IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1778 OF 2016

Commissioner of Income Tax LTU .. Appellant
Versus
M/s. Tata Consultancy Services .. Respondents

Mr. Tejveer Singh for appellant
Mr. Porus Kaka, Senior Advocate with Mr. MANISH Kanth I/b. Srihari Iyer for respondents.

CORAM : AKIL KURESHI &
SARANG V. KOTWAL , JJ.

DATE : 18th March 2019.

P.C.

In this appeal filed by the revenue, following question arises:-

> “(a) Whether on the facts and circumstances of the case and in law, the ITAT has erred in upholding the order of CIT (A) in allowing the claim under section 10A of the I.T. Act on units on which deduction under section 90HHE of the IT Act was being claimed and also on the method of computation of deduction under section 10A of the IT Act, 1961?”

2] Before adverting to this question, we may record that the revenue’s appeal contains several other questions concerning transfer pricing adjustments. However, it is an agreed position between the Advocates of both sides, that in case of the present assessee, between Government of India and that of United States of America, a Mutually Agreed Procedure has been followed and final agreement is arrived at. In view of this development, these additional questions have become academic in nature and we have, therefore, not examined the same.

3] The sole surviving question arises in following factual background. One of the activities that the respondent assessee is engaged in, is manufacture and export of computer software. In relation to such income, the assessee was previously claiming deduction in terms of section 80HHE of the Income Tax Act, 1961 (for short Act).

4] Under Finance Act of 2000, the provisions of section 10A came to be amended giving benefit of deduction in relation to the income from the manufacturing activities of computer software development for export. This amendment would take effect from 1/4/2001. In the return of income filed for the assessment year

2005-06, the assessee had claimed such deduction in terms of section 10A of the Act, instead of section 80HHE. We are informed that for all assessment years post 1/4/2001, the assessee had made such a change in claim of deduction. Be that as it may, we are concerned with the revenue's stand in relation to the present assessment year. The revenue opposed such a claim on two grounds. Firstly, that in view of sub-section (5) of section 80HHE of the Act, the assessee could not have made any such claim under section 10A. The second contention of the revenue is that in any case, section 10A as amended with effect from 1/4/2001, would cover only those industries which set up manufacturing activity of computer software after the said date. In other words, according to the revenue, this benefit would not be available to the existing industries.

5] Apart from this opposition to the very claim of the assessee's deduction, the revenue also questioned the computation of such claim arguing that the freight and insurance expenditure which is to be deleted from the export turnover, cannot be excluded for the purpose of computing the total turnover.

6] Section 80HHE of the Act pertains to deduction in respect of profits from export of computer software etc. Sub-section (5) of section 80 HHE provides that where deduction under said section is claimed and allowed in respect of the profits of the business referred in sub-section (1) for any assessment year, no deduction shall be allowed in relation to such profits under any other provision of the Act for the same or any other assessment year. What subsection (5) of section 80 HHE thus prohibits is the claim of deduction allowed under section 80HHE under any other provision, be it in the same assessment year or in other assessment year. In the present case, it is not even the ground of the revenue that the deduction under section 10A of the Act claimed by the assessee in the present year is in relation to profit for which the assessee was granted deduction under section 80HHE. Sub-section 5 of section 80 HHE of the Act, therefore, in the present case would have no applicability. We are fortified in our view by a division bench judge ent of Delhi High Court in the case of Commissioner Income Tax Vs. Damco Solutions Pvt. Ltd., reported in 200 Taxman page 26 in which it was observed as under:-

> "2. This stand of the Assessing Officer was repelled by the CIT (A) holding that the purpose of sub-section (5) of section 80HHE was to avoid double benefit and that would not mean that if the assessee for a particular assessment year wanted relief only under section 10A of the Act that would be denied to the assessee. The only embargo was not to give relief under both the provisions."

7] Coming to the revenue's second objection to the assessee's claim of deduction under section 10A of the Act, we may recall, that the assessee had admittedly started manufacturing computer software for export prior to 1st April 2001, when section 10A was substituted by the Finance Act of 2000. It was under this amendment that the profit and gains derived by an undertaking from export of computer software came to be covered for deduction under section 10A. The revenue contends that this benefit would not be available to an industry which was already existing and engaged in such activity. However, the interpretation of the revenue would render the first proviso to subsection (1) of section 10A wholly redundant. This proviso reads as under:-

> "10A(1) …..
>
> Provided that where in computing the total income of the undertaking for any assessment year, its profits and gains had not been included by application of the provisions of this section as it stood immediately before its substitution by the Finance Act, 2000, the undertaking shall be entitled to deduction referred to in this sub-section only for the unexpired period of the aforesaid ten consecutive assessment years.

8] As per this proviso, therefore, while computing total income of the undertaking for any assessment year, the profit and gain which had not been included prior to the introduction of Finance Act, 2000, such an undertaking would be entitled to deduction as per sub-section (1) only for the unexpired period of 10 consecutive assessment years. In plain terms, therefore, this proviso would apply to an industry which was already in existence, engaged in manufacturing and export of computer software when the said amendment was made in section 10A. However, such an industry would be eligible to claim that deduction in relation to profit and gain arising out of such activity only for remainder of the period of 10 assessment years, which could be claimed for consequent assessment years alone.

9] If the revenue's interpretation of sub-section (1) of section 10 were to be accepted, then, this proviso would be rendered redundant.

10] Coming to the revenue's contention in relation to the computation of benefit of section 10A of the Act, this issue is squarely covered by the judgement of Supreme Court in the case of Commissioner of Income Tax Vs. HCL Technologies, reported in **404 ITR 719,** in which the Court held that the total turnover for the purpose of section 10 of the Act cannot be understood as defined for the purpose of section 80 HHE. It was further held that thus the expenses which are to be excluded from the export turnover, would also have to be excluded for the purpose of computing total turnover.

12] In the result, no question of law arises. Appeal is dismissed.

(SARANG V. KOTWAL, J) (AKIL KURESHI, J)