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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA 154/2017**

PRINCIPAL COMMISSIONER OF
INCOME TAX, DELHI-1

..... Appellant

Through: Ms. Vibhooti Malhotra, Advocate.

versus

AMADEUS INDIA PVT. LTD.

..... Respondent

Through: Mr. M.S. Syali, Senior Advocate with
Mr. Mayank Nagi, Advocate.

WITH

+ **ITA 330/2017**

THE PRINCIPAL COMMISSIONER OF
INCOME TAX-4

..... Appellant

Through: Mr. Ruchir Bhatia & Mr. Puneet Rai,
Advocates.

versus

INTER GLOBE TECHNOLOGY
QUOTIENT PVT. LTD.

..... Respondent

Through: Mr. Aditya Vohra, Advocate.

CORAM:

**JUSTICE S.MURALIDHAR
JUSTICE VINOD GOEL**

ORDER
22.05.2017

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Dr. S. Muralidhar, J.:

1. These are two appeals by the Revenue under Section 260A of the

Income Tax Act, 1961 ('Act') which raise similar issues concerning the interpretation of Section 10A and Section 10AA of the Act.

2. ITA No.154/2017 is directed against an order dated 21st August, 2016 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.1804/Del/2014 for the Assessment Year ('AY') 2009-10. The Respondent in the appeal is the Assessee, Amadeus India Pvt. Ltd. ('AIPL').

3. ITA No. 330/2017 is directed against an order dated 26th July, 2016 passed by the ITAT in ITA No. 6144/Del/2013 for AY 2010-11. The Respondent in the appeal is the Assessee, Inter Globe Technology Quotient Pvt. Ltd. ('Inter Globe').

No ground re: Section 10A in ITA 154 of 2017

4. There were two broad questions raised by the Revenue in its appeal against AIPL. One concerned the deletion of the transfer pricing adjustment in the sum of Rs. 75,40,09,515 made by the Assessing Officer ('AO'). The other concerned the correctness of the impugned order of the ITAT allowing deduction to AIPL under Section 10A of the Act in the sum of Rs. 18,43,84,578.

5. By an order dated 26th April, 2017, the Court confined the notice to the second issue viz., allowing the deduction to AIPL under Section 10A of the Act.

6. It must be noticed at the outset that although in the questions of law, a specific question has been raised by the Revenue on the issue of

deduction under Section 10A of the Act (Question ‘C’) in the grounds in the memorandum of appeal, there is not a single ground on this aspect. There is just one general ground i.e., ground ‘E’, which reads “For that the order of ITAT is erroneous since it ignores the settled position of law.”

7. Nevertheless, since Ms. Vibhooti Malhotra, learned counsel for the Revenue has argued this issue at length, the Court proceeds to examine it notwithstanding that there is no ground urged in the appeal on the said issue.

Facts in ITA 154 of 2017

8. The facts relevant to the issue raised are that AIPL was incorporated on 8th March, 1994 and was granted approval for setting up a 100% export oriented unit under Software Technology Park Scheme (‘STPS’) by a letter dated 5th July, 1995. This was followed by an agreement dated 28th September, 1995 between the Government of India and AIPL. The first undertaking of AIPL was set up at Hansalaya Building, New Delhi (‘Unit I’). AIPL started commercial production under the Software Technology Park of India (‘STPI’) scheme from the financial year (‘F.Y.’) 1994-95. Subsequently, the business activity of the undertaking was shifted to D-4/4, Vasant Vihar, New Delhi. The turnover of AIPL was certified by Software Export (Softex) forms issued by STPI. Till AY 2004-05, AIPL claimed exemption/deduction under Sections 10A/10B of the Act.

9. AIPL set up another undertaking at D-1, Local Shopping Centre No.

2, Vasant Vihar, New Delhi ('Unit II'). AIPL was granted approval for setting up its new 100% export oriented undertaking by a letter dated 8th June, 2005. Unit II started commercial operations with effect from April, 2005.

10. Unit II was engaged in the business of export (by transmission outside India through data communication link) of data processing/IT Enabled Services ('ITeS') which were all duly certified by STPI. During the AY under consideration i.e., AY 2009-10, Unit I had already exhausted the period of exemption under Section 10A of the Act. Therefore, the claim for deduction under Section 10A during the AY 2009-10 was made by the Assessee only with regard to Unit II located at D-1, Local Shopping Centre No. 2, Vasant Vihar, New Delhi.

