

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE
SHRI S.V. MEHROTRA, ACCOUNTANT MEMBER
AND
SMT. BEENA A PILLAI, JUDICIAL MEMBER**
ITA No.:- 283/Del/2012
Assessment Year: 2005-06

DCIT Circle-11(1), New Delhi.	Vs.	Infrasoft Technologies Ltd. 411, Somdutt Chambers-1, 5, Bhikaji Cama Place, New Delhi – 110 066 PAN AAACB2817R
(Appellant)		(Respondent)

CO No.:- 167/Del/2014
Assessment Year: 2005-06

Infrasoft Technologies Ltd., Ravinder Gupta, Chartered Accountant 20, Vakil Lane, K.G. Marg, New Delhi – 110 001 PAN AAACB2817R	Vs.	DCIT Circle-11(1), Room No. 312, C.R. Building, New Delhi.
(Appellant)		(Respondent)

Department by :	Shri Rajesh Kumar, Sr. DR
Assessee by:	Shri Vijay Mehta, CA, Mr. Anuj Kisnadwala, Adv.
Date of Hearing	22/06/2016
Date of pronouncement	02/06/2016

ORDER

PER BEENA A PILLAI, J. M.

These are cross appeals filed by Revenue and assessee against order passed by Ld. CIT (Appeals)-XIII,

New Delhi dated 27.10.2012 pertaining to the Assessment Year 2005-06 on the following grounds:-

A. I.T.A. No. 283/Del/2012 (Revenue's appeal):

1. *“On the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs. 8,70,25,513/- made on account of disallowance of the claim u/s 10A of the I.T. Act.*
2. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in directing the AO to verify the assessee's claim that the loss relates to the STPI unit by treating the loss on sale of assets of Rs. 14,06,578/- as business loss and to be considered for computation of deduction u/s 10A of the IT Act.*
3. *The appellant craves leave to add, alter or amend any ground of appeal raised above at the time of hearing.”*

B. C.O. No.167/Del/2014 (Assessee's Cross Objections):

1. *“That on the basis of material on record, the Learned CIT(A) ought to have held that a new independent undertaking, eligible for Section 10A benefits, was set up on 28th March, 2000.*
2. *The assessee craves to add, amend, alter or delete any grounds of appeal before hearing.”*

2. The brief facts of the case are as under:

2.1 The assessee is a limited company and filed return of income on 31.10.2005 declaring income of Rs.2,51,52,240/- wherein assessee had claimed deduction of Rs.8,70,25,513/- u/s 10A of the Act. The return was selected for scrutiny and notices u/s 143(2) were issued. The case was discussed by the Ld. A.O. During the assessment proceeding, the Ld. A.O. observed

that the assessee is deriving income from business of development and sale of software products, as well as rendering software services. The assessee company was incorporated on 6.7.1995. The assessee shows received approval from STPI authorities on 28.3.2000. From assessment year 2001-02 onwards the assessee began to claim deduction u/s 10A of I.T. Act. From paragraphs 2.1 and 3 of assessment order it appears that the assessee claimed deduction u/s 80HHE of I.T. Act from 1995-96 to 2000-01 and from 2001-02 onwards, deduction was claimed u/s 10A of the Act. During the year under consideration, claim of assessee u/s 10A of I.T. Act was disallowed by Ld. AO, on the ground that, switch over of deduction claimed u/s 10A of I.T. Act from assessment year 2000-01, was not bona-fide and / or genuine by relying on assessment order passed for Assessment Year 2001-02.

2.2 Aggrieved by the assessment order, the assessee preferred appeal before Ld. CIT(A).

2.3 Ld. CIT(A) though agreed with the view of the Assessing Officer that as no new unit was set up on 16.03.2000 and the assessee had converted its existing domestic unit to STPI unit, he held that assessee is eligible for deduction u/s. 10A of the Act for relevant assessment year. In order to arrive at this conclusion, the Ld. CIT(A) relied upon the order of his predecessor for AY. 2002-03, who held that there is no bar in law to claim deduction u/s 10A, in cases where deduction u/s 80HHE has been earlier claimed and allowed, provided that all

the conditions of Section 10A of the Act are satisfied. Ld. CIT(A) for Assessment Year 2002-03 held as under:

