



T.C.A.Nos.1370 and 1371 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	12.03.2025
Pronounced on	.04.2025

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

T.C.A.Nos.1370 and 1371 of 2009

M/s.Virtusa Consulting Services Private Limited
Formerly known as M/s.Polaris Software Lab Limited,
No.34, IT Highway, Navalur,
Chennai – 603 103. ... Appellant/Respondent in both TCAs.

(Appellant company name amended vide Courtorder dated 20.09.2022 made in
C.M.P.Nos.5501 and 5503 of 2022 in T.C.A.Nos.1370 and 1371 of 2009)

Vs.

Income Tax Officer (OSD),
Company Circle V (2),
4th Floor, Main Building,
121, Nungambakkam High Road,
Nungambakkam, Chennai – 600 034. ... Respondent/Appellant in both TCAs.

Prayer in Tax Case (Appeal) No.1370 of 2009: Appeal under Section 260A of
the Income Tax Act, 1961, against the order of the Income Tax Appellate
Tribunal, Chennai Bench 'B' dated 03.07.2009 in I.T.A.No.2156/MDS/2007.

Prayer in Tax Case (Appeal) No.1371 of 2009: Appeal under Section 260A of
the Income Tax Act, 1961, against the order of the Income Tax Appellate
Tribunal, Chennai Bench 'B' dated 03.07.2009 in I.T.A.No.2146/MDS/2007.



T.C.A.Nos.1370 and 1371 of 2009

For Appellant : Mr.N.V.Balaji
(in both)

For Respondent : Mr.Ravikumar
(in both) Senior Standing Counsel

COMMON JUDGMENT

(Judgment of this Court was delivered by **C.SARAVANAN, J.**)
By this Common Order, both these Tax Case Appeals are being disposed of.

2. These Tax Case Appeals were admitted by this Court on 14.12.2009.

At the time of admission, the following Questions of Law were framed as Substantial Questions of Law by this Court for being answered:

“(i)Whether on the facts and in the circumstances of the case, the Tribunal was right in law in rejecting the contention of the appellant concerning the computation of deduction under Section 10A and 80HHE?

(ii)Whether on the facts and in the circumstances of the case, the Tribunal was right in law in upholding the exclusion of expenditure incurred in foreign currency in relation to on-site software development from the purview of export turnover for the purpose of computation of deduction under Section 10A and 80HHE of the Income Tax Act?

(iii)Whether on the facts and in the circumstances of the case, the Tribunal was right in law in not noting the distinction between 'manufacture of computer software' and the provision of 'technical services'?

(iv)Whether on the facts and in the circumstances of the case, the Tribunal was right in law in remitting back to the Assessing Officer without giving its finding on the issue relating to the exclusion of the component of unrealized sale proceeds both from export turnover and total turnover?



T.C.A.Nos.1370 and 1371 of 2009

(v) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in setting aside the order of the Assessing Officer without giving its finding on the issue relating to deduction under Section 80HHE towards the balance 10% of the profits not available as deduction under Section 10A? and

(vi) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the dividend income from other mutual funds are not akin to dividend income from Unit Trust of India and do not qualify as income received from domestic company for deduction under Section 80M? ”

3. These Appeals arise out of the impugned Common Order dated **03.07.2009** passed by the Income Tax Appellate Tribunal (hereinafter referred to as the “ITAT”) in I.T.A.No.2156/MDS/2007 filed by the Respondent/Income Tax Department and the cross appeal filed by the Appellant/Assessee (formerly, M/s.Polaris Software Lab Limited) in the said appeal. The dispute in these appeals pertains to the **Assessment Year 2003-2004**.

4. By the impugned Common Order, the ITAT partly allowed the appeal preferred by the Appellant/Assessee in I.T.A.No.2156/MDS/2007 and partly allowed the cross appeal preferred by the Respondent/Income Tax Department in I.T.A.No.2146/MDS/2007.

5. The Appellant/Assessee has thus filed these two Tax Case Appeal, to the extent, the cross appeal of the Appellant/Assessee in I.T.A.No.2156/MDS/2007 was disallowed and to the extent, the appeal of the



T.C.A.Nos.1370 and 1371 of 2009

Respondent/Income Tax Department in I.T.A.No.2146/MDS/2007 was allowed.

BRIEF FACTS LEADING TO THE FILING OF THESE APPEALS:-

6. The brief facts of the case is that the Appellant/Assessee is a public Limited Company having two divisions. One of the division of the Appellant/Assessee is an Export Oriented Units (EOU), where its Software Technology Part (STP) was located in a Free Trade Zone (FTZ). For the Software Technology Part (STP) Unit, the Appellant/Assessee claimed deductions under Section 10A of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'). For the other Division, the Appellant/Assessee claimed deductions under Section 80HHE of the Act.

7. The Appellant/Assessee filed its Return of Income on **28.11.2003** declaring a sum of **Rs.22,79,02,910/-** as the taxable income for the **Assessment Year 2003-2004**. The return was initially processed under Section 143(1) of the Act on **12.03.2004**.

8. Thereafter, the Return of Income filed by the Appellant/Assessee on **28.11.2003** was selected for scrutiny under Section 142 of the Act. In this background, the Appellant/Assessee filed its revised Return of Income on **05.01.2005** declaring a taxable income of **Rs.21,39,14,420/-** and claimed a



T.C.A.Nos.1370 and 1371 of 2009

refund of **Rs.7,08,24,923/-**.

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9. In the revised Return of Income filed on **05.01.2005**, the Appellant/Assessee claimed a deduction of **Rs.34,46,11,336/-** under Section 10A of the Act, as it stood during the period in dispute. The matter was referred to the Transfer Pricing Officer (TPO). The Transfer Pricing Officer (TPO) passed an Order dated **21.02.2006** under Section 92CA of the Act, wherein, it was confirmed that no adjustment is considered necessary for the value of international transactions entered into by the Appellant/Assessee.

10. Thereafter, an Assessment Order dated **29.03.2006** was passed for the **Assessment Year 2003-2004** under Section 143(3) read with Section 94CA(4) of the Act. The Assessing Officer noticed that the Appellant/Assessee has incurred an aggregate expenditure of **Rs.90,40,04,020/-** in foreign currency towards transfer and other project expenses in respect of its export turnover under Section 10A and Section 80HHE of the Act.

11. In the **Assessment Order** dated **29.03.2006**, passed under Section 143(3) read with Section 94CA(4) of the Act, as it stood then, the Assessing Officer disallowed several claims of Appellant/Assessee for deductions in the taxable income in the revised Returns of Income filed by the Appellant/Assessee



T.C.A.Nos.1370 and 1371 of 2009

on **05.01.2005**.

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12. In the aforesaid **Assessment Order** dated **29.03.2006**, the benefit of the following expenses incurred while computing the deduction under Section 10A and Section 80HHE of the Act and Section 80M of the Act by the Appellant/Assessee as in the revised Returns of Income filed on 05.01.2005 were partly disallowed.