11. While filing its return of income for AY 2009-10 the Assessee claimed a deduction under Section 10A of the Act. It submitted a certificate from a Chartered Accountant in Form 56F in which it was certified that during the year under consideration the Assessee had made a claim for deduction under Section 10A of the Act on data processing receipts of Rs. 25,36,64,616 being the eligible export turnover of Unit II. Therefore, out of the total data processing receipts of Rs. 1,64,98,72,986 credited by the Assessee in its profit and loss account ('P&L Account'), deduction under Section 10A of the Act was claimed for an export turnover of Rs. 25,36,64,616 pertaining only to Unit II. This comprised Rs. 23,37,30,290 on account of 'Data Processing Receipts', Rs. 27,77,969 on account of 'On Site Support Services' and Rs. 1,73,56,357 on account of 'Software Development

Services'. Exemption under Section 10A was claimed at Rs. 20,02,81,699.

Order of the TPO

12. The AO made a reference of the Transfer Pricing Officer ('TPO') under Section 92CA of the Act in respect of the international transactions involving AIPL and its Associated Enterprise ('AE'). Amadeus Spain. The TPO in his report dated 16th January, 2013 recommended an upward transfer pricing adjustment of Rs. 75,43,18,168 being the difference the Arm's Length Price and the price charged by AIPL. This has ultimately been ordered to be deleted by the ITAT in the impugned order on account of AMP adjustment. That aspect of the matter need not be examined further since in this appeal notice has been confined only to the question of allowing the deduction under Section 10A of the Act.

13. However, it requires to be noted that on the basis of the order of the TPO, the AO passed a draft assessment order under Section 144C of the Act which was communicated to the Assessee on 28th February, 2013. The Assessee then went before the Dispute Resolution Panel ('DRP').

Proceedings before the DRP

14. During the course of proceedings before the DRP, an enhancement show cause notice dated 26th November, 2013 was issued. In it, it was stated that it had been observed that the total revenue received from business had been credited from the said P&L Account of AIPL by an amount of Rs. 164.99 crores, which was the distribution fee received

from Amadeus Spain. The distribution fee for the AY under consideration was 46% of the net turnover. It was stated therein that the services enlisted in Articles II and XI of the Distribution Agreement suggested that the main income of the taxpayer was not in conformity with Section 10A of the Act. The Assessee was also asked to provide details of various personnel employed in the company, their work profile, number of Engineers/Software Developers/Data Processors in each division and the minimum educational qualification for such employees.

15. The Assessee furnished the requisite details by a letter dated 27th November, 2013 to the DRP. It also filed its written submissions on 29th November, 2013. The Assessee relied on the order passed by the ITAT in its own case for AY 1996-97 reported as *Assistant Commissioner of Income Tax v. Amadeus India (P) Ltd. (2001) 79 ITD 407 [ITAT (Del)]*.

16. By its order dated 30th November, 2013, the DRP held that AIPL was an agent of Amadeus Spain carrying on marketing and distribution functions. It was held that the revenue of Rs. 164.98 crores received under the Distribution Agreement was not on account of any export of software or data processing for which deduction could be claimed under Section 10A. The DRP noted that the ITAT had in *Amadeus Global Travel Distribution SA v. Deputy Commissioner of Income Tax (2008) 113 TTJ 767 (Del)* held that the Assessee was a Dependent Agency Permanent Establishment ('DAPE') of Amadeus Spain and hence "the remuneration derived by it from Amadeus Spain in the form

of distribution fee was for services rendered by it in India as an agent of the foreign company.”

17. However, the DRP found that the IT support services of Rs. 20.59 crores and call centre receipts of Rs 4.58 crore could be in nature of receipts eligible for deduction under Section 10A. The Assessee was directed to provide all the details/ certificate(s) in support of its claims of deduction under Section 10A for only Unit II to the AO. The AO was further directed to allow deduction under Section 10A on the profits to the above receipts corresponding to Unit II only, provided that the basic eligibility criteria of deduction under Section 10A was satisfied.

18. Based on the order of the DRP, the AO passed the final assessment order dated 31st January, 2014 restricting the deduction under Section 10-A to Rs. 1,58,97,121. The balance of Rs. 18,43,84,578 was disallowed and directed to be added back to the income of the Assessee.