“i) The assessee had merely converted its domestic unit started In 1995 to STPI unit and had not started a new export unit.

ii) Even if the assessee had converted its existing domestic unit to STPI unit, it would be eligible to claim deduction u/s. 10A of the Act from the date of conversion for the unexpired period of 10 years starting from A.V. 1996-97 in light of Circular No. 1 of 2005 issued by CBDT dated 06.01.2005.

iii) Provisions of S.10A(9) of the Act would apply to the assessee and the assessee would not be eligible to claim deduction u/s.10A of the Act if on the last day of the previous year the shares of company carrying not less than 51% of the voting power are not held by persons who held the shares carrying not less than 51% of the voting power on the last day of year in which the undertaking was set up. The Ld. CIT(A), in turn examined the shareholding pattern of the assessee as on 31.3.1996 and 31.3.2002 and concluded that the conditions of S. 10A(9) of the Act were violated and, hence, the assessee is not eligible to claim deduction u/s 10A of the Act.”

2.3 Aggrieved by the order of Ld. CIT(A), the assessee as well as Revenue are in appeal before us.

3. At the outset, the Ld. A.R. submitted that this Tribunal in assessee's own case, for Assessment Year 2002-03 has upheld the finding that the existing domestic unit was converted into STPI unit. Ld. A.R. also submitted that the Revenue did not file any appeal before this Tribunal for Assessment Year 2002-03 in respect of findings of Ld. CIT(A) that the assessee can claim deduction u/s 10A where deduction u/s 80HHE was

earlier claimed and allowed, provided conditions u/s 10A were satisfied.

4. On the contrary, Ld. D.R. relied on the orders of authorities below.

5. Ld. A.R. submitted that the assessee was eligible for claim u/s 10A of I.T. Act in assessment year 2005-06, even if it is held that the assessee had converted its existing domestic unit to STPI unit. For this purpose he drew our attention to circular No. 1 of 2005 dated 6.1.2005 issued by CBDT. He submitted that as per the circular the assessee is eligible for deduction for claim u/s 10A of I.T. Act in asstt. year 2005-06 as the same would be 10th year starting from asstt. year 1996-97 (year in which deduction u/s 80HHE of I.T. Act was claimed for the first time). He further submitted that section 10A(a) of the Income Tax Act was omitted and did not exist on the statute book for assessment year 2005-06.

6. We have heard the rival contentions and perused the material available on record. The assessee has given the chronology of events in support of his contention. This is extracted herein below for ready reference:-

(1) 06.07.1995: Assessee Company incorporated and started domestic unit engaged in local sale of various computer software.

(2) F. Y. 1999-2000: Assessee company started export unit for rendering software development services and for that purpose undertook various activities as under:

06.08.1999: Board resolution for registering the export oriented unit with STPI.

23.09.1999: Agreement with M/s Direct Credit Exchange Ltd., UK for manufacturing and export of software.

11.12.1999: Premises of ground floor of the same building taken on lease to shift existing domestic unit.

03.02.2000: Advance received from M/s Direct Credit Exchange Ltd. UK. This was first ever foreign exchange remittance in respect of export received by assessee.

07. 02.2000: New EEFC account opened

14.3.2000: Board resolution permitting authorized people to sign documents in connection with registration of export unit with STPI.

16.3.2000: Application made to STPI Authority for approval.

(3). 28.03.2000: Approval received from STPI (Authority.)

6.1 We find that ITAT in assessee's own case for asstt. year 2002-03, have dealt with the issue as under:

"We first consider the alternative contentions of the assessee for the Assessment Year 2001-02. 'The Ld. CIT(A) in his order for the Assessment Year 2002-03 has given a specific finding at page 14, that even if the unit of the assessee has held to have been converted from existing domestic unit to a STPI unit it would still be eligible to claim deduction u/s 10A of the Act from the date of conversion, for an unexpired period of 10 years starting form Assessment Year 1996-97. This finding of the First Appellate Authority is not challenged by the revenue. The Assessment Year 2001-02 falls within the unexpired period of 10 years, from the year set up of the first domestic unit which was in the Assessment Year 1996-97. Hence the assessee is otherwise eligible for deduction u/s

10A for the year under consideration. This is also clear from a plain reading of the Circular of the CBDT, Circular No.1 of 2005 dated 6.01.2005.' Hence, in our view it is not necessary to go into the other aspects of this issue in this year."

