

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

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

I.T. A. No.1371/Bang/2015  
(Assessment Year : 2009-10)

Dy. Commissioner of Income Tax,  
Circle 3(1)(2), Bangalore.

.... Appellant.

Vs.

M/s. Hewlett Packard Global Soft Pvt. Ltd.,  
No.39, 40, Electronic City, Phase I, Bangalore.

..... Respondent.

Appellant By : Shri Deepak R.L., Addl. CIT (D.R)

Respondent By : Shri Anur Pai Dhungat, C.A.

Date of Hearing : 21.9.2016.

Date of Pronouncement : 30.09.2016.

**O R D E R**

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

This appeal by the revenue is directed against the order dt.30.7.2015 of Commissioner of Income Tax (Appeals)-3, Bengaluru for the Assessment Year 2009-10.

2. The revenue has raised the following grounds :

1. The order of the learned CIT(A) is opposed to law and facts of the case.
2. On the facts and in the circumstances of the case, the CIT(A) erred in holding that the expenses reduced from the export Turnover has to be reduced from the Total turnover when the total turnover has not been defined in the Act and there is no provision under Sec.10A which provides for exclusion of such expenses from total turnover
3. On the facts and in the circumstances of the case the CIT(A) erred in allowing the appeal of the assessee without appreciating the fact that the decision of the Hon'ble High Court in the case of M/s Tata Elxsi Ltd., has not been accepted by the department and SLP has been filed before the Apex Court and the issue has not reached finality.
4. For these and other grounds that may be urged at the time of hearing, it is prayed that the order of the CIT(A) in so far as it relates to the above grounds may be reversed and that of the Assessing Officer may be restored.
5. The appellant craves leave to add, alter, amend and / or delete any of the grounds mentioned above.

3. The only issue arises in the appeal of the revenue is regarding restriction of claim of deduction under Section 10B of the Income Tax Act, 1961 (in short 'the Act') by reducing the telecommunication expenses incurred in foreign currency from the export turnover.

4. We have heard the learned Departmental Representative as well as learned Authorised Representative and perused the relevant material on record. At the outset, we note that this issue is covered by Hon'ble jurisdictional High Court in CIT Vs. Tata Elxsi Ltd. 349 ITR 98 (Kar). A similar issue has been raised by the revenue regarding exclusion of telecommunication and travel expenses from export turnover which is

covered by the decision in the case of Tata Elxsi Ltd. (supra). The Hon'ble High Court while dealing with the definition of export turnover as well as total turnover as per the provisions of section 10A has held as under :

¶10. The Bombay High Court had an occasion to consider the meaning of the word 'total turnover' in the context of Section 10-A, in the case of *CIT v. Gem Plus Jewellery India Ltd.* [2011] 330 ITR 175 [2010] 194 Taxman 192 (Bom.). Interpreting sub-Section (4) of Section 10-A, it is held as under:

$$\begin{array}{l} \text{Profits derived from} \\ \text{export of articles or things} \\ \text{or Computer software} \end{array} = \frac{\begin{array}{l} \text{Profits of the} \\ \text{business of the} \\ \text{undertaking} \end{array} \times \begin{array}{l} \text{Export turnover in respect} \\ \text{of the articles or things or} \\ \text{computer software} \end{array}}{\begin{array}{l} \text{Total turnover of the business carried on by the} \\ \text{undertaking} \end{array}}$$

"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 under-taking 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 or by the undertaking. The formula which is prescribed by sub-section (4) of section 10A is as follows:

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 inasmuch 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 a constituent element of the total turnover in the denominator. The legislature has provided a definition of the expression "export turnover" in *Explanation 2* to section 10A by 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 section 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 to the contrary. However, no such provision having been made, the principle 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 it has 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 v. Sak Soft Ltd.* [2009] 313 ITR (AT) 353/ 30 SOT 55 (Chennai) 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 10-A would be as under:

Profits of the business X export turnover

---

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 10-A 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 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 10-A, 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. The components of the export turnover in the numerator and the denominator cannot be different. Therefore, though there is no definition of the term 'total turnover' in Section 10-A, 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 10-A, would be as under:

$$\text{Profits of the business of the } \chi \frac{\text{Export turn over}}{\text{(Export turnover + domestic turn over)}} \text{ undertaking}$$

Total Turn Over

**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 10-A 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."

Following the decision of Hon'ble jurisdictional High Court in the case of Tata Elxsi Ltd. (supra), the ground of the revenue's appeal stand dismissed.

5. In the result, the revenue's appeal is dismissed.

Order pronounced in the open court on the 30<sup>th</sup> day of 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