Impugned order of the ITAT in the case of AIPL

19. The Assessee then filed an appeal before the ITAT. It was contended by AIPL before the ITAT that as in the earlier years, even during the AY in question, the sole activity of AIPL was to provide software connectivity for providing access of Amadeus CRS to travel agents for which it received 46% of the revenue earned by Amadeus Spain. Software connectivity was provided by rendering ITeS data processing services to Amadeus Spain. AIPL relied extensively on the order passed in its own case by the ITAT for AY 1996-97 allowing the

deduction claimed for Unit I under Section 80 HHE/10A of the Act and the fact that this had been accepted by the Revenue. Likewise, in the claim for AYs 1997-98 and 1998-99, the orders in favour of the Assessee by the ITAT and the CIT(A) respectively had become final. Further, Unit II had been set up in AY 2006-07 and for that year the deduction under Section 10A had been allowed. Thus, the rule of consistency was also invoked.

20. In the impugned order dated 21st August, 2016, the ITAT noted that the ITAT had in its earlier order for AY 1996-97 in the Assessee's own case i.e., *Assistant Commissioner of Income Tax v. Amadeus India (P) Ltd.* (*supra*) undertaken a detailed examination of the activities of the Assessee. The ITAT had at that stage referred the issue to STP Noida to clarify whether the information sent by the Assessee to Amadeus Spain was a “programme” or “data” or “data entry transaction”. Reference was made to the replies received on 26th February, 1998 from the Assistant Director (Tech.) of STP explaining the activity performed by AIPL as under:

“M/s. Amadeus (India) (P.) Ltd. is involved in Data Procession activity/Data Entry Jobs. They have a main computer in Delhi which is connected to various travel agents in India via Satellite Links. Whenever a reservation has to be made the travel agents get connected to the Central Reservation System (CRS), at Amadeus which processes the data for its correct format. If the format is correct the data is sent to Germany for the availability of the tickets on a particular flight on a given date and time. Amadeus (I) (Pvt.) Ltd. is connected to their German counterpart via leased lines. The data is further processed in Germany for the correct status of booking. The data are sent in segments. M/s Amadeus (I) (Pvt.) Ltd. bills their counterpart on basis of per

segment basis. A sample copy is enclosed, also enclosed is a sample invoice. The nature of activity of M/s. Amadeus (I) (Pvt.) Ltd. is as data entry/data processing job. Data entry/Data processing is a software development as defined by Customs Notification No.10/96 dated 17-2-1997 issued by Ministry of Finance, Dept. of Revenue.”

21. The ITAT had in the earlier occasion for AY 1996-97 made a separate reference to the Export Promotion Council (‘ESC’). In its opinion, the ESC had stated:

“It is to confirm and clarify that data processing job is well covered within the scope of the definition of Computer Software. To substantiate this we enclose herewith a copy of Customs Notification No.7/98 and Customs Notification dated 11-2-1998. Further customs Notification No.10/96 dated 17-2-1997 also clarifies that data entry are well covered within the scope of computer software. Since Ministry of Finance has given detailed definition of Computer Software (for Customs Act) it would be appropriate that benefit under section 80HHE be extended to M/s. Amadeus. In case of any doubt the matter be referred to Department of Electronics before any decision is taken.”

22. A reference was also made to the National Informatics Centre (‘NIC’). By a letter dated 9th February, 1998, the NIC intimated the AO as under:

“According to the details given by you, M/s. Amadeus India Pvt. Ltd. is merely collating information (data) from customers and doing bit of processing (collating) and forwarding the collated information (not any software programme) to its German counterpart.”

23. However, before the ITAT, the Assessee had pointed out that the AO had not put the correct facts before the NIC and that in that event the opinion was bound to be incorrect. In para 31 of its order for AY

1996-97, the ITAT observed as under:

“31. From the objections raised by the assessee as mentioned above it appears that the Assessing Officer has not supplied the complete information about the activities of the assessee to NIC. The opinion based on incomplete information cannot be relied upon. Moreover, when opinion from NIC was received by the Assessing Officer, the assessee was asked as to why the claim of the assessee for deduction under section 80HHE may not be disallowed, the assessee made a reference to ESC also. ESC vide their letter dated 10-3-1998 addressed to Assessing Officer opined as under:-

“If you go by the definition of section 80HHE of the Income Tax Act, that also clearly says that section 80HHE is applicable to a person who is engaged in the business of export out of India of Computer Software.... Since, Ministry of Finance at various occasions have given elaborate definition of computer software after detailed consultations with the technical authority like Department of Electronics, it would be appropriate that benefit under section 80HHE are extended to M/s Amadeus India Pvt. Ltd. against their export of Computer Software to which they are entitled. In case of any doubt it is requested that matter may kindly be referred to the Department of Electronics before any decision is taken in this regard.”

