

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

**BEFORE SHRI GEORGE GEORGE K, JUDICIAL MEMBER
AND
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

**ITA No.1558/Bang/2014
(Asst. Year - 2010-11)**

M/s. ANSR Source India Pvt. Ltd.,
GF Karle Premium, Old Airport Road,
96/2 & 3, HAL II Stage Layout, Kodihalli,
Bangalore. 5600 17.
[PAN AAJCS1188F]

Appellant

The Income-tax Officer,
Ward - 11(1),
Bangalore.
Respondent

Respondent

**Assessee by : Shri PadamchandKhincha, CA
Revenue by : Smt. SoumyaAchar, JCIT**

Date of Hearing : 11-08-2015

Date of pronouncement: 18-09 -2015

ORDER

PER GEORGE GEORGE K, JUDICIAL MEMBER :

This appeal, instituted at the instance of the assessee, is directed against the order of the Commissioner of Income-tax (Appeals) -I, Bangalore, dated 28.08.2014 in relation to the assessment year **2010-11**.

2. The assessee company has raised the following grounds:-

1. *The order of the ld CIT (A) – 1, Bangalore to the extent prejudicial to the interest of the appellant is bad in law and liable to be quashed.*
2. *The CIT (A) has erred in upholding the conclusion of the AO that the appellant is not eligible for deduction u/s 10B*
3. *Without prejudice to be above, the ld. Officer has erred in denying the alternative claim of sec. 10A (which claim was made in the return of income) in respect of profits derived by the undertaking from export of software services.*
4. *The order passed by the AO and confirmed by the CIT(A) is contrary to the circular issued by the Central Board of Direct Taxes [Circular NO.14XL-35) of 1955 dated 11.4.1995] as to manner of dealing with reliefs due to the assessee;*
5. *The CIT (A) has erred in not allowing the deduction u/s 10A of the Act by not following the order of the Hon'ble Tribunal for the A.Y 2009-10 on identical facts in ITA No.562/Bang/2013 in the appellant's own case;*

6. The ITO has erred in not allowing credit for advance tax paid of Rs.50,000/- and self-assessment taxes paid for Rs.5,27,279/-;

7. The ITO has erred in levying interest u/s 234B and 234C of the Act. On facts and in the circumstances of the case and law applicable, interest u/s234B and 234C is not leviable. The appellant denies its liability to pay interest u/s 234B and 234C; &

8. In view of the above and other grounds to be adduced at the time of hearing, the appellant prays that:

- (i) the assessment order passed being bad in law be quashed;*
- (ii) the exemption u/s 10B/10A be allowed as claimed by the appellant;*
- &*
- iii) the claim for tax deducted at source be allowed in full.”*

3. Briefly stated, the facts of the case are as under:

The assessee is a Private Limited Company engaged in Knowledge process out-sourcing. For the assessment year under dispute, the assessee company had filed its return of income on 7/10/2010 declaring a total income of Rs.35,819/- after claiming deduction of Rs.47,61,940/- u/s 10A (6 of Schedule – 10A) of the Act in respect of Units located in STP. During the course of assessment proceedings, based on the details

contained in its computation sheet, the assessee was required to furnish certain details to claim deduction u/s 10B of the Act. On verification of the details furnished, the AO had denied exemption sought for on the premise that the assessee had not fulfilled the basic condition to claim exemption u/s 10B of the Act and also not furnished Form No.56G properly [with the approval from the Board appointed by the Central Government u/s 14 of the Industries (Development and Regulation) Act, 1951] for claiming deduction.

4. Aggrieved, the assessee had filed an appeal before the CIT (A). After due consideration of the assessee's submissions, analyzing and elaborately quoting (i) the provisions defined in Clause (iv) of Explanation – 2 of S.10B of the Act; (ii) Board's Instruction No.02/2009 dated 9.3.2009 [subsequently corrected by F.NO.178/19/2008 – ITA dated 8.5.2009]; and (iii) the judgment of the Hon'ble Delhi High Court in the case of Regency Creations Limited [27 Taxmann. Com 322 (Del)], the CIT (A) had justified the AO's stand on the ground that **“.....It is clear from the above, that a hundred per cent export-oriented unit (100% EOU) should be approved by the Development Commissioner as ratified by the Board of approval for EOU Scheme. In the instant case, the appellant was registered as 100% EOU under the STP Scheme and not by the prescribed authority u/s 10-B of the Act. The AR of the appellant was unable to file any document showing the approval was granted to the appellant company in accordance with the provisions of Sec. 10 B of the Act. Therefore, the AO is correct in denying the benefit of**

deduction u/s 10 B of the Act....” [Refer Para3.4 (On page 4) of CIT (A)’s order].The CIT (A) had also rejected the request of the assessee to treat Form 56G as compliance u/s 10B of the Act to claim deduction under the Act.

