

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.63 OF 2016

THE PR.COMMISSIONER OF INCOME TAX -10)
)...APPELLANT

V/s.

M/S.HINDUJA VENTURES LTD.)...RESPONDENT

Mr.Arvind Pinto, Advocate for the Appellant.

Mr.Kamal Sawhney a/w. Mr.Abhishek Tilak, Advocate for the Respondent.

**CORAM : S.V.GANGAPURWALA &
A. M. BADAR, JJ.**

DATE : 26th JULY 2017

ORAL JUDGMENT : (PER S. V. GANGAPURWALA, J.)

1 The present appeal pertains to Assessment Year 2005-2006.

2 The assessee claims that it has four units engaged in the business of IT and IT enabled services. The assessee claimed

deduction under Section 10A of the Income Tax Act (hereinafter referred to as the Act) in respect of Unit II and Unit III. The Assessing Officer did not allow deduction under Section 10A. In appeal, the Commissioner (Appeals) called for the remand report. The Assessing Officer submitted the remand report. The remand report favoured the assessee. However, the Commissioner (Appeals) dismissed the appeal. The assessee filed an appeal before the Tribunal. The Tribunal allowed the appeal and held that Unit II and Unit III are entitled for the benefit under Section 10A of the Act. Aggrieved thereby, the present appeal by the department.

3 The Revenue has filed the appeal on following grounds:

7.1 Whether on the facts and in the circumstances of the case and in law, the Hon.ITAT erred in concluding that the benefits of Section 10A of the Act in respect of Unit II and Unit III are allowable by

treating such units as distinct undertaking by ignoring the fact that assessee in his application to the STPI Authorities has stated that these units are expansion and not distinct undertakings ?

7.2 Whether on the facts and in the circumstances and in law, the perversity has crept into the order of the Hon'ble ITAT by ignoring and not appreciating the evidence in the form of assessee's own declaration and admission in application to STPI to the effect that works under reference constituted expansion of existing units and not a new and distinct undertaking or unit ?

4 Mr.Pinto, the learned counsel for the appellant, strenuously contends that the assessee itself had represented vide its letter to the STPI that Unit II and Unit III are in the nature of expansion of business. As such, the assessee cannot now turn around and contend otherwise. According to the learned counsel,

even permission was granted by the STPI presumably on the ground that Unit II and Unit III are expansion units of the assessee. This fact has been considered by the Assessing Officer and the Commissioner (Appeals). However, the Tribunal without considering the finding of the Commissioner (Appeals) has set aside the said finding. The learned counsel relied on the judgment of the Delhi High Court in the case of HCL Technologies vs. Assistant Commissioner of Income Tax decided on 15th April 2015. According to the learned counsel, the said judgment would squarely apply in the present case and even the judgment of the Apex Court in Textile Machinery Corporation Ltd. vs. CIT reported in 107 ITR 195 was referred thereto. He further submits that there was no independent registration of Unit II and Unit III with STPI which would demonstrate that it was not independent new undertaking. This fact has been lost sight of by the Tribunal. If the said business was not merely an expansion but a new undertaking, then certainly a fresh permission would have been required. The same is not forthcoming. In view of that, it was not appropriate for the

Tribunal to reverse finding of fact arrived at by the Commissioner (Appeals) and the Assessing Officer. The learned counsel submits that the Tribunal has failed to consider provision of Section 10A(2) in its correct perspective and thereby has arrived at erroneous conclusion.

5 According to the learned counsel, the provisions of Section 10A(2) would apply only if the undertaking is not formed by splitting up or reconstruction of the business already in existence. In the present matter, as it was not a new undertaking, the assessee would not be entitled for the benefit of sub-section (2) of Section 10A of the Act.

6 The learned counsel for the respondent supports the order and submits that the Commissioner (Appeals) had called for the remand report from the Assessing Officer. The said remand report clearly shows that Unit II and Unit III of the assessee were independent and a new business. According to the learned counsel, various factors on record could clearly demonstrate the

independent nature of business of Unit II and Unit III. The same has been spelt out by the Tribunal in its judgment. The learned counsel, to substantiate his contention, relies on the judgment of the Apex Court in case of **Textile Machinery Corporation Ltd. vs. CIT** reported in **107 ITR 195**. The learned counsel submits that the Tribunal has relied on the judgment in **Patni Computer Systems Ltd. vs. Deputy Commissioner of Income Tax, Circle 4**. In the said case also permission was granted for expansion of the business and the same was held to be an independent business. The said finding is upheld by this court in appeal filed by the Revenue against the judgment of the Tribunal in **Patni Computer Systems Ltd. vs. Deputy Commissioner of Income Tax, Circle 4**. The learned counsel also relies on the judgment of this court in the case of **The Commissioner of Income Tax-IV vs. Symantec Software India (P) Ltd.** bearing **Income Tax Appeal No.1534 of 2012, decided on 12th December 2014**.

