

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, बी, मुंबई ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "B", MUMBAI**

श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं

श्री राजेश कुमार, लेखा सदस्य, के समक्ष

**Before Shri Joginder Singh, Judicial Member, and
Shri Rajesh Kumar, Accountant Member**

**ITA NO.6525/Mum/2012
Assessment Year 2009-10**

Income Tax Officer-9(2)(3), Room No.225, 2 nd floor, Aayakar Bhavan, M.K.Road Mumbai-400020	बनाम/ Vs.	M/s Neural Technologies & Software Pvt. Ltd. 3405/C, Oberoi Woods Mohand, Gokhale Road, Goregaon (E), Mumbai-400063
(राजस्व /Revenue)		(निर्धारिती /Assessee)
PAN. No.AABCN1689E		

**C.O. No.276/Mum/2014
(Arising out of ITA NO.6525/Mum/2012)
Assessment Year 2009-10**

M/s Neural Technologies & Software Pvt. Ltd. 3405/C, Oberoi Woods Mohand, Gokhale Road, Goregaon (E), Mumbai-400063	बनाम/ Vs.	Income Tax Officer-9(2)(3), Room No.225, 2 nd floor, Aayakar Bhavan, M.K.Road Mumbai-400020
(निर्धारिती /Assessee)		(राजस्व /Revenue)
PAN. No.AABCN1689E		

राजस्व की ओर से / Revenue by	Shri Vijay Kumar Soni-DR
निर्धारिती की ओर से / Assessee by	Shri Bhardesh Doshi

सुनवाई की तारीख / Date of Hearing :	19/10/2015
आदेश की तारीख /Date of Order:	19/10/2015

आदेश / O R D E R

Per Joginder Singh (Judicial Member)

The Revenue is aggrieved by the impugned order dated 31/08/2012 of the ld. First Appellate Authority, Mumbai. The assessee has also preferred Cross objection.

2. First, we shall take up appeal of the Revenue, wherein, only ground agitated by the department pertains to deleting the disallowance of deduction u/s 10B of the Income Tax Act, 1961 (hereinafter the Act) amounting to Rs.1,70,59,298/- more specifically, when the assessee did not have approval of prescribed authority as required by CBDT and the green card issued by Chairman Inter Ministerial Standing Committee (IMSC), as software technology park scheme, is merely a concession provided by the Government to the units set up on STP Zones to avail certain facilities on priority basis but does not have any bearing with the allowance and/or disallowance of deduction u/s 10B of the Act.

2.1. During hearing, the ld. DR, Shri Vijay Kumar Soni, advanced his arguments, which are identical to the ground raised. On the other hand, Shri Badresh Doshi, ld. counsel for the assessee, defended the conclusion arrived at in the impugned order by contending that the issue in hand is covered in favour of the assessee by the decision from Hon'ble jurisdictional High Court in CIT vs Western Outdoor Interactive Pvt. Ltd. (ITA Nos.1150, 1200 and 1269 of 2010)

order dated 14/08/2012 (copy supplied by the assessee). It was also contended that for A.Y. 2008-09, identical deduction was granted to the assessee.

2.2. We have considered the rival submissions and perused the material available on record. The facts, in brief, are that the assessee, a private limited company, is engaged in the business of software development, registered with software technology park of India (STPI), involved in software development with very high analytical mathematical and statistical contents. The assessee company develops computer software broadly in the areas of business financial services and insurance sector in market risk management, credit risk management, operational risk management, software for implementing measuring, controlling, reporting and managing risk and regulatory compliance with the Basel-2 capital adequacy accord, production and implementation of simulation software for artificial FX market creation for training purposes with an object to teach the hedging strategy and managing FX exposure in real time, development of computer software for risk management of treasury activities and used several artificial intelligent tools and technologies such as neural networks, genetic algorithms, bionomic algorithms and other machine learning techniques. As per the assessee, the Managing Director has Doctoral degree in adaptive estimation and neural learning procedures from Indian Institute of Technology, Mumbai and had been responsible for applying several cutting as

technologies in the area of risk management/exposure management. The assessee, during the year had turnover of Rs.3,14,83,809/- and profit of business was Rs.1,52,56,117/-. The 1d Assessing Officer disallowed Rs.1,70,59,298/-, claimed as deduction u/s 10B of the Act with a remark that the assessee company is not approved by the prescribed authority, as required for eligibility for deduction u/s 10B of the Act and merely indulge into normal business of export of computer software. The stand of the assessee was that the approval of the unit are registered in STP/ESTP, granted by the designated Officer from the ministry of communication & technology instead of Board of approval.