24. It was further observed by the ITAT in paras 34 & 35 as under:

“34. Even if undue importance is to be attached to the use of the word "programme" under the Act and to the need for the presence of a "computer programme" *stricto sensu* (in contrast to the wider compass of the language used in the Customs notifications) as essential for claiming an exemption, under the Act. We are of the opinion that the assessee qualifies for exemption under the quoted sections. In the computer industry, a distinction no doubt exists among three different processes: (i) preparing a programme (ii) compiling a data base on the basis of the programme and (iii) processing for purpose of adding to, or altering the documents on the data base. In the present case, at one end, we have the Amadeus group of companies with a mega

computer at Erding into which they have fed various programmes and built up a huge data base of various kinds of information relating to several airlines and service providers. At the other end we have the travel agent with a computer who merely accesses or utilises relevant information which appears on the data base of the computer. In a sense, he also adds to and alters the database available on the computer when he books a ticket for a client by typing in the data regarding his customer such as airline, fare, ticket, nature of services etc. for such entries will be added to the data base and become available for other operators on computers working on the system all over the world. A view may perhaps be taken that what the travel agent does is not "programming" as he merely makes use of adds to or alters the information on the data base but does not touch the process by which such information is brought on to the host computer.

35. The assessee which occupies a position midway between the two fulfils, it will be clear from the facts as stated above, the functions of a programme exporter, it does not add mere entries to a database as done by the travel agent. In fact it has no direct interest in adding to, or drawing extracts from the data base built into the computer like the several operators all the world over. What it does actually is to supplement the functions of the Amadeus Group by preparing and transmitting programmes to the latter for incorporation into portions or "partitions" in its mega-computer at Erding in Germany, so as to enable the travel agents in its marketing region draw on the available information for their benefit. Its activities are to issue instructions to the master computer to recognise the operators, identify them and provide them access to specific portions of the data base. There can be no doubt whatever, for the reasons discussed above, that the assessee manufactures, produces and exports software within the meaning of the three specified sections of the Act. It is open to it to claim exemption under any one of these sections and as is well established by pertaining to interpretation of taxing statutes is entitled to choose that one which is most favourable to it in any particular assessment year."

25. In the impugned order dated 21st August, 2016 for AY 2009-10, the ITAT further noted that the registration granted by the STPI authorities to Unit II was exclusively for manufacture of 'computer software/IT enabled services'. The ITAT held that the DRP could not have possibly taken a contrary view. With there being no change in the *modus operandi* since 1996-97, the ITAT found no reason not to follow the earlier decision for that AY.

26. A further factor that was adverted to before the ITAT by the Revenue was the view taken by the DRP that Amadeus Spain has a Permanent Establishment ('PE') in the form of AIPL. The ITAT found that "this fact is totally irrelevant in adjudication of the Appellant's (AIPL's) claim for deduction under Section 10A." It was held that a foreign company's DAPE and DA are two separate taxable entities as per law. The ITAT noted: "DAPE is a creation of Article 5 of the relevant DTAA, wherein the object is to tax profits of foreign company in the source state." In this context it referred to the decision of the Mumbai Bench of the ITAT in ***Deputy DIT International Taxation v. Set Satellite (Singapore) Pte. Ltd. (2008) 307 ITR (AT) 181 (Mum).***

27. The ITAT also took note of its order dated 26th July, 2016 in ITA Nos. 1463/Del/2013 etc. (***Deputy CIT v. Inter Globe Technology Quotient P. Ltd.***) for AYs 2007-2008 to 2010-2011. (This order is incidentally under appeal in the companion appeal here i.e., ITA 330 of 2017 for AY 2010-11). The ITAT noted that although Inter Globe was a competitor for AIPL, "both the Assesses have similar business model and are rendering data processing activity."

Contentions of the Revenue

28. It was urged by Ms. Vibhooti Malhotra, learned counsel for the Revenue, that a parallel could not be drawn between the decisions in the Assessee's own case for AY 1996-97 and the AY under consideration because the deduction that was claimed for AY 1996-97 deduction was under Section 80HHE whereas here it is under Section 10A of the Act.