6.2 We also notice that for the year under consideration, the assessee is not hit by section 10A (9) of I.T. Act, as it stood omitted by the Finance Act 2003 w.e.f. 1.4.2004. Respectfully following the decision of this Tribunal in assessee's own case, for asstt. year 2001-02 and circular No. 1 of 2005, we hold that the assessee is eligible for claim u/s 10A of I.T. Act for asstt. year 2005-06.

7. In second ground of appeal, Revenue has objected to direction issued by Ld. CIT(A) to Ld. AO to verify the assessee's claim that the loss relates to the STPI unit by treating the loss on sale of assets of Rs. 14,06,578/- as business loss and to be considered for computation of deduction u/s 10A of the IT Act.

The Ld. CIT(A) observed as under:

"x.....However, applying Explanation 1 to section 10A(9) which has been omitted with effect from 1.4.04 the CIT(A) has held that the appellant was not entitled to the deduction u/s 10A. The present A.Y. is 2005-06, hence, Explanation 1 to section 10A(9) does not apply. There is no change in the facts for A.Y. 2005 relating to the deduction u/s 10A viz-a-viz A.Y. 2002-03. In fact, the AO has reiterated the observations made for earlier years, therefore, the findings of the CIT(A) for A.Y. 2002-03 are relevant to A.Y. 2005-06 also. Thus, concurring with the reasoning and findings given by the CIT(A) for A.Y. 2002-03, with regard to the admissibility for the 10A deduction in para 2 of his order dated 29.2.08, it is held that the appellant is entitled to the deduction of Rs. 87025513 u/s 10A."

8. In the course of hearing before us the Ld. D.R. supported the order of AO. Further, he was unable to explain how the order of Ld. CIT(A) was erroneous in law or on facts.

8.1 The Ld. Counsel for the assessee vehemently contended that the direction issued by Ld. CIT(A) was in accordance with law.

9. We have heard both sides carefully perused the material on record. We find that Ld. CIT(A) has upheld the action of the AO in adding back the loss on sale of assets. Additionally, the Ld. CIT(A) directed the AO to verify claim that the loss related to STPI unit and if the claim was found verifiable, the claim u/s 10A be recomputed on enhanced profits. We have already held, while deciding ground No. 1 of appeal filed by the revenue, that the assessee is eligible for claim u/s 10A of I.T. Act. Therefore we find no infirmity in the direction of the Ld. CIT(A)'s direction to AO to recompute benefit u/s 10A of I.T. Act. Accordingly, we uphold the direction given by the Ld. CIT(A) and dismiss ground No. 2 of appeal filed by Revenue.

10. In the result, appeal filed by Revenue stands dismissed.

CROSS OBJECTION NO.167/DEL/2014:

11. The issue raised by the assessee in its C.O. relates to allowability of deduction u/s 10A. Since we have already held, while deciding ground No. 1 of appeal filed by Revenue that the assessee is eligible for claim u/s 10A

of I.T. Act, the issue raised by the assessee in cross objection becomes infructuous. Hence, the cross objection stands dismissed being infructuous.

14. In the result, appeal filed by Revenue and cross objection filed by the assessee, are dismissed.

Order pronounced in the open court on 2nd Aug., 2016.

Sd./-

Sd./-

(S.V. MEHROTRA)
ACCOUNTANT MEMBER
Dated:02.08.2016

(BEENA A PILLAI)
JUDICIAL MEMBER

'Veena' /Sp.

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR

ITAT, New Delhi

S.No.	Details	Date	Initials	Designation
1	Draft dictated on			Sr. PS/PS
2	Draft placed before author			Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS	2/8/16		Sr. PS/PS
6	Kept for pronouncement	2/8		Sr. PS/PS
7	File sent to Bench Clerk	2/8		Sr. PS/PS
8	Date on which the file goes to Head Clerk			
9	Date on which file goes to A.R.			
10	Date of Dispatch of order			