Sl. No.	Amount	Deductions claimed	Remarks
1.	Rs. 12,50,000/-	Amount paid to ROC	---
2.	Rs. 34,46,11,336/-	Deductions under Section 10A of the Act.	The Appellant/Assessee submitted its reply dated 27.03.2006 stating that “The details of expenditure incurred in Foreign Currency has already been furnished and that these expenses included expenses towards legal and professional fee, Membership fee, travelling expenses, overseas project development expenses, business development expenses etc., Travel and stay expenses includes expenses for software development, business development, for ascertaining customer requirements, etc. and that “software development” will not amount to “technical services” within
3.	Rs. 5,25,45,446/-	Deductions under Section 80HHE of the Act.	



T.C.A.Nos.1370 and 1371 of 2009

Sl. No.	Amount	Deductions claimed	Remarks
			the meaning of Clause (iv) to Explanation to Section 10A of the Income Tax Act, 1961 and hence will not fall under the exclusion from Export Income. Further, it was submitted that even if a portion of the expenditure incurred in foreign currency was treated as “technical services”, the same has to be reduced from export turn over as well as from total turn over in view of the decision of the CIT(Appeals) in its own case for the Assessment Year 2002-2003. ”
4.	Rs. 66,68,933/-	Dividend income under Section 80M of the Act.	Rs.17.03 Crores distributed to Shareholders

13. The dispute in these appeals is confined to deduction and computation of deduction under Section 10A and 80HHE of the Act and Section 80M of the Act. As far as the computation of deduction under Section 80HHE and under Section 10A of the Act in the said **Assessment Order** dated **29.03.2006** are concerned, the following computation was made by the Appellant/Assessee.

Computation of Deduction u/s.80HHE of the Act



T.C.A.Nos.1370 and 1371 of 2009

Total Turnover adopted by the Appellant/Assessee	Rs.80,01,95,246/-
Less: Expenses incurred by the Appellant/Assessee in foreign exchange as discussed	Rs.18,99,79,814/-
Adj.Total Turnover (C)	Rs.61,02,15,432/-
Export Turnover adopted by the Appellant/Assessee	Rs.60,93,27,584/-
Less: Expenses incurred by the Appellant/Assessee in Foreign country	Rs.18,99,79,814/-
Adj.ETO (B)	Rs.41,93,47,770/-
Profits of the business (adopted by the Appellant/Assessee) (A)	Rs.13,80,09,678/-
Deduction u/s.80HHE = $A \times B/C$ = $13,80,09,678 \times 41,93,47,770 / 61,02,15,432$ = Rs.9,48,41,997/-	
Eligible deduction for the Assessment Year 2003-2004 @ 50% = Rs.4,74,20,998/-	

Computation of Deduction u/s.10A of the Act

Consolidated ETO adopted by the Appellant/Assessee	Rs. 2,29,01,09,853/-
Less:	
(1) unrealised foreign exchange 2,97,28,983	
(2) Expenses incurred in foreign currency 71,40,24,206	Rs. 74,37,53,189/-
Export Turnover	Rs. 1,54,63,56,664/-
Consolidated Total Turnover	Rs. 2,65,39,38,843/-
Profits of the business	Rs. 45,19,79,052/-
Deduction under Section 10A	Rs. 26,33,52,270/-
Eligible deduction for the Assessment Year 2003-2004 @ 90% of Rs.26,33,52,270/-	Rs. 23,70,17,043/-

14. The Assessing Officer thus assessed the revised Returns of Income filed by the Appellant/Assessee on **05.01.2005** in the **Assessment Order** dated **29.03.2006** as **Rs.32,76,33,084/-** as detailed below:-



T.C.A.Nos.1370 and 1371 of 2009

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Returned Income (as per revised return of income filed)		Rs. 21,39,14,420/-
Less:		
Income from other sources	2,10,84,347/-	
Short Term Capital Gains	1,85,31,952/-	Rs. 3,96,16,300/-
Taxable Income from Business		Rs. 17,42,98,123/-
Add:		
Income exempt u/s.10A		Rs. 34,46,11,336/-
80HHE		Rs. 5,25,45,466/-
Income from Business		Rs. 57,14,54,825/-
Add:		
Fees paid to ROC capitalised		Rs. 12,50,000/-
		Rs. 57,27,04,825/-
Less:		
1/5 th of ROC fees u/s.35D		Rs. 2,50,000/-
		Rs. 57,24,54,825/-
Less:		
Deduction u/s.10A (as per working enclosed)		Rs. 23,70,17,043/-
Deduction u/s.80HHE (as per working enclosed)		Rs. 4,74,20,998/-
Taxable Income from Business		Rs. 28,80,16,784/-
Add:		
Income from other sources		Rs. 2,10,84,347
Short Term Capital Gains		Rs. 1,85,31,953
Assessed Income		Rs. 32,76,33,084/-

15. In the **Assessment Order** dated **29.03.2006**, the balance tax liability of the Appellant/Assessee was computed as follows:-

Income Tax	Rs. 11,46,71,579
Add:	
Surcharge @ 5%	Rs. 57,33,579
	Rs. 12,04,05,158
Less:	
TDS	Rs. 3,74,82,726
Advance Tax Paid	Rs. 10,12,90,000
Refundable	Rs. 1,83,67,568



T.C.A.Nos.1370 and 1371 of 2009

Income Tax	Rs. 11,46,71,579
Add: Interest under Section 244A	Rs. 12,62,031
Refundable	Rs. 1,96,29,599
Less: Refund issued on 28.04.2005	Rs. 6,57,43,349
Payable	Rs. 4,61,13,750
Add: Interest under Section 234D	Rs. 55,33,650
Balance Payable	Rs. 5,16,47,400

16. Thus, vide the **Assessment Order** dated **29.03.2006**, the tax payable by the Appellant/Assessee was determined as **Rs.5,16,47,400/-** on the aforesaid assessed income of **Rs.32,76,33,084/-** as in the revised Return of Income filed by the Appellant/Assessee.

17. Aggreived by the aforesaid Assessment Order, the Appellant/Assessee filed **I.T.A.No.192/2006-2007** before the Commissioner of Income Tax (Appeals) (hereinafter referred to as the 'Appellate Commissioner') for the **Assessment Year 2003-2004**.

18. The Appellate Commissioner vide Order dated **31.05.2007** partly allowed the appeal in **I.T.A.No.192/2006-2007** filed by the Appellant/Assessee against the **Assessment Order** dated **29.03.2006**.



T.C.A.Nos.1370 and 1371 of 2009

19. Aggrieved by the Order dated **31.05.2007** passed by the Appellate Commissioner in **I.T.A.No.192/2006-2007** for the **Assessment Year 2003-2004**, both the Appellant/Assessee and the Respondent/Income Tax Department filed appeals before the ITAT.

20. As regards, the alternative plea of the Appellant/Assessee that if the expenses are excluded from the export turnover, the same shall not form part of the total turnover, the Appellate Commissioner directed the Assessing Officer to exclude the expenditure in foreign exchange from the total turnover for the purpose of computing eligible deduction under Section 10A of the Act.

21. Regarding exclusion of expenses incurred in foreign currency, while computing deduction under Section 80HHE of the Act, the Appellate Commissioner modified the order of the Assessing Officer and directed the Assessing Officer to not to exclude certain expenses amounting to **Rs.64,77,794/-** from the export and total turnover for the purpose of determination of eligible deduction under Section 80HHE of the Act.

22. Regarding claim under Section 80HHE of the Act with respect to 10% of the profit which was not considered for deduction under Section 10A of the



T.C.A.Nos.1370 and 1371 of 2009

Act, the Appellate Commissioner held the same cannot be claimed separately under Section 10A of the Act.

23. The Appellate Commissioner found that certain expenses incurred by the Appellant/Assessee as in the revised Return of Income are not directly connected with the software development and directed the Assessing Officer not to exclude these expenses amounting to **Rs.2,43,46,287/-** from the export turnover by following the orders in the case for the Assessment Year 2003-2004.

24. Regarding deduction under Section 80M of the Act in respect of dividend received from the mutual fund, the Appellate Commissioner allowed the claim of the Appellant/Assessee company by following the decision of the Bombay High Court in **Commissioner of Income Tax Vs. State Bank of India, 262 ITR 662**.

25. The respective appeals of the Appellant/Assessee and the Respondent/Income Tax Department before the ITAT is summarised in the following table:-

ISSUES COVERED UNDER TCA.NO.1370 OF 2009 ARISING OUT OF IMPUGNED ORDER IN ITA.NO.2156/MDS/2007 FILED BY THE APPELLANT/ASSESSEE			
Sl.No	CIT (Appeals)	Order of the Tribunal	Remarks
1	Exclusion of Rs.70,40,24,206/- from the export turnover for computing	Remanded back to the Assessing Officer to re-do the exercise.	Appeal in TCA.No. 1371 of 2009.



T.C.A.Nos.1370 and 1371 of 2009

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**ISSUES COVERED UNDER TCA.NO.1370 OF 2009 ARISING OUT OF
IMPUGNED ORDER IN ITA.NO.2156/MDS/2007 FILED BY THE
APPELLANT/ASSESSEE**

	deduction under Section 10A of the Act on the ground that same was used for providing technical services outside India.		
2	Exclusion of Rs.18,99,79,814/- from the export turnover while computing deduction under Section 80HHE of the Act on the premises that such expenses were incurred in foreign currency for providing technical services outside India.	Against the Appellant/Assessee in view of the decision of the Trial for the Assessment Year 2001-2002 and 2002-2003 in ITA.No.304 and 395/Mds/2006.	-do-
3	For disallowing the balance of 10% profit which was not allowable under Section 10 A under section 80HHE of the Act.	Remanded back to the Assessing Officer to re-do the exercise.	-do-
4	For upholding the interest under Section 234D of the Act.	Allowed	No appeal by the Appellant/Assessee.

**ISSUES COVERED UNDER TCA.NO.1371 OF 2009 ARISING OUT OF
IMPUGNED ORDER IN ITA.NO.2156/MDS/2007 FILED BY THE
RESPONDENT/INCOME TAX DEPARTMENT**

Sl.No	CIT (Appeals)	Order of the Tribunal	Remarks
1	Direction of the CIT (Appeals) to the Assessing Officer to exclude expenditure incurred in foreign exchange from the total turnover for the purpose of computation of eligible deduction under Section 10A of the Act following the decision of the CIT (Appeals) for the assessment year 2001-02 vide	Answered against Respondent/Income Tax Department	No Appeal.



T.C.A.Nos.1370 and 1371 of 2009

**ISSUES COVERED UNDER TCA.NO.1371 OF 2009 ARISING OUT OF
IMPUGNED ORDER IN ITA.NO.2156/MDS/2007 FILED BY THE
RESPONDENT/INCOME TAX DEPARTMENT**

	order dated 29.11.2005 in ITA No. 164/2005-06 on the Ground That the Said Order Had Not Attained Finality.		
2	The CIT (Appeals) erred in holding that the dividend received from which refund was a par with the dividend declared by the domestic company and therefore an eligible deduction under Section 80M of the Act in terms of the decision of the Bombay High Court in CIT versus State Bank of India , 262 ITR 662.	Remitted back to the Assessing Officer to re-do the exercise.	

SUBMISSIONS ON BEHALF OF THE APPELLANT/ASSESSEE:-

26. The case of the Appellant/Assessee before this Court is that as far as Substantial Questions of Law Nos.(ii) and (iii) are concerned, the issues are already covered by the Division Bench of this Court in Appellant's/Assessee's own case in **T.C.(Appeal) Nos.961 and 962 of 2008** vide order dated **23.10.2018**.

27. It is the further case of the Appellant/Assessee that as far as the Substantial Question of law No.(iv) is concerned, it is also covered by the decision of the Division Bench of this Court in **T.C.(Appeal) Nos.961 and 962 of 2008** for the Assessment Years 2001-2002 and 2002-2003 in accordance with the decision of the Hon'ble Supreme Court in “**Commissioner of Income Tax Vs. HCL Technologies Limited**”, 2018 404 ITR 719.



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28. As far as Substantial Question of Law No.(v) is concerned, it is submitted by the learned counsel for the Appellant/Assessee that the ratio of the Division Bench of this Court in “**Commissioner of Income-tax, Chennai Vs. Ambattur Clothing Limited**”, [2010] 194 Taxmann 79 (Madras) rendered in the context of **Section 10B read with Section 80HHC** of the Act for the Assessment Year 2003-2004 will apply *Mutatis mutandis* for the claim of the Appellant/Assessee under **Section 80HHE** of the Act. A specific reference is made to Paragraph Nos.4, 5 and 6 of the aforesaid decision which reads as under:-

“4. When we examine the issue raised in this appeal, at the very outset, it will have to be pointed out that even under Section 10A(6)(iii) of the Act, there is a specific provision, which reads as under:

“No deduction shall be allowed under Section 80HH or Section 80HHA or Section 80-I or Section 80-IA or Section 80-IB in relation to the profits and gains of the undertaking; and”

5. The very statutory provision prescribing a prohibition in respect of the deductions in relation to the profits and gains itself, has not specifically included section 80HHC. Apparently, it therefore would only mean that there was no prohibition for claiming any deduction under Section 80HHC while applying the benefits provided under Section 10A of the Act. If that is the statutory prescription, by which the assessee was entitled to claim a benefit under Section 80HHC in relation to the profits and



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T.C.A.Nos.1370 and 1371 of 2009

gains while invoking Section 10A, it will have to be concluded that the assessment order in having allowed such a deduction of the remaining 10 per cent of the profits earned by the assessee, was not erroneous. In any event, having regard to such a statutory prescription available for the assessee to claim the benefit under Section 80HHC in respect of the profits earned from Section 10A of the Act, there is absolutely no scope for the Assessing Authority to have invoked Section 154 of the Act, in order to state that, that can be considered as an error apparent, inasmuch as, there was no error at all, much less, apparent error to be rectified by the Assessing Authority.

6.This conclusion of ours is apart from the conclusion of the Tribunal in having held that in that situation what was held by the Assessing Authority in the original assessment order was a possible view and that cannot be considered as an error apparent on the face of the records.”

29. As far as Substantial Question of Law No.(vi) is concerned, the learned counsel for the Appellant/Assessee would submit that substantial question of law has been answered by the Division Bench of the Bombay High Court in “**Commissioner of Income Tax Vs. State Bank of India**”, [2003] 129 Taxman 409 (Bombay), wherein, the Bombay High Court held that the income received from Union Trust of India was dividend and therefore the appellant therein namely, State Bank of India was entitled to the benefit of Section 80M of the Act.

30. It is submitted by the learned counsel for the Appellant/Assessee that



T.C.A.Nos.1370 and 1371 of 2009

there is no dispute that the Appellant/Assessee had received dividends from mutual funds of India, whereas, the Assessing Officer disallowed the same in the **Assessment Order** dated **29.03.2006** passed under Section 143(3) read with Section 94CA(4) of the Act. Hence, it is submitted that the impugned common order of the Tribunal in remanding the case for fresh consideration and denying the benefit of Section 80 of the Act to the Appellant/Assessee is liable to be set aside and that accordingly the Appellant's/Assessee's appeals deserve to be allowed.

31. In this connection, the learned counsel for the Appellant/Assessee relied on the following decisions of the Courts:-

1. **Commissioner of Income-Tax Vs. State Bank of India**, (2003) 129 Taxman 409 (Bombay).
2. **Commissioner of Income Tax, Chennai Vs. Ambatture Clothing Ltd**, (2010) 194 Taxman 79 (Madras).
3. **Commissioner of Income Tax Vs. M/s Zylog Systems Limited**, TCA.No.312 & 385 of 2011.
4. **M/s Polaris Consulting & Services Ltd Vs. The Deputy Commissioner of Income Tax**, TCA.No.961 & 962 of 2008.

SUBMISSIONS ON BEHALF OF THE RESPONDENT/INCOME TAX DEPARTMENT:-

32. Defending the impugned Common Order of the Tribunal, the learned Senior Standing Counsel for the Respondent would submit that no Substantial



T.C.A.Nos.1370 and 1371 of 2009

Questions of Law arise for consideration in these Tax Case Appeals. As admittedly, the case of the Appellant/Assessee has been rightly remanded back to the Assessing Officer for *de novo* consideration by the Tribunal. Therefore, these appeals are liable to be dismissed.

33. The learned Senior Standing Counsel for the Respondent has fairly conceded that these two Tax Case Appeals arising out of the impugned common order of the Tribunal was the subject matter of an appeal before the Division Bench of this Court in **T.C.A.Nos.160 and 161 of 2010** and insofar as Substantial Question of Law No.(ii) is concerned, it was answered in favour of the Appellant/Assessee for the Assessment Years 2001-2002 and 2002-2003 and in favour of the Appellant/Assessee for the Assessment Year 2003-2004 arising out of the impugned common order of the Tribunal in **T.C.A.Nos.160 and 161 of 2010** vide order dated **25.01.2022**, in accordance with the decision of this Court in **T.C.A.Nos.1193 and 1194 of 2008** vide order dated **12.10.2018**. Relevant portion of the order dated **12.10.2018** in **T.C.A.Nos.1193 and 1194 of 2008** is extracted hereunder:-

“5.1. As regards the substantial question of law framed in T.C.A.No.161 of 2010, the Division Bench of this Court, in T.C.A.Nos.1193 and 1194 of 2008 by order dated 12.10.2018, after following the decision of the Hon'ble Supreme Court in CIT, Central III Vs. HCL Technologies Limited [(2018) 404 ITR 719], dealt with the same question



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T.C.A.Nos.1370 and 1371 of 2009

and answered the same in favour of the assessee, the relevant passage of which, is usefully extracted hereunder:-

“3. The question of law framed above has been answered by the Hon'ble Supreme Court in the case of CIT, Central III Vs. HCL Technologies Limited [reported in (2018) 404 ITR 719] wherein it has been held as follows:

“18. Accordingly, the formula for computation of the deduction under Section 10A of the Act would be as follows:

Export Profit = total profit of the Business x Export turnover as defined in Explanation 2(IV) of Section 10A of the IT Act + domestic sale proceeds.

19. In the instant case, if the deductions on freight, telecommunication and insurance attributable to the delivery of computer software under Section 10A of the IT Act are allowed only in Export Turnover but not from the Total Turnover, then, it would give rise to inadvertent, unlawful, meaningless and illogical result which would cause grave injustice to the respondent which could have never been the intention of the legislature.

20. Even in common parlance, when the object of the formula is to arrive at the profit from export business, expenses excluded from export turnover have to be excluded from total turnover also. Otherwise, any



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T.C.A.Nos.1370 and 1371 of 2009

other interpretation makes the formula unworkable and absurd. Hence, we are satisfied that such deduction shall be allowed from the total turnover in same proportion as well.

21. On the issue of expenses on technical services provided outside, we have to follow the same principle of interpretation as followed in the case of expenses of freight, telecommunication etc., otherwise the formula of calculation would be futile. Hence, in the same way, expenses incurred in foreign exchange for providing the technical services outside shall be allowed to exclude from the total turnover.

22. In view of above discussion, we are of the considered view that these instant appeals are devoid of merits and deserve to be dismissed. Accordingly, all the connected matters and interlocutory applications, if any, are disposed of with no order as to costs.?"

4. Following the above, these tax case appeals are dismissed and the substantial questions of law framed for consideration are answered in favour of the assessee and against the Revenue. No costs."

5.2. In the light of the aforesaid judgment, we answer the substantial question of law involved in T.C.A.No.161 of 2010 in favour of the assessee and against the Revenue.



T.C.A.Nos.1370 and 1371 of 2009

*6. In fine, TCA.No.160 of 2010 is allowed.
TCA.No.161 of 2010 is dismissed. No costs.”*

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34. However, it is submitted by the learned Senior Standing Counsel for the Respondent that the Appellant/Assessee had not claimed deduction under Section 80HHE of the Act on the balance of the turnover from the Software Techonology Part (STP) Unit for which the relief was claimed under Section 10A of the Act, for the period in dispute.

35. That apart, it is submitted that there are other conditions which are required to be satisfied under Section 10A of the Act. Therefore, it is stated that even if the expenses incurred under the scope of Section 10A of the Act are to be recognised in terms of Explanation 2(iv) of the Act, the benefit of Section 80A of the Act would not inure as admittedly the Appellant/Assessee has not proved receipt of consideration in foreign exchange within the stipulated time and therefore it is submitted that the Tribunal has rightly remanded the case back to the Assessing Officer to pass a fresh order.

36. It is further submitted that the benefit of Section 10A of the Act during the period in dispute was confined to 90% of the Export Turn Over and the balance 10% of the Export Turn Over in the Software Techonology Part



T.C.A.Nos.1370 and 1371 of 2009

(STP) Unit cannot be allowed as deduction under Section 80HHE as it was claimed in the original return filed by the Appellant/Assessee on 28.11.2003 under Section 139(1) of the Act or in the revised Return of Income filed by the Appellant/Assessee under Section 139(5) of the Act on 05.01.2005.

37. Therefore, in this connection, the learned Senior Standing Counsel for the Respondent has placed reliance on the following decisions:-

- i. **Goezte (India) Limited Vs. CIT**, (2006) ITR 0323;
- ii. **PCIT Vs. Wipro Limited**, [2022] 140 taxmann.com 223 (SC);
- iii. **Wipro Ltd Vs. PCIT**, [2022] 142 taxmann.com 562 (SC) and
- iv. **Shriram Investments Vs. CIT**, [2024] 167 taxmann.com 139 (SC).
- v. **Nagaraj & Co. Pvt Limited Vs. ACIT**, 425 ITR 412 (Mad).
- vi. **CIT Vs. Perio Telecommunications and Electronics Components India Pvt Ltd**, 288 Taxmann 399 (SC).
- vii. **CIT Vs. Craft Cottage**, 142 Taxmann 88 (All).
- viii. **Aztec Software and Technology Services Ltd Vs. ACI**, 229 Taxmann 187 (Kar).
- ix. **Mahesh Investment Vs. ACIT**, 357 ITR 42 (Kar).
- x. **Vishvesariah Technoligical University Vs. CIT**, 113 CCH 29 (ISCC).
- xi. **Capricon Food Products India Ltd Vs. ACIT**, 427 ITR 120 Mds.

38. Hence, the learned Senior Standing Counsel for the Respondent has prayed for dismissal of these Tax Cases Appeals filed by the



T.C.A.Nos.1370 and 1371 of 2009

Appellant/Assessee.

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DISCUSSION:-

39. We have heard the learned counsel for the Appellant/Assessee and the learned standing counsel for the Respondent/Income Tax Department in length and have perused the materials on record.

40. The benefit under Section 10A and Section 80HHE of the Act are two independent reliefs which the Appellant/Assessee availed independently. Section 10A of the Act was inserted in 1981. Section 10A of the Act contains a special dispensation for deduction of profit and gains from export sale of **“articles”** or **“things”** or **“computer software”** from the total income of a unit located in Free Trade Zone.

41. The benefit under Section 10A of the Act was initially available for ten consecutive Assessment Years beginning with the Assessment Year relevant to the Previous Year in which such an undertaking began to **manufacture** or **produce** such **“articles”** or **“things”** or **“computer software”**.

42. With effect from **01.04.2003** vide amendment to Section 10A of the



T.C.A.Nos.1370 and 1371 of 2009

Act by the Finance Act, 2002, the deduction under Section 10A of the Act was restricted to 90% of the profits and gains derived by an undertaking located in Free Trade Zone from export of such “**articles**” or “**things**” or “**computer software**”. Thus, during the period in dispute i.e., during the **Assessment Year 2003-2004**, the deduction was restricted to 90% of the profits and gains for the export of “computer software” from the units located in Free Trade Zone.

43. Deduction under Section 80HHE of the Act is much wider. Section 80HHE of the Act was inserted in the year 1991 vide Finance Act, 1991 with effect from **01.04.1991**. As per sub-section (1B) of Section 80HHE of the Act, an Indian Company or such person other than a company resident in India was entitled for deduction in respect of profit derived from,

- (i) export out of India of **computer software** or its transmission from India to a place outside India by any means;
- (ii) providing technical services outside India in connection with the development or production of computer software.

44. During the period in dispute which pertains to the **Assessment Year 2003-2004**, the benefit under Section 80HHE of the Act was confined to 50% of the profit derived from export of computer software or its transmission from India to a place outside India or for providing technical services outside India in connection with the development or production of computer software.



T.C.A.Nos.1370 and 1371 of 2009

45. To claim deduction both under Section 10A and/or Section 80HHE of the Act, an Assessee is also required to furnish in the prescribed form along with the Return of Income filed by the Assessee, the report, as defined in the **Explanation** below **sub-section (2)** of **Section 288** of the Act certifying that the deduction has been correctly claimed in accordance with the provisions of **Section 10A** of the Act.

46. The expression “**computer software**” and “**export turnover**” have been defined similarly in **Explanations** to **Section 10A** and **Section 80HHE** of the Act.

47. The expression “**computer software**” in **clause (i) in Explanation 2** to **Section 10A** of the Act and **Explanation to Clause 5** of **Section 80HHE** of the Act are identical. They read as under :-

Clause (i) in Explanation 2 to Section 10A of the Act.	Explanation to Clause 5 of Section 80HHE of the Act
“computer software”	
“computer software” means:-	
i) any computer programme recorded on any disc, tape, perforated media or other information storage device; or	
ii) any customised electronic data or any product or service of similar nature, as may be notified by the board, which is transmitted or exported from India to any place outside India by any means;	



T.C.A.Nos.1370 and 1371 of 2009

48. The definition of expression “**export turnover**” in **Explanation (c) of the Section 80HHE** of the Act is similar to the definition of “**export turnover**” in **clause (vi) to Explanation 2 to Section 10A** of the Act. They are almost identical. They read as under:-

Clause (iv) to Explanation 2 of Section 10A of the Act.	Explanation to Clause 5 of Section 80HHE of the Act
“ export turnover ”	“ export turnover ”
“ export turnover ” means the consideration in respect of export by the undertaking of “ article ” or “ thing ” or “ computer software ” received in, or brought into India by the assessee in convertible foreign exchange in accordance with sub- section (3) , but does not include freight, telecommunication charges or insurance attributable to the delivery of “ articles ” or “ things ” or “ computer software ” outside India or expenses, if any, incurred in foreign exchange in providing the technical services outside India.	" export turnover " means the consideration in respect of computer software received in, or brought into, India by the assessee in convertible foreign exchange in accordance with sub-section (2), but does not include freight, telecommunication charges or insurance attributable to the delivery of the computer software outside India or expenses, if any, incurred in foreign exchange in providing the technical services outside India.

49. Thus, not only freight, telecommunication charges or insurance attributable to the delivery of “**articles**” or “**things**” or “**computer software**” in Section 10A of the Act and “**computer software**” in Section 80HHE of the Act but also any expenses incurred in foreign exchange for providing technical services outside India cannot form part of “**export turnover**”. In other words, it is the amount received in foreign exchange for the above purpose alone and not expenses incurred in foreign exchange can be considered for determining the



T.C.A.Nos.1370 and 1371 of 2009

“export turnover” under the respective provisions.

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50. Under Section 80M of the Act, dividend income could be allowed as deduction while computing the total income which is equivalent to so much of the amount of income by way of dividends from another domestic company which does not exceed the amount of dividend distributed by the domestic company to an Assessee company. In other words, the dividend income in the hands of the Appellant/Assessee from the other domestic company could be allowed in as much the dividend income incurred by the Assessee is equivalent to the dividend distributed by such domestic company on or before the due date.

51. The Assessing Officer had found that the Appellant/Assessee had approximately incurred a sum of **Rs.90,40,04,020/- [Rs.71,40,24,206/- + Rs.18,99,79,814/-]** as expense in foreign exchange for 2 of its units while claiming deduction under Section 10A and Section 80HHE of the Act apart from the benefit under Section 80M of the Act for the **Assessment Year 2002-2003**. The amount of expenses claimed and allowed by the Appellate Commissioner are as under:-

<i>Expenses incurred</i>	<i>Under Section 10A of the Act</i>	<i>Under Section 80HHE of the Act</i>
As per the Appellant/Assessee	Rs.71,40,24,206/-	Rs.18,99,79,814/-
As per the Appellate Commissioner	Rs.34,46,11,336/-	Rs.5,25,45,466/-

52. There is however no discussion in the Impugned Order or in the Order



T.C.A.Nos.1370 and 1371 of 2009

passed by the Appellate Commissioner whether that the Appellant/Assessee indeed exported “**computer software**” as defined in Explanation clause (i) to **Explanation 2 to Section 10A** of the Act and would have incurred a huge sum of **Rs.34,46,11,336/-** as was allowed by the Appellate Commissioner out of **Rs.71,40,24,206/-** in foreign exchange for export of “**computer software**” from its Free Trade Zone units as expenses and **Rs. 34,46,11,336/-**. It is inconceivable how the aforesaid amount of **Rs.34,46,11,336/-** or **Rs.71,40,24,206/-** in foreign exchange could have been incurred as expense in foreign exchange, if there was export of “computer software” *simpliciter*.

53. The gross receipt of the Appellant/Assessee for both the unit was **Rs. 3,09,03,05,089/- [Rs.80,01,95,246/- + Rs.2,29,01,09,853/-]**. It was received in foreign exchange by the Appellant/Assessee. After claiming various expenses and deductions, the Appellant/Assessee had arrived at a net taxable amount of **Rs.21,38,14,420/-** from the aforesaid gross amount in the Return of Income that was filed. The Assessing Officer had disallowed a sum of **Rs.34,46,11,336 and Rs.5,25,45,466/-** purportedly incurred as expense. A sum of **Rs.3,96,16,300/-** was allowed and had thus arrived at income from business as **Rs.57,14,54,825/-** while disallowing a sum of **Rs.12,50,000/-** being the fees paid to ROC to arrive at the net taxable income of **Rs.57,24,54,825/-**.

54. On the above sum of **Rs.57,24,54,825/-**, deductions for a sum of



T.C.A.Nos.1370 and 1371 of 2009

Rs.23,70,17,043/- and Rs.4,74,20,998/- was claimed under Section 10A and Section 80HHE of the Act and respectively was allowed. Thus, the taxable income of the Appellant/Assessee from business was arrived at **Rs.28,80,16,784/-**.

55. Reading of the computation of deductions by the Assessing Officer under the respective provisions in Assessment Order shows that there were duplications. Thus, drastically, the taxable income of the Appellant/Assessee from business as also the deduction to arrive at the Assessed Income of **Rs.32,76,33,084/-** was wrongly adopted.

56. The Appellant/Assessee was required to prove that the Appellant/Assessee had indeed exported “**computer software**” first to avail the benefit of deduction under **Section 10A** of the Act.

57. If **Rs.71,40,24,206/-** was incurred as it was claimed by the Appellant/Assessee, an inference can be drawn that the Appellant/Assessee has indeed provided on-site service to its clients abroad but had wrongly claimed the benefit of Section 10A of the Act to avail higher deduction.

58. Under Section 10A of the Act only the amount received in “convertible foreign exchange” in India alone towards the consideration from **export** of “**articles**” or “**things**” or “**computer softwares**” alone were deductible under Section 10A of the Act. Thus, ITAT has correctly declined to interfere with the



T.C.A.Nos.1370 and 1371 of 2009

Order of the Appellate Commissioner.

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59. A reading of the above definition of “**export turnover**” in Section 10A of the Act would show that a sum of **Rs.71,40,24,206/-** purportedly incurred out of **Rs.90,40,04,020/-** in foreign exchange by the Appellant/Assessee. Therefore, it could not have been included while computing of deduction by the Appellant/Assessee from such “export turnover”.

60. It is noted that the Appellate Commissioner was of the view that in view of the decision of the ITAT in the Appellant/Assessee's own case in **I.T.A.No.394/MDS/2006** and **I.T.A.No.395/MDS/2006** for the **Assessment Years 2001-2002 and 2002-2003**, the Appellant/Assessee's appeal was liable to be dismissed. This was affirmed by the ITAT in the Impugned Order.

61. However, the decision of the ITAT in **I.T.A.No.394/MDS/2006** and **I.T.A.No.395/MDS/2006** now stands reversed by the decision of this Court in **T.C.A.Nos.961 and 962 of 2008** vide Order dated **23.10.2018**. Operative portion of the Order dated **23.10.2018** in **T.C.A. Nos.961 and 962 of 2008** has been extracted in the ensuing paragraphs. There, the Court vide Order dated **23.10.2018** answered the following Substantial Questions of Law:-



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T.C.A.Nos.1370 and 1371 of 2009

“ ...

1. *Whether on the facts and in the circumstances of the case, the Tribunal was right in upholding the exclusion of expenditure incurred in foreign currency in export of software, from the purview of 'Export Turnover' for the purpose of computation of deduction under Section 10A of the Income Tax Act?*
2. *Whether on the facts and in the circumstances of the case, the Tribunal was right in law in directing the inclusion of the component of unrealised sale proceeds in total turnover while directing the exclusion of the same from export turnover?*
3. ”

62. The operative portion of the Order dated 23.10.2018 of the Division Bench of this Court in the aforesaid decision in **T.C.A. Nos. 961 and 962 of 2008** reads as under:-

“13.Be that as it may. We may point out that the CITA did not endeavour to examine the scope of the agreement. In fact, certain observations made by the CITA would enure in favour of the assessee. By way of illustration, in paragraph No.10(c) of the Order of the CITA, he would state that computer software cannot be defined or understood in a narrow sense of the term to mean only software in the form of product/goods as claimed. As the assessee is engaged in developing, transmitting and providing software to meet the needs and requirements of the clients, it encompasses providing all the relevant technical services necessary and attendant with the development and export of computer software. If this was the finding of the CITA, the resultant conclusion should have been that the assessee is only engaged in the development of the computer software and not rendering any technical services on 'standalone basis'. However, we find that the conclusion arrived at by the CITA stating that the assessee is rendering technical services is an incorrect conclusion not supported by any reasons. We would



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T.C.A.Nos.1370 and 1371 of 2009

add by stating that the CITA was required to examine the documents produced by the assessee to find out as to whether there was any technical services rendered on 'standalone basis'. This is more so because, the CITA accepted that the 'development of software' encompasses 'providing of technical services'. Therefore, unless and until there was a material available in the hands of the CITA or the Assessing Officer to come to a conclusion that there is technical services on 'standalone basis' rendered by the assessee, the Assessing Officer and the CITA were not justified in coming to a conclusion that the technical services were rendered by the assessee and the amounts paid need to be excluded.

14. Before the Tribunal, the assessee reiterated the submissions raised before the CITA and produced the technical documents as well as the scope of the work and the contract. However, the Tribunal, in our considered view, did not make an endeavour to examine as to whether the interpretation of CITA was just and proper and whether the relevant clauses in the agreement and the other documents were examined or not, but made a standalone statement that software development and technical services are two faces of one coin. We fail to understand as to whether the above is a statement made out of the personal knowledge of the Tribunal or whether it is a statement of law. If it is the statement of law, it should have been duly supported by reasons and we find none.

15. Admittedly, the decision of the Tribunal should revolve on the facts of a particular case. The Tribunal has not been established to give declaratory reliefs sans facts. Therefore, the primordial requirement for the authorities as well as the Tribunal is to examine the nature of contract between the parties i.e. the assessee and the foreign entity.

16. On a perusal of the nature of the contract and the various steps, which have been enumerated therein, we find that the element of 'technical services, have been rendered as integral part of the software development process. There was no material available before the Assessing Officer to split up the transaction into two or to bisect the transaction to find out an element of 'technical services'. As rightly pointed out by the assessee, this exercise has been done by the Assessing Officer based on the



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T.C.A.Nos.1370 and 1371 of 2009

notes to the accounts in the financial statements, which would be Impermissible. What is required to be examined is the nature of services rendered by the assessee to the foreign entity. Thus, we are fully satisfied that the 'technical services' rendered by the assessee is not on a 'standalone basis', but it is an integral part of the software development and up to step No.(8), as mentioned above, the assessee is bound to render all assistance to the foreign entity. Therefore, the artificial split up of the transaction by the Assessing Officer, that too without any materials on his file, is wholly unsustainable.

17. For the above reasons, we are constrained to set aside the order passed by the Tribunal and answer the Substantial Question of Law No.1 in favour of the assessee.”

63. In fact, in **T.C.A.Nos.1193 and 1194 of 2008** filed by the Respondent/Income Tax Department in Appellant/Assessee's own case against the **Order** dated **19.12.2007** of the ITAT in **I.T.A.Nos. 535/Mds/2006 and 536/Mds/2006** for the **Assessment Years 2001-2002 and 2002-2003**, the following substantial question of law came for consideration:-

“Whether in the facts and circumstances of the case, the Tribunal was right in holding that the expenditure incurred in foreign exchange, which have been specifically excluded from export turnover by explanation 2(iv) to Section 10A would also form part of the total turnover for the purpose of Section 10A of the Act.”

64. The Court in **T.C.A.No. 1193 and 1194 of 2008** followed the decision of the Hon'ble Supreme Court in **CIT Vs. HCL Technologies, Mad (2018) 404 ITR 719** and **T.C.A.No.961 and 962 of 2008** and its decision in **T.C.A. Nos.**



T.C.A.Nos.1370 and 1371 of 2009

961 and 962 of 2008 and dismissed the Respondent/Income Tax Department's

appeal with the following observation:-

*“3. The question of law framed above has been answered by the Hon'ble Supreme Court in the case of **CIT, Central III Vs. HCL Technologies Limited** [reported in (2018) 404 ITR 719] wherein it has been held as follows:*

“18. Accordingly, the formula for computation of the deduction under Section 10A of the Act would be as follows:

Export Profit = total profit of the Business x Export turnover as defined in Explanation 2(IV) of Section 10A of the IT Act + domestic sale proceeds.

19. In the instant case, if the deductions on freight, telecommunication and insurance attributable to the delivery of computer software under Section 10A of the IT Act are allowed only in Export Turnover but not from the Total Turnover, then, it would give rise to inadvertent, unlawful, meaningless and illogical result which would cause grave injustice to the respondent which could have never been the intention of the legislature.

20. Even in common parlance, when the object of the formula is to arrive at the profit from export business, expenses excluded from export turnover have to be excluded from



T.C.A.Nos.1370 and 1371 of 2009

total turnover also. Otherwise, any other interpretation makes the formula unworkable and absurd. Hence, we are satisfied that such deduction shall be allowed from the total turnover in same proportion as well.

21. On the issue of expenses on technical services provided outside, we have to follow the same principle of interpretation as followed in the case of expenses of freight, telecommunication etc., otherwise the formula of calculation would be futile. Hence, in the same way, expenses incurred in foreign exchange for providing the technical services outside shall be allowed to exclude from the total turnover.

22. In view of above discussion, we are of the considered view that these instant appeals are devoid of merits and deserve to be dismissed. Accordingly, all the connected matters and interlocutory applications, if any, are disposed of with no order as to costs.?"

65. The above two decisions of this Court vide **Order** dated **23.10.2018** in **T.C.A.No. 961 and 962 of 2008** and **Order** dated **12.10.2018** in **T.C.A.Nos.1193 and 1194 of 2008** were also followed in **T.C.A.No.161 of 2010** vide **Common Order** dated **25.01.2022** passed in **T.C.A.No.160 and 161 of 2010**.



WEB COPY 66. The Substantial Question of Law that was framed in **T.C.A. No. 161**

of 2010 reads as under:-

“Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the expenditure incurred in foreign exchange which have been specifically excluded from export turnover by explanation 2(iv) to Section 10A would also not form part of the total turnover for the purpose of Section 10A of the Act?”

67. Operative portion of the **Order** dated **25.01.2022** in **T.C.A.No. 161 of**

2010 reads as under:-

*“5.1. As regards the substantial question of law framed in **T.C.A.No.161 of 2010**, the Division Bench of this Court, in **T.C.A.Nos.1193 and 1194 of 2008** by order dated 12.10.2018, after following the decision of the Hon'ble Supreme Court in **CIT, Central III Vs. HCL Technologies Limited** [(2018) 404 ITR 719], dealt with the same question and answered the same in favour of the assessee, the relevant passage of which, is usefully extracted hereunder:-*

.....

4. Following the above, these tax case appeals are dismissed and the substantial questions of law framed for consideration are answered in favour of the assessee and against the Revenue. No costs.”

*5.2. In the light of the aforesaid judgment, we answer the substantial question of law involved in **T.C.A.No.161 of 2010** in favour of the assessee and against the Revenue.*

*6. In fine, **TCA.No.160 of 2010** is allowed. **TCA.No.161 of 2010** is dismissed. No costs.”*



T.C.A.Nos.1370 and 1371 of 2009

68. Substantial Questions of Law No. 1 in **T.C.A.No.961 and 962 of 2008** is the Substantial Questions of Law No, 2 in the present appeals and **T.C.A.No. 161 of 2010**. This Court has answered the issue in favour of the Appellant/Assessee following its views in **T.C.A.No.1193 and 1194 of 2008** following the decision of the Hon'ble Supreme Court in **CIT Vs. HCL Technologies, Mad (2018) 404 ITR 719**.

69. The learned Counsel for the Appellant/Assessee as well as the learned counsel for the Respondent/Income Tax Department also submitted that the above Substantial Questions of Law was covered in favour of the Appellant/Assessee and against the Revenue as per the unreported decision of this Court in **T.C.A.Nos.1193 and 1194 of 2008** dated **12.10.2018**.

70. Since there is difference between manufacturing of '**computer software**' and providing '**technical services**', the Substantial Quesiton of Law No. (iii) has to be answered in favour of the Appellant/Assessee in view of express language in Seciton 80HHE of the Act.

71. Therefore, Substantial Questions of Law (ii) and (iii) are answered in favour of the Appellant/Assessee in terms of the Order in **T.C.A No.961 and 962 of 2008**, **T.C.A.Nos.1193 and 1194 of 2008** dated **12.10.2018** followed in



T.C.A.Nos.1370 and 1371 of 2009

T.C.A.Nos.160 and 161 of 2010 in the Appellant/Assessee's own case vide

Order dated **25.01.2022**.

72. If the Appellant/Assessee was not exporting “**computer software**” from its unit located in Free Trade Zone, the benefit of **Section 10A** of the Act cannot be allowed. Therefore, deduction on balance 10% of “export turnover” which was outside the purview of Section 10A of the Act cannot be claimed separately under Section 80HHE(1)(ii) of the Act. That apart, the benefit is to be restricted to 50% of profit and gains for service provided by a Company.

73. There is no scope for nixing the income and expenses incurred for computation of deduction under Section 10A of the Act and Section 80HHE of the Act. Therefore, Substantial Questions of Law (v) has to be answered against the Appellant/Assessee.

74. As far as Substantial Question of Law No.(vi) regarding benefits under Section 80M of the Act is concerned, based on the decision of the Bombay High Court in **Commissioner of Income Tax Vs State Bank of India, 262 ITR 662** makes clear that deduction under Section 80M of the Act during the period in dispute deduction was confined to dividend received by a domestic



T.C.A.Nos.1370 and 1371 of 2009

company from another domestic company. This has been remitted back.

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75. If the amount was not realized, benefit cannot be claimed. Therefore, Substantial Question of Law No. (i) is answered against the Appellant/Assessee. With regard to Substantial Question of Law (iv), since the issue has been remitted back as far as Substantial Question of Law (iv) is concerned, we are refraining to answer the same.

76. In the light of the decisions of this Court in the Appellant's/Assessee's own case (cited *supra*) the computation have to be made by the Assessing Officer after ascertaining whether indeed the Appellant/Assessee had indeed exported computer software as is contemplated in Section 10A/ 80HHE(1)(i) of the Act or had indeed provided technical services outside India under Section 80HHE(1)(ii) of the Act.

77. In the result, these Tax Case Appeals of the Appellant/Assessee are partly allowed by answering the **Substantial Questions of Law Nos.(ii), and (iii) partly in favour of the Appellant/Assessee. Rest of the Substantial Questions of Law are against the Appellant/Assessee and the case is remitted back** to the Assessing Officer to redo the exercise as was ordered by



T.C.A.Nos.1370 and 1371 of 2009

the ITAT after looking into the computation along with the Return of Income filed by the Appellant/Assessee under Section 139(1) of the Act and after ascertaining whether indeed the Appellant/Assessee had exported “computer software”.

78. In view thereof, the Substantial Questions of Law framed in these Tax Case Appeals are answered as follows:-

“Question No. (i):- Whether on the facts and in the circumstances of the case, the Tribunal was right in law in rejecting the contention of the appellant concerning the computation of deduction under Section 10A and 80HHE?”

Answer:- Answered against the Appellant/Assessee

Question No. (ii):- Whether on the facts and in the circumstances of the case, the Tribunal was right in law in upholding the exclusion of expenditure incurred in foreign currency in relation to on-site software development from the purview of export turnover for the purpose of computation of deduction under Section 10A and 80HHE of the Income Tax Act?

Answer:- Answered in favour of the Appellant/Assessee

Question No. (iii):- Whether on the facts and in the circumstances of the case, the Tribunal was right in law in not noting the distinction between 'manufacture of computer software' and the provision of 'technical services'?

Answer:- Answered in favour of the Appellant/Assessee

Question No. (iv):- Whether on the facts and in the circumstances of the case, the Tribunal was right in law in remitting back to the Assessing Officer without giving its finding on the issue relating to the exclusion of the



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T.C.A.Nos.1370 and 1371 of 2009

component of unrealized sale proceeds both from export turnover and total turnover?

Answer:- Answered *against* the Appellant/Assessee

Question No.(v):- *Whether on the facts and in the circumstances of the case, the Tribunal was right in law in setting aside the order of the Assessing Officer without giving its finding on the issue relating to deduction under Section 80HHE towards the balance 10% of the profits not available as deduction under Section 10A? And*

Answer:- Answered *against* the Appellant/Assessee

Question No.(vi):- *Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the dividend income from other mutual funds are not akin to dividend income from Unit Trust of India and do not qualify as income received from domestic company for deduction under Section 80M?"*

Answer:- Answered *against* the Appellant/Assessee

79. These Tax Case Appeals stands partly allowed by way of remand. No

costs.

[S.S.S.R., J.]

[C.S.N., J.]

30.04.2025

Neutral Citation : Yes / No

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T.C.A.Nos.1370 and 1371 of 2009

S.S.SUNDAR, J.
and
C.SARAVANAN, J.

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T.C.A.Nos.1370 and 1371 of 2009

30.04.2025