5. Aggrieved, the assessee has come up before us with the present appeal. During the course of hearing, the learned AR has made the following submissions, namely:

- **that the CIT(A) erred in not directing the AO to re-examine the facts in the light of the Board’s Circular No.14(XL-35) of 1955 dated 11.4.1955 (sic) 14.11.1955 and to guide the assessee to claim the relief which is legitimately entitled by it;**
- **that the CIT(A) also erred in rejecting the assessee’s prayer to admit the filing of Form No.56G;**
- **a plea was put-forth to the effect that if the assessee was not eligible for deduction u/s 10B of the Act, the assessee be permitted to make an alternate claim u/s 10A of the Act for deduction of profits arising from export of software services for the following reasons, namely:**
 - **the assessee is registered the undertaking with the Software Technology Parks of India for the purposes of making this claim;**
 - **the undertaking has a valid STPI letter of permission (LOP) and a 100% EOU license dated 6.11.2006 along with valid Customs license and Private Bonded Warehouse license, Green Card and valid Importer Exporter Code (IEC) No.0705011895 issued by the DGFT, Bangalore.**
 - **the assessee had exported software services and realized valuable foreign exchange within the prescribed time;**
 - **the exports in foreign currency have been realized within the statutory prescribed time;**
 - **the Directors’ in their Report have disclosed the earnings through export of software services; &**

- ***the assessee, thus, fulfils all the conditions prescribed u/s 10A of the Act and had remitted all taxes due on the income returned;***
- ***seek the permission of this Hon'ble Bench for making an alternate claim u/s 10A of the Act by placing reliance on the Board's Circular dated 14.11.1955.***

6. In conclusion, the learned AR had placed strong reliance on the findings of the earlier Bench of this Tribunal in the assessee's own case for the assessment year 2009-10 in ITA No.562/Bang/2013 dated 13/11/2013.

7. On the other hand, the learned DR supported the views of the lower authorities and pleaded that there is no infirmity in the findings of the CIT (A) warranting any interference.

8. We have carefully considered the rival submissions, perused the relevant case records and also the documentary evidences produced by the learned AR in the form of a paper book. The basis of the issue is that the assessee had, while furnishing its return of income, claimed deduction of Rs.47,67,940/- u/s 10A [Source: page 12 of paper book]. However, in its computation of income accompanying the return of income, it had mentioned as profits eligible for exemption u/s 10B of Rs.47,61,940/- and accordingly, arrived at the total taxable income at Rs.35,819/-. Based on the above particulars contained in the computation sheet, the AO had called for details of documentary proof for claiming deduction u/s 10B of the Act.. On verification of the details furnished, the AO came to the conclusion that the assessee was not entitled to exemption u/s 10B of the Act, since it had failed to furnish the approval certificate from the Board

appointed by the Central Govt. u/s 14 of the Industries (D & R Act) Act 1951 and also Certificate in Form No.56G. However, the assessee, during the course of appellate proceedings before the first appellate authority, pleaded for admission of Form No.56G report as a proof of being a 100% EOU based on the STPI registration and the approval of Central Excise and Customs Department. The CIT (A) had, however, dismissed the assessee's plea.

9. The crux of the issue before us is: Whether the CIT (A) was justified in upholding the AO's stand without looking into the issue in depth? At the out-set, we would like to point out that an identical issue to that of the present one under dispute came up for consideration/adjudication before the earlier Bench of this Tribunal in the assessee's own case for the immediately preceding assessment year, i.e., AY 2009-10. After taking into account (i) the assessee's submissions; (ii) the reasoning of the CIT (A) in rejecting the assessee's claim; and (iii) extensively referring and also extracting the relevant portions of the Board's Circular No. 14(XL-35) dated 14.11.1955 as well as the findings of the Hon'ble Chennai Tribunal in the case of ITO v. Heartland K.G. Information Limited reported in (2010) 131 TTJ 216 (Chennai) on the issue of exemption u/s 10A of the Act, the earlier Bench had restored the issue on the file of the AO with a direction to look into matter afresh. For ready reference, the relevant portion of its findings is reproduced as under:

“4.3.2. (On page 11) Considering the facts and circumstances of the issue as deliberated upon in the foregoing paragraphs, we are of the opinion that the AO had failed to properly appraise the assessee of its legitimate claim (refer Board's

Circular No.14 (XL-35), dated 11/4/ 1955) and also it has been denied an opportunity by the first appellate authority to furnish correct Form claiming deduction u/s 10A [which it had admittedly failed to do so at the time of assessment proceedings], the entire issue requires to be looked into afresh at the Assessing Officer's level. To facilitate the AO to implement the above direction and to take appropriate action in accordance with the provisions of the Act, the issue is restored on the file of the AO.....”

10. Taking into account all the above facts into consideration and also in consonance with the findings of the earlier Bench (supra) on an identical issue in the assessee's own case, the matter under dispute is restored on the file of the AO with a specific direction to look into the matter afresh and to take appropriate action in accordance with the provisions of the Act, after affording a reasonable opportunity to the assessee of being heard. While doing the above exercise, the AO shall keep in view the findings of the earlier Bench in the assessee's own case (supra) on the issue. It is ordered accordingly.

11. With regard to the assessee's second ground, the AO shall look into the assessee's grievance of not allowing credits for payments of (i) advance tax of Rs.50,000/- and (ii) self-assessment tax of Rs.5,27,279/- and to take corrective step if so warrants..

12. The third ground of the assessee is not maintainable as charging of interest u/s 234B and 234C of the Act is mandatory and consequential in nature.

13. **In the result**, the assessee's appeal is treated as allowed for statistical purposes.

Order pronounced in the open Court on this 18th day of Sept **2015**.

Sd/-
(JASON P BOAZ)
Accountant Member

Sd/-
(GEORGE GEORGE .K
Judicial Member

Bangalore: Dated 18th Sept 2015
VBP/-

Copy to:

1. Appellant –
2. Respondent –
3. CIT(A)
4. CIT,
5. DR
6. Guard File

By order

Assistant Registrar
ITAT, Bangalore