7 The learned counsel submits that provisions of Section 10A will have to be liberally construed with regard to the object in

view. The benefit is to be given to the new undertaking by way of incentive under Section 10A of the Act. The restriction imposed therein will have to be liberally construed. The learned counsel relies on the judgment of **Bharat General Insurance vs. Commissioner of Income Tax** reported in **188 ITR Vol 196 page 188.**

8 We have considered the submissions canvassed by the learned counsel for the respective parties.

9 It is not a matter of debate that vide letter dated 19th July 2000 the assessee sought permission to start Unit II at Bangalore for carrying out business of processing insurance claims and vide letter dated 26th July 2000 the STPI authorities at Bangalore granted the said permission to start a BPO for claim processing. On or about 12th September 2001, permission was granted to Unit III to do the business of international call center. It was observed by the Tribunal that on 28th October 2003, the assessee has taken a separate registration with STPI, Mumbai, for

BPO call processing activity at Bangalore for the purpose of back end data backup.

10 The Assessing Officer in his remand report has held that both Unit II and Unit III duly fulfill all the conditions laid down in Section 10A(2) of the Act. The remand report of the assessee spells out following facts :

1. Both units were set up with fresh investments, the assessee purchased new plant and machinery for these units and it was not the case that these units were formed by splitting or reconstructing existing business. As such this condition is fully satisfied.
2. Separate books of accounts have been maintained by each units.
3. The employees employed in each of the units were fresh set of employees and were not transferred from existing business.
4. The nature of activity of both the units is totally

different not only vis-a-vis each other but also vis-a-vis the activity carried on by the first unit.

5. The customers of each unit are completely different / unrelated and both units have new and independent sources of income.

6. While Unit-1 is engaged in the business of software development, Unit-2 is engaged in non-voice BPO business (Insurance claim processing) and Unit 3 engaged in voice BPO (Call Center).

7. While Unit-1 earns revenue predominantly from within India, Units 2 and 3 earn revenues wholly from exports outside India.

11 The Assessing Officer in his remand report has specifically observed that both units were set up with fresh investments. The assessee purchased plant and machinery for these units and it was not the case that these units were formed by splitting or reconstructing existing business. It was also contended that separate books of accounts were maintained. The

employees of each of the units were fresh set of employees and were not transferred from existing business. The nature of activity of both units is totally different, not only vis-a-vis each other, but also vis-a-vis the activity carried on by the first unit. It was also observed by the Assessing Officer in its remand report that customers of each unit are completely different and unrelated and both the units have new and independent sources of income. While Unit I is engaged in the business of software development, Unit II is engaged in non-voice BPO business (Insurance claim processing) and Unit III is engaged in voice BPO (Call center). While Unit I earns revenue predominantly from within India, Unit II and Unit III earn revenue wholly from exports outside India.

12 In light of aforesaid facts, it would be clear that the Unit II and Unit III cannot be said to be formed by reconstruction nor can be said to be an expansion of earlier same business. Though the permission was sought by way of an expansion, the facts on record categorically and succinctly establish that the business of Unit II and Unit III were independent, distinct and

separate and are not related with each other or even with Unit I.

13 The Tribunal also considered the letter from Director, STPI, issued to the Assessing Officer dated 10th December 2008, the letter of the Director, STPI, intimating formation of Unit II so also another letter to Director, STPI, seeking permission for bonding facility for Unit II and approval from Director, STPI for Unit II, the letter to the Director, STPI, intimating formation of Unit III, letter to Director, STPI, seeking permission for bonding facility for Unit III and approval from Director, STPI for Unit III. After considering all the documentary evidence and the remand report of the Assessing Officer, the Tribunal agreed with the remand report of the Assessing Officer and held that the assessee would be entitled for benefit of Section 10A of the Act.

14 The assessee has relied on the judgment of **Patni Computer Systems Ltd.** referred to supra which has been upheld by this court. In the said judgment also, the Tribunal had held that permission was sought by Patni Computers Systems Ltd. for

expansion and benefit under Section 10A was accorded. The said order is upheld by this court in appeal.

15 In case of Textile Machinery Corporation Ltd. referred to supra, the Apex Court was considering the provisions of Section 15(C) of the Act as it stood then, dealing with similar provisions. The Apex Court in the said case observed that the true test is not whether the new industrial undertaking connotes expansion of the existing business of the assessee but whether it is all the same a new and identifiable undertaking, separate and distinct from the existing business. No particular decision in one case can lay down an inexorable test to determine whether a given case comes under Section 15C or not.

16 Considering the aforesaid conspectus, the Tribunal has not committed any error while passing the impugned order.

17 The plausible finding of fact has been arrived at after appreciating the documents on record and remand report of the

Assessing Officer.

18 In light of above, no substantial question of law arise.

The appeal is dismissed. No costs.

(A. M. BADAR, J.)

(S.V.GANGAPURWALA, J.)