

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE**

**BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND SHRI A. K. GARODIA, ACCOUNTANT MEMBER**

ITA No.315/Bang/2016
Assessment year : 2007-08

M/s. Torry Harris Business Solutions (P) Ltd., 71, Sona Towers, Millers Road, Bengaluru – 560 052. PAN : AA ACT7287M	Vs.	Asst. Commissioner of Income Tax, Circle-12(4), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. R. Sreenivasan, CA
Revenue by	:	Shri. M. K. Biju, JCIT

Date of hearing	:	09.11.2016
Date of Pronouncement	:	11.11.2016

ORDER

Per Sunil Kumar Yadav, Judicial Member

This appeal is preferred by the assessee against the order of CIT(A)
on the following grounds:

- i. The officers below were not justified in ignoring the income of Rs.23,43,473/- for the purpose of computation of deduction u/s 10 A of the IT Act.

- ii. The Officers below have not properly given effect to the order of CIT (A) in ITA No. 127/DCIT C-12(4) / CIT(A)-III/Bang/2013-14 dated 13/07/2014.
- iii. The officers below failed to appreciate that as long as an item of income has been assessed as business income, such income will also qualify for deduction u/s 10 A.

2. During the course of hearing, the learned counsel for the assessee had invited our attention to the order of the CIT(A) passed in first round with the submission that CIT(A) has directed the AO to exclude certain expenses excluded from the export turnover from the total turnover, following the judgment of the jurisdictional High Court in the case of Tata Elxsi Ltd., 349 ITR 98. Consequently the AO has passed an order excluding the expenses incurred on telecommunication, insurance as well as expenses incurred in foreign exchange from the export turnover as well as the total turnover.

3. According to the assessee, the entire receipt of Rs.24,43,473/- are to be excluded as it is attributable to the business of the assessee. But the AO had not excluded the same. Therefore, he has not complied with the directions of the CIT(A).

4. The assessee referred to an appeal before the CIT(A) but did not find favour with him as CIT(A) has held that the AO has properly passed an order in compliance with the directions of the CIT(A).

5. Now the assessee is in appeal before the tribunal and reiterated its contentions; Whereas the learned DR has submitted that in para 7 of the order of the CIT(A) in first round, the CIT(A) has dealt with the exclusion of the expenses on telecommunication, insurance as well as the expenditure incurred on foreign exchange from the total export turnover, following the judgment of the jurisdictional High Court in the case of Tata Elxsi (supra), the CIT(A) has directed the AO to exclude the expenses from the total turnover of export.

6. Pursuance to these directions, the AO has passed the consequential order. From the reading of the para 7 in the CIT(A), it is abundantly clear that CIT(A) has issued directions for the exclusion of the expenditure on telecommunication, insurance as well as the expenditure incurred on foreign exchange from the export turnover as well as from the total turnover. Therefore there is no ambiguity in the assessment order passed consequent to the order of the CIT(A).

7. Having carefully examined the order of the CIT(A) passed in first round, we find that CIT(A) has issued directions for the exclusion of the expenses incurred on telecommunication, insurance as well as expenditure incurred on foreign exchange from the export turnover and also from the

total turnover following the judgment of the Jurisdictional High Court in the case of Tata Elxsi Ltd., (supra). For the sake of reference, we extract the relevant para 7 of CIT(A) as under:

“Ground No. 7 to 11 are against the reworking of deduction u/s 10A, AO in the assessment order has excluded the expenses on telecommunication, insurance as well as expenditure incurred in foreign exchange from the export turnover. However this amount is not excluded from the total turnover. In this regard appellant has relied on the decision of the Karnataka High Court in the case TATA Elxsi Limited 349 ITR 98. I find this issue is squarely covered in favour of the appellant by the jurisdictional High Court which has held as follows:

In other words, if the export turnover in the numerator is to be arrived at after excluding certain expenses, the same should also be excluded in computing the export turnover as a component of total turnover in the denominator. The reason being the total turnover includes export turnover. The components of the export turnover in the numerator and the denominator cannot be different. Therefore, though there is no definition of the term total turnover in section 10A, there is nothing in the said section to mandate that what is excluded from the numerator that is export turnover would nevertheless form part of the denominator.”

8. From careful reading of the aforesaid para of the CIT(A), we find that the CIT(A) has not given any direction with respect to other expenditures incurred and were excluded from the export turnover. Therefore we find no infirmity in the order of the CIT(A) who has confirmed the order of the AO, passed consequent to the directions of CIT(A) in first round.

9. In the result, the appeal filed by the assessee is dismissed.

Pronounced in the open court on this 11th day of November, 2016.

Sd/-
(A. K. GARODIA)
Accountant Member

Sd/-
(SUNIL KUMAR YADAV)
Judicial Member

Bangalore.
Dated: 11th November, 2016.
/NS/

Copy to:

1. Appellants
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.