their rights. This principle is embodied in well known dictum, “VIGILANTIBUS ET NON

DORMIENTIBUS SERVIUNT LEGES". Considering the facts and circumstances of the case and keeping in view the provisions of Rule 19(2) of the Income Tax Appellate Tribunal Rules as were considered in the case of CIT Vs. Multiplan India Ltd. (38 ITD 320) (Del), we dismiss the appeal for non-prosecution.

7. In the result, the appeals of revenue as well as assessee are dismissed.

Order pronounced in the open court on 30th Sept., 2016.

Sd/-  
**(S. JAYARAMAN)**  
Accountant Member

Sd/-  
**(VIJAY PAL RAO)**  
Judicial Member

\*Reddy gp

Copy to :

1. Appellant
2. Respondent
3. C.I.T.
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard File.

By Order

Asst. Registrar, ITAT, Bangalore