29. There is no merit in the above contention for the simple reason that the Revenue has not been able to show that the activity of the Assessee, which was examined then and the activity now is any different. The essence of both Section 80 HHE and Section 10A in terms of the conditions of eligibility are not very different.

30. It was then submitted by Ms. Malhotra that the beneficiaries of the Assessee's activities are all located in India and, therefore, there was no real export of services. The extracted portions of the order of the ITAT for 1996-97 reveal that the very same activity of the Assessee was examined not only by STPI but also by ESC. It was also noticed that the NIC had been furnished wrong information about the activity of the Assessee by the Revenue. The categorical finding of the ITAT, on the basis of the reports of the STPI and ESC was that the Assessee "manufactures, produces and exports software" and that it could claim exemption under any of the three provisions viz., Section 80HHE or Sections 10A or 10B of the Act. The said order for AY 1996-97 and followed in the subsequent two AYs has been accepted by the Revenue.

31. Ms. Malhotra raised a doubt whether the Assessee could be said to be exporting computer software. The Court finds that this doubt has been comprehensively negated by the ITAT in its order in the Assessee's own case for AY 1996-97. It observed in this regard:

“32. ... the Government of India has identified computer software as an area of extreme focus. In order to give impetus to the software export industry in a concrete manner and for providing conducive environment to the industry to conduct business at a pace commensurate with international practices, Government has conceived the STP Scheme, one of the significant features of which is to provide single point contact services. In this context, 'computer software' (used in contrast with 'computer hardware') will include all services where 'computer hardware' viz., computers are used as professional tools for processing intellectual inputs to be used in automatic data processing machines. The setting up of STP's and their monitoring by the DOE, the stipulation of an export obligation, the grant of customs concessions and exemptions for imports (if any), sales tax concessions, grant of the exchange clearances for the export of the products after verification and certification by the DOE, restriction on external commercial borrowings, the amendment of the Copyright Act as well as the grant of exemption for Income-tax purposes under section 10A, 10B and 80HHE all form part of an integrated policy for development and export of software. The expression 'software' should, therefore, be understood in the same sense in relation to each of the legislations pertaining to this industry. If the assessee is registered as a unit for manufacture and export of software and is such a one for all the other aspects referred to above, it would be not only anomalous but unjust to say that it is not an exporter of software for purposes only of Income-tax merely because the various departments of Government have not kept abreast of each other in the issue of their clarificatory notifications and instructions.”

Conclusion in ITA 154 of 2017 (AIPL)

32. The Court finds that the impugned order of the ITAT in the case of AIPL for AY 2009-10 on the issue of allowing of deduction under Section 10A of the Act suffers from no legal infirmity either in its analysis of the legal provisions or in its conclusions. The Court is not inclined to frame any question of law on the issue concerning a Section 10A deduction in the appeal of the Revenue against AIPL for AY 2009-10.

Facts in ITA 330 of 2017 (Inter Globe)

33. Turning now to the Revenue's appeal in the case of Inter Globe for AY 2010-11, it is seen that there are concurrent findings of CIT(A) as well as ITAT regarding the eligibility of the Assessee to deduction under Section 10AA of the Act.

34. The facts were that the Assessee/Inter Globe was engaged in the business of software development and providing information technology services, namely, 'data processing'. It exported the services from the Special Economic Zone ('SEZ') Unit located at Noida.

AO's order

35. The basis for the AO to deny the deduction under Section 10AA of the Act for AY 2010-11 was that a majority of the invoices were addressed to the Assessee at the addresses in Mumbai, Gurgaon etc. Very few of those invoices bore the Noida SEZ address. The AO observed that the source of the data processing export had to be unit established at SEZ area. However, there were only 38 employees there.

The value of the computers at the Noida SEZ address was only Rs.31.63 lakhs.

36. The AO in the assessment order dated 1st March, 2013 concluded that the Assessee was nothing but a distributor of Galileo, which was the owner of the computer reservation system ('CRS') through which the airline and hotel reservations were done worldwide. As per the Agreement the Assessee installed computer hardware and software at the office of various travel agents throughout India. The agents made bookings on the software and were entitled to commission. The AO disbelieved that the Assessee was required to provide any ITeS to Galileo, namely, export of data processing or that the said services were rendered on Galileo USA from the unit located in Noida and not at the desk of the travel agents.