2.3. On appeal, before the 1d. First Appellate Authority, the claimed deduction was granted to the assessee against which, the Revenue is aggrieved and is in appeal before this Tribunal.

2.4. If the observation made in the assessment order, leading to addition made to the total income, conclusion drawn in the impugned order, material available on record, assertions made by the 1d. respective counsel, if kept in juxtaposition and analyzed, under the facts narrated hereinabove, we note that even before the 1d. Assessing Officer, necessary details like STP registration, green card, agreement of software export with STPI, quarterly/annual performance report were furnished by the assessee. The

Assessing Officer has not disputed the activities of software development of the assessee. Certain additional evidences were filed before the 1st First Appellate Authority in the form of Circulars, notifications, letter with respect to delegation of power to the Director STPI/IMSC with respect to granting permission, which were forwarded for the comments of the AO under Rule 46A of the Rules. The Assessing Officer was of the view that green card is merely a concession, provided by the Government, to set up units in STP zones to avail certain facilities on priority basis and was of the view that for claiming deduction u/s 10B, the assessee is expected to obtain approval of CEO of STPI, as required in CBDT instructions dated 18/10/2010. The assessee filed further communication, pursuant to the report of the Assessing Officer. Again, remand report was sought from the Assessing Officer. Admittedly, there is no dispute with respect to fulfillment of other conditions as provided u/s 10B of the Act for claiming such deduction. The stand of the assessee is that automatic route is available to the units, which are having investment less than 100 millions as is the case of the assessee, therefore, the approval by the Director of STPI is sufficient to claim the deduction u/s 10B of the Act. Even, the green card is issued by the designated officer on behalf of the Secretary, Govt. Of India, Ministry of Information Technology and Chairman Inter Ministerial Standing Committee. It is also noted that for A.Y. 2008-09, the claim of the assessee, identically, was allowed and the claimed deduction amounting to Rs.3,24,70,565/- was granted u/s

10B of the Act. This factual matrix was not controverted by the Revenue. In view of this factual position, unless and until, contrary facts are brought to our notice, the department is not expected to deny the claimed deduction. Our view is fortified by the decision dated 14/08/2012 from Hon'ble jurisdictional High Court in the case of Western Outdoor Interacting Pvt. Ltd. (IT Appeal No.1150, 1200 and 1269 of 2010). The Hon'ble High Court in this case held that the relief granted in the first Assessment year in which claim was made and accepted then the Income Tax Officer cannot withdraw the relief for subsequent years, more specifically, so, when the Revenue has not even suggested that there was any change in the facts warranting a different view for subsequent years. We find that there is no change in facts and identical facts are existing which were available for A.Y. 2008-09, therefore, it is not open to the department to deny claimed deduction. We further observe that in the absence of rectification from IMSC, no green card can be issued by the designated officer. It is just like a single window system and to avoid constrains to the assessee and further to mitigate the hardship for the development of software, such type of facilities are provided to entrepreneurs, therefore, we find no infirmity in the conclusion drawn in the impugned order. The order of the ld. First Appellate Authority is affirmed, resulting into, dismissal of appeal of the Revenue.

3. So far as, the cross objection (C.O. No.276/Mum/2014, (arising out of ITA No.6525/Mum/

2012), is concerned, it was not pressed by the ld. counsel for the assessee, therefore, the C.O. of the assessee is dismissed as not pressed.

Finally, the appeal of the Revenue and the Cross Objection of the assessee are dismissed.

This Order was pronounced in the open court in the presence of ld. representatives from both sides at the conclusion of the hearing on 19/10/2015.

Sd/-
(Rajesh Kumar)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-
(Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 19/10/2015

Shekhar, P.S./नि.स.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai.