

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'C' BENCH, KOLKATA**

**Before Shri M. Balaganesh, Accountant Member
and Shri S.S. Viswanethra Ravi, Judicial Member**

**I.T.A. No. 1678/KOL/ 2014
Assessment Year: 2008-2009**

**Deputy Commissioner of Income Tax,.....Appellant
Circle-7, Kolkata,
P-7, Chowringhee Square,
Kolkata-700 069**

-Vs.-

**M/s. World Wide Safety Pvt. Limited,.....Respondent
5A, Robinson Street,
Kolkata-700 017
[PAN : AAACW 3085 G]**

Appearances by:

*Shri Arindam Bhattacharya, JCIT, Sr. D.R., for the Department
Shri Arvind Agarwal, Advocate, for the assessee*

Date of concluding the hearing : June 20, 2016

Date of pronouncing the order : June 22, 2016

O R D E R

Per Shri S.S. Viswanethra Ravi :-

This appeal is preferred by the Revenue against the order of Id. Commissioner of Income Tax (Appeals)-VIII, Kolkata dated 09.05.2014 for the assessment year 2008-09.

2. Brief facts of the case are that the assessee-company is a 100% Export Oriented Manufacturing Unit and during the year under review, the assessee-company was engaged in manufacturing and export of seamless knitted or crocheted textile gloves, Industrial leather Gloves with knitted lining inside, synthetic/cotton knitted gloves covered in PVC/Latex/Nitril, etc. The return of income for the year under consideration was filed by it on 30.09.2008 declaring total income at 'nil'. The return was processed under section 143(1) on 12.06.2009 accepting the returned income.

3. In the computation of income, the assessee company claimed deduction u/s 10B. For the period under review, deduction of Rs.6,21,44,550/- was claimed under section 10B as per the Form 56F submitted along with the Tax Audit Report. Total export turnover as declared by the assessee-company was Rs.26,68,72,666/- and the Assessing Officer computed the deduction under section 10B at Rs.5,84,95,944/- and excess thereon was disallowed to an extent of (Rs.6,21,44,550/- minus Rs.5,84,95,944/-) Rs.36,48,606/- and added the same to the income of the assessee..

4. On appeal, the Id. CIT(Appeals) deleted the addition made by the Assessing Officer on account of excess claim of deduction under section 10B by observing in his impugned order as under:-

"I have gone through the written submission, the assessment order and the other materials on record. It is observed that the jurisdictional tribunal in the case of the appellant has for the AY 2003-04, 2004-05 and 2006-07 held that exclusion/deduction of exchange rate fluctuation, clearing and forwarding charges and courier charges are not permissible in determining the total turnover and export turnover with reference to computing the deduction under section 10B. Further, from a reading of Form 56G, it is observed that local sales of Rs.32,692/- has already been considered while computing the export turnover. Therefore, the AO is directed to recompute deduction under section 10B following the principles laid down by the jurisdictional Tribunal in the appellant's own case for the abovementioned assessment years. Ground Nos. 2 and 3 are disposed off accordingly".

Being aggrieved, the Revenue is in appeal before the Tribunal.

5. At the time of hearing before us, the Id. D.R. relied on the order of Assessing Officer. On the other hand, Id. counsel for the assessee has relied on the order of Id. CIT(Appeals). He also relied on the decision dated 10.11.2006 of this Tribunal in assessee's own case for the assessment year 2003-04 in ITA No. 1539/KOL/2006.

6. We have heard the rival submissions and also perused the relevant material available on record. We find that the issue under consideration is squarely covered by the decision dated 10.11.2006 of this Tribunal in assessee's own case for the assessment year 2003-04 in ITA No. 1539/KOL/2006, wherein it was held as under:-

"We find from the auditors report that the appellant company is a 100% export oriented undertaking and has made an export turnover of Rs.9,17,63,625/- which is also the total turnover. We further find that the auditors while calculating the deduction u/s 10B of the Act, 1961 at Rs.2,05,61.516/- had determined the export turnover by excluding freight of Rs.59,17,681/-and insurance of Rs.2,36.510/-. We also find that in the instant case the total turnover and export turnover are same.

We find that Explanation 2 under section 10B reads as under :-

"(iii) "export turnover" means the consideration in respect of export [by the undertaking] of articles or things 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 the articles or things or computer software outside India or expenses, if any, incurred in foreign exchange in providing the technical services outside India; "

6.3. *We find that Explanation to (b) under Sub section (4C) of Section 80HHC reads as under :-*

"(b) "export turnover" means the sale proceeds [received in, or brought into India] by the assessee in convertible foreign exchange [in accordance with clause (a) of sub-section (2)] of any goods or merchandise to which this section applies and which are exported out of India but does not include freight or insurance attributable to the transport of the goods or merchandise beyond the customs station as defined in the Customs Act, 1962 (52 of 1962);j

6.4. *We further find explanation (ba) under Sub-section (4C) of Section 80HHC reads as under :-*

"[ba) "total turnover" shall not include freight or insurance attributable to the transport of the goods or merchandise beyond the customs station as defined in the Customs Act, 1962 (52 of 1962) :

Provided that in relation to any assessment year commencing on or after the 1st day of April 1991, the expression "total turnover" shall have effect as if it also excluded any sum referred to in clauses (iia), (iib) [(iic), (iid) and (iic) of section 28".

6.5. We find from the various Judicial pronouncements relied on by the ld. counsel, the definition of total turnover excludes incidental expenses such as freight, octroi insurance and sales tax, etc.

6.6. We also find from the various decisions relied on by the ld. counsel for the assessee that where there is an incentive provision provided under the law, the same should be liberally construed.

7. Considering the totality of the facts of the case and considering the fact that in the instant case the total turnover and export turnover are same, in our opinion, the ld. CIT was not justified in assuming jurisdiction under section 263 and directing the AO not to exclude the freight and insurance from the turnover while computing deduction u/s 10B of the I.T. Act. Therefore, we set aside the order of the ld. CIT and the grounds raised by the appellant are allowed".

7. As the issue involved in the year under consideration as well as all the material facts relevant thereto is similar to A.Y. 2003-04, we respectfully follow the decision of this Tribunal rendered for the said year and uphold the impugned order of the ld. CIT(Appeals) deleting the disallowance made by the Assessing Officer on account of excess claim of deduction under section 10B.

8. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on June 22, 2016.

Sd/-

Sd/-

(M. Balaganesh)
Accountant Member

(S.S. Viswanethra Ravi)
Judicial Member

Kolkata, the 22nd day of June, 2016

Copies to : (1) **Deputy Commissioner of Income Tax,**
Circle-7, Kolkata,
P-7, Chowringhee Square,
Kolkata-700 069

**(2) M/s. World Wide Safety Pvt. Limited,
5A, Robinson Street,
Kolkata-700 017**

- (3) Commissioner of Income-tax (Appeals)-VIII, Kolkata
- (4) Commissioner of Income Tax, Kolkata
- (5) The Departmental Representative
- (6) Guard File

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.