Order of CIT (A)

37. The CIT(A), however, disagreed. In the order 6th September, 2013 allowing the Assessee's appeal, the CIT (A) followed the decision of the ITAT in the case of AIPL for AY 1996-97. The CIT(A) found as a matter of fact that "data that is being processed and transmitted by the appellant is gathered in the appellant's Unit at SEZ from across the country from the offices of various travel agents or from the customers, who make booking through CRS system of Galileo. However, in order to transmit the same to Galileo, it has to be processed through appellant's system located at SEZ Unit NOIDA. Therefore, in the absence of the CRS system at appellant's SEZ Unit NOIDA, the data collected from the travel agents, cannot be transmitted further and

moreover in the absence of CRS, of which the appellant is sale distributor, the data is of no use for the desired objectives. Therefore, I hold that the service by appellant data for processing transmission from its SEZ Unit NOIDA, is the only service which has been exported for the purpose of making booking through CRS to Galileo, therefore, in view of the same, the observation whether the appellant had more number of computers/manpower outside SEZ, and that the data is collected by travel agents (outside SEZ) is of no relevance in determining the nature of services exported by the appellant.”

38. Further, in the Assessee’s own case for AY 2007-08, followed by the CIT(A) for AYs 2008-09 and 2009-10, the deduction under Section 10AA of the Act had been allowed by holding that the profits earned from rendering services to Galileo were covered thereunder. The material facts remained the same for AY 2010-11. The CIT(A) accordingly allowed the appeal and allowed the deduction claimed by the Assessee/Inter Globe under Section 10AA of the Act.

Impugned order of the ITAT in case of Inter Globe

39. The Revenue then went in appeal to the ITAT. The ITAT noted that the Agreement entered into between the Assessee and Galileo envisaged the following technical services being provided: access levels, communication links, scripts, problem ticketing and help desk operations, voice inbound call centre 24X7, Network Monitoring Operations, Ticket Stock Control Operations, Vendor Support Operations, Fares Support Operations. Further, constant update network was done by the Assessee from time to time. The Software Export

Declaration (SOFTEX) form showing the work of the Assessee of data entry and conversion of software data processing was also referred to. The Auditor's report certified that the Assessee had been engaged in the development of computer software and information technology enabled products and services. This had been certified by the Office of the Development Commissioner, Noida SEZ.

40. Before the ITAT as it was contended by the Revenue it was urged that the activity involving AIPL was very different from the activities being performed by Inter Globe and, therefore, there could be no comparison between the two cases. In rebutting this contention, the ITAT referred to the fact that the claim under Section 10AA of the Act was supported by a certificate of a Chartered Accountant in Form 56F. It was noticed that Article 9 read with Schedule-I of the Distribution Agreement between the Assessee (Inter Globe) and Galileo showed that Galileo was entitled to a fee based on the number of segments completed by the Assessee. 'Segment' was defined under Article 2 to mean a booking, either of a direct flight or consisting of various legs of journeys, which is concluded and not cancelled at any stage. The more the number of segments booked by travel agent, the higher would be the revenues of the Assessee. Therefore, it was critical for the Assessee to ensure that the bookings were converted into segments. In terms of Article 8 of the Agreement, the Assessee was required to provide any kind of technical help, support or assistance as may be required by the subscribers in connection with use of Galileo GDS server located in Denver, USA. Revenue generated on creation of segment and

finalisation of PNRs required the Assessee to undertake the said data processing services from its units located in Noida SEZ.

41. The case of the Assessee which was accepted by the ITAT was that “the aforesaid data processing services were rendered on the Galileo’s GDS in USA from the unit located in Noida SEZ and not at the desk of the travel agent.” The ITAT concurred with the findings of the CIT(A) in this regard including the part of the order where reliance was placed on the decision of the ITAT in the case of AIPL.

42. The ITAT also discussed the case of *Acquire Service Private Limited v. Commissioner of Service Tax [2015] 78 VST 292 (CESTAT-New Delhi)*, which was a part of the group of companies using the CRS of Amadeus or Galileo. The *modus operandi* was described as under:

“7.6. ... These groups had evolved and were maintaining a computer reservation system (CRS), the requisite software and a huge database comprising a variety of information relating to several airlines and other travel services provides, for providing international travel related facilities. The core computer system/server were established at overseas locations at US, Germany or Spain as the case may be. The travel agent, with a computer, merely accesses or utilizes travel information drawn from the data base of the computers. The travel agent also adds to, and alters the data available on the computer when he books a ticket (or other travel facilities like cab services, accommodation at hotels/resorts etc.) for a customer by feeding in the data regarding the customer such as airlines, hotel, local travel fare, tickets, the several intermediary and eventual destination; and the nature of services to be provided etc. This data enters the composite data based stream and becomes available to other operators via computers operating on Amadeus or Galileo

system, all over the world, whenever a fulfilling transactions occurs at the travel agents end. The Assessee's role like the present Assessee before us, was occupying the position of hyphen between the overseas Amadeus and Galileo which have conceived evolved, maintained and operates the CRS (Computer Reservation System) facility on the one hand; and travel agent on the other. What the Assessee does is to supplement functions, of the overseas entities (Amadeus or Galileo) by preparing and transmitting the locally generated travel related data to them for incorporation and synthesis into the core data base, maintained in the mega computers overseas, so as to enable travel agents (operating within the Assessee's marketing region) to draw on the available and updated information, for their benefit. The Assessee issued instructions to the respective master computer (of Amadeus or Galileo) to enable recognition that identification of tour operator and facilitate access to them of specific portion (segment) of the composite data basis. CRS is a system connected with a data base carrying various kinds of information pertaining to several airlines and other travel services provides is used for booking airlines tickets, cabs, hotels and like travel facilities across the globe. Airlines hotels, cabs agencies and other services providers pay fee to the overseas entities (Amadeus or Galileo) for bookings made by employing the CRS. The Assessee process the data generated by their accredited travel agent in India, at their respective STP unit and align and interface such information as per protocols of the CRS systems of the overseas entitles-Amadeus or Galileo. On successful booking of a ticket or others travels related facilities by accredited travel agents, the relevant data is processed by the Assessee and fed into the data overseas, employing internet facilities and activities amounting to computer data processing. For providing this service, Assessee received data processing fees from the overseas entities in convertible foreign exchange, assesses, however receive no fee/consideration from either the airlines, the travel agents or from hotels etc. the CESTAT has thus come to the conclusion that Assessee promote/market CRS services provide by the Overseas entities (Amadeus/Galileo) but do so through computers data processing, amounting to information technology services.”

43. It was noticed that the functions of AIPL had also been discussed in the case of Galileo. The ITAT noted that its decision in the case of Galileo was upheld by this Court in its decision in ***Director of Income Tax v. Galileo International Inc. (2011) 336 ITR 264 (Del.)***. Reference was also made to the decision of this Court in ***CIT v. M.L. Outsourcing Services (P) Ltd. (2014) 271 CTR 553 (Del.)*** where a reference was made to the CBDT notification dated 26th September, 2000 in relation to deduction under Section 10A of the Act.

Contentions of the Revenue

44. Mr. Ruchir Bhatia, learned counsel for the Revenue submitted that the decision of this Court in ***Director of Income Tax v. Galileo (supra)*** which interpreted the same agreement between the Assessee and Galileo held that it did not provide for rendering of export services.

45. The Court is unable to agree with the above submission. This Court in ***Director of Income Tax v. Galileo (supra)*** was not examining whether the Assessee was entitled to deduction under Section 10AA for the services provided by it. The focus there was on whether Galileo could be said to have a PE in India. As noted by the CIT(A) and the ITAT even in that case, the ITAT discussed the functions of the Assessee. The said decision of the ITAT, which was affirmed by this Court, was not inconsistent with what the ITAT held in its impugned order in the present case as far as the Assessee's functions are concerned.

46. The concurrent factual findings of both the CIT (A) and the ITAT as regards the Assessee/Inter Globe fulfilling the conditions of eligibility for deduction under Section 10AA of the Act have not been shown to be perverse.

Conclusion in ITA No. 330 of 2017 (Inter Globe)

47. Consequently, the Court is not persuaded that any substantial question of law arises from the order dated 26th July, 2016 of the ITAT in the case of Inter Globe for AY 2010-2011.

48. Both appeals are dismissed but, in the circumstances, with no orders as to costs.

CM No. 16642/2017 (Exemption) in ITA No. 330/2017

49. Allowed, subject to just exceptions.

CM No. 16643/2017 in ITA No. 330/2017 (for condonation of 38 days' delay in re-filing)

50. For the reasons stated in the application, the delay in re-filing the appeal is condoned. The application is allowed.

S.MURALIDHAR, J

VINOD GOEL, J

MAY 22, 2017/b'nesh