

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

“D” BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2816/Mds/2014

निर्धारण वर्ष / Assessment Year : 2010-11

The Assistant Commissioner of
Income Tax,
Company Circle VI(2),
Chennai - 600 034.

M/s Severn Glocon (India) Pvt.
Ltd.,
v. F-96 & 97, SIPCOT Industrial
Estate,
Irungattukottai,
Chennai – 602 117.

(अपीलार्थी/Appellant)

PAN : AAHCS 9495 H

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.2770/Mds/2014

निर्धारण वर्ष / Assessment Year : 2010-11

M/s Severn Glocon (India) Pvt.
Ltd.,
F-96 & 97, SIPCOT Industrial
Estate,
Irungattukottai,
Chennai – 602 117.

The Deputy Commissioner of
Income Tax,
v. Company Circle VI(2),
Chennai - 600 034.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

राजस्व/Revenue by : Sh. Joe Sebastian, CIT
निर्धारिती/Assessee by : Sh. T. Banusekar, CA

सुनवाई की तारीख/Date of Hearing : 26.05.2015

घोषणा की तारीख/Date of Pronouncement : 19.06.2015

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

Both, Revenue and assessee, filed the appeals against the order passed by the Commissioner of Income Tax (Appeals)-VI, Chennai, dated 29.08.2014. Therefore, we heard both the appeals together and disposing the same by this common order.

2. Let's first take Revenue's appeal in I.T.A. No. 2816/Mds/2014. The only ground raised by the Revenue is with regard to exclusion of expenses from the export turnover and total turnover.

3. Sh. Joe Sebastian, the Ld. Departmental Representative, submitted that the Assessing Officer excluded the expenses from export turnover. However, the same were not excluded from the total turnover. The CIT(Appeals) directed the Assessing Officer to exclude the expenses from total turnover also. According to the Ld. D.R., export turnover is only in respect of the export of the goods, therefore, what was excluded from the export turnover need not be excluded from the total turnover.

4. On the contrary, Sh. T. Banusekar, the Ld. representative for the assessee, submitted that export turnover and total turnover

should be of the same factor. What was excluded from the export turnover has also to be excluded from the total turnover in view of the decision of Special Bench of this Tribunal in ITO v. Sak Soft Ltd. (2009) 30 SOT 55.

5. We have considered the rival submissions on either side and perused the relevant material on record. As rightly argued by the Ld. representative for the assessee, both export turnover and total turnover shall be of the same factor. What was excluded from the export turnover cannot form part of total turnover. Therefore, this Tribunal is of the considered opinion that the CIT(Appeals) has rightly directed the Assessing Officer to exclude the expenses from total turnover also. This Tribunal do not find any infirmity in the order of the lower authority. Accordingly, the same is confirmed.

6. Now coming to assessee's appeal in I.T.A. No.2770/Mds/2014, the first issue arises for consideration is with regard to deduction under Section 10B of the Income-tax Act, 1961 (in short 'the Act').

7. Sh. T. Banusekar, the Ld. representative for the assessee, submitted that the assessee is 100% export oriented unit eligible for exemption under Section 10B of the Act. The Assessing Officer

disallowed the claim of the assessee on the ground that Inter Ministerial Committee constituted by the Government of India under Section 14 of the Industries (Development & Regulation) Act, 1951 does not approve the assessee. Referring to the order of the Development Commissioner, MEPZ Special Economic Zone, the Ld. representative submitted that the Development Commissioner has granted the approval. This was subsequently ratified by the Board in its second meeting held on 25.03.2011. The approval granted by the Board was communicated to the assessee by the Development Commissioner, a copy of which is available at page 8 of the paper-book. Therefore, according to the Ld. representative, it may not be correct to say that the Board's approval was not obtained. Even otherwise, according to the Ld. representative, the assessee is eligible for exemption under Section 10A of the Act. Referring to the Instruction of the CBDT, a copy of which is available at page 11 of the paper-book, the Ld. representative submitted that the approval granted by the Development Commissioner would be a valid approval once it is approved by the Board of Approval for EOU Scheme. Therefore, According to the Ld. representative, the CIT(Appeals) is not justified in confirming the order of the Assessing Officer. The Ld. representative further submitted that even otherwise the assessee is eligible for exemption

under Section 10A of the Act. Therefore, the issue requires to be remitted back to the file of the Assessing Officer for reconsideration.

8. On the contrary, Sh. Joe Sebastian, the Ld. Departmental Representative, submitted that Explanation 2(iv) to Section 10B of the Act clearly says that 100% export oriented unit means an undertaking which is approved by the Board appointed by the Government of India under Section 14 of the Industries (Development & Regulation) Act, 1951. Therefore, the Board nominated by Government of India under the provisions of Section 14 of the Industries (Development & Regulation) Act, 1951 has to approve the unit for the purpose of claiming deduction under Section 10B of the Act. In this case, it is nobody's case that the Board constituted by Government of India has accorded, under Explanation 2(iv) to Section 10B of the Act, approval to the assessee as 100% export oriented unit. In this case, the assessee was approved by Development Commissioner of the Special Economic Zone. No material is available on the record to show that the assessee was approved by the Board constituted by Government of India. According to the Ld. representative, the approval granted by the Development Commissioner was subsequently ratified by the Board nominated by Ministry of

Commerce. It is not known whether the Board of Approval nominated by Ministry of Commerce was appointed under Section 14 of the Industries (Development & Regulation) Act, 1951. Income-tax Act, being a special enactment, the approval has to be accorded only by the Board nominated by the Government under Section 14 of the Industries (Development & Regulation) Act, 1951. The letter of the Special Economic Zone does not say anything about the constitution of committee under the Industries (Development & Regulation) Act, 1951. Therefore, according to the Ld. D.R., the CIT(Appeals) has rightly confirmed the addition. The Ld. D.R. further submitted that the assessee is also not eligible for exemption under Section 10A of the Act.

9. We have considered the rival submissions on either side and perused the relevant material on record. Explanation 2(iv) to Section 10B clearly says that approval by the Board appointed by Government of India under Section 14 of the Industries (Development & Regulation) Act, 1951 is an essential condition. In this case, though the assessee claims that the approval initially granted by Development Commissioner, Special Economic Zone was ratified by the Board, it is not clear from the material available on record whether ratification was accorded by the Board

constituted by Government of India under Section 14 of the Industries (Development & Regulation) Act, 1951. In the absence of any material to show that whether the approval was accorded by the Board constituted under Industries (Development & Regulation) Act, 1951, this Tribunal is of the considered opinion that the matter needs to be re-examined. Moreover, Section 10A also gives exemption to 100% export oriented unit. Therefore, this Tribunal is of the considered opinion that the matter needs to be re-examined by the Assessing Officer in the light of the provisions of Section 10A of the Act, in case the assessee is not eligible under Section 10B of the Act. Accordingly, the orders of the lower authorities are set aside and the entire issue is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the issue afresh and find out whether the Board constituted by Government of India under Section 14 of the Industries (Development & Regulation) Act, 1951 has approved the assessee as 100% export oriented unit. In case such approval was not granted, the Assessing Officer shall also examine the claim of the assessee under Section 10A of the Act on merit, in accordance with law, after giving a reasonable opportunity to the assessee.

10. The next issue arises for consideration is with regard to determination of eligible export turnover.

11. During the course of hearing, the Ld. representative for the assessee submitted that the assessee is not pressing this ground. Accordingly, the ground raised by the assessee with regard to determination of eligible export turnover is dismissed.

12. The next ground of appeal is with regard to exclusion of foreign travel expenses, 50% of telephone charges and communication expenses, freight outward and commission expenses from the export turnover.

13. Sh. T. Banusekar, the Ld. representative for the assessee, submitted that the CIT(Appeals) allowed the appeal of the assessee partly, deleting the disallowance made under Section 40(a)(ia) of the Act. However, the CIT(Appeals) upheld the exclusion of foreign travel expenses, 50% of telephone charges and communication expenses, freight outward and commission expenses from the export turnover. The Commissioner also directed the Assessing Officer to exclude the same from total turnover also. Referring to Explanation 2(iv) to Section 10A of the Act, the Ld. representative submitted that export turnover does not include freight,

telecommunication charges or insurance attributable to the delivery of the articles, etc. These facts are not appreciated by the Commissioner as well as the Assessing Officer. According to the Ld. representative, the assessee has now filed copies of ledger extract to show that the commission expenses and other expenses were not paid outside India, hence, it was not incurred in foreign exchange. The lower authorities had no occasion to examine the ledger extract. Therefore, the Ld. representative submitted that the matter may be remitted back to the file of the Assessing Officer.

14. On the contrary, Sh. Joe Sebastian, the Ld. D.R. submitted that the Commissioner directed the Assessing Officer to exclude the telephone charges, foreign travel expenses, commission expenses, etc. from the export turnover as well as the total turnover. Therefore, according to the Ld. D.R., the assessee may not have any grievance at all.

15. We have considered the rival submissions on either side and perused the relevant material on record. As rightly submitted by the Ld. representative, the Commissioner upheld the exclusion of foreign travel expenses, commission charges, communication expenses, etc. from the export turnover and also directed the Assessing Officer to exclude the same from total turnover. While

deciding the appeal of the Revenue, this Tribunal found that in view of the decision of Special Bench in Sak Soft Ltd. (supra), the expenses which were excluded from the export turnover are also to be excluded from total turnover. Since the CIT(Appeals) excluded the communication charges, foreign travel expenses, commission charges, etc. from export turnover, this Tribunal is of the considered opinion that the same are also to be excluded from total turnover. In other words, the items which were excluded from the export turnover have also to be excluded from total turnover. Therefore, this Tribunal do not find any infirmity in the order of the lower authority. Accordingly, the same is confirmed.

16. In the result, the appeal of the Revenue is dismissed and the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced on 19th June, 2015 at Chennai.

sd/-
(ए. मोहन अलंकामणी)
(A. Mohan Alankamony)
लेखा सदस्य/Accountant Member

sd/-
(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 19th June, 2015.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-VI, Chennai-34
4. आयकर आयुक्त/CIT-VI, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.