

आयकर अपीलीय अधिकरण, 'ए' (एस म सी) न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
"A" (SMC) BENCH, CHENNAI

श्री चंद्र पूजारी, लेखा सदस्य के समक्ष

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2080/Mds/2016

निर्धारण वर्ष /Assessment Year : 2011-12

**M/s.Mercury Precision Products
Pvt. Ltd.,**
Plot No. 24(NP), Ambattur
Industrial Estate, Ambattur,
Chennai – 600 098.
PAN AACCM1976A
(अपीलार्थी/Appellant)

v. The Income-tax Officer,
Corporate Ward-IV(1),
Chennai- 34.
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर /Appellant by : Shri S.Parthasarathy, CA &
Shri M. Narayanan, CA
प्रत्यर्थी की ओर से/Respondent by : Shri A.V.Sreekanth, JCIT

सुनवाई की तारीख/Date of Hearing : 05.12.2016

घोषणा की तारीख/Date of Pronouncement : 22.12.2016

आदेश / O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by the assessee is directed against the order
of the Commissioner of Income-tax(Appeals)-8,Chennai dated
29.03.2016.

2. The only issue in this appeal is with regard to treatment of interest income on fixed deposits of ₹ 10,90,028/- while computing the deduction u/s.10A of the Act. The assessee earned interest of ₹ 10,90,028/- on fixed deposits and claimed as business income of the assessee while claiming deduction u/s.10A of the Act. However, the lower authorities treated the same as 'income from other sources' and not considered for granting deduction u/s.10A of the Act. Against this, the assessee is in appeal before the Tribunal.

3. The Id. AR, submitted that the assessee is a 100% export oriented unit and is eligible to avail the exemption u/s. 10A the Act as all the conditions prescribed therein are complied with. The assessee earned interest of ₹ 10,90,028.00 from the deposits placed with the Bank for various purposes, like, to meet the margin requirements while establishing LCs or for issue of Bank guarantees, temporary parking of funds before deployment etc. The said interest on fixed deposit is not an income which is earned out of funds received from outside not connected with the business nor from a separate line of business activity, but it is

from the funds derived from the regular export business proceeds. Further, the Id. AR submitted that in assessee's own case in the A.Y 2008-09 to 2010-11, which were subject to scrutiny u/s.143(3) of the Act, interest on such fixed deposit has been taxed under the head 'profits and gains from business or profession' and thereby granted exemption u/s.10B of the Act for the entire interest earned on fixed deposit after considering the facts of the case. He relied on the decision in the case of CIT v. Western Outdoor Interactive P. Ltd. 349 ITR 309, wherein it was held that sec.10A of the Act exemption is allowable in case allowed in earlier years and there is no change in the business.

3.1 The Id. AR, also placed reliance on the judgment of the Karnataka High Court in the case of Motorola India Electronics (P) Ltd. In ITA No.428 of 2007 and 447 of 2007 dated 1.12.2013, wherein it was observed that interest received on fixed deposit is eligible for benefit u/s.10B of the Act, since there is a direct nexus between such income and the business of the undertaking. The High Court held that though the interest does not partake the character of profits and gains from the export of article, it is the income which is derived from the consideration

realized by export of articles. Therefore, it is eligible for benefit u/s.10B of the Act and to support his view, he further relied on the judgment of the Tribunal, Mumbai Bench in the case of J.P.Morgan Services Pvt. Ltd. (2013). Further, the Id. AR submitted that the profits of the business of the undertaking includes the profits and gains from export of the articles as well as all other incidental incomes derived from the business of the undertaking. It is clear that what is exempted is not merely the profits and gains from the export of articles but also the income from the business of the subject undertaking which is directly attributable to and partakes the character of being borne out of the said export activity. According to the Id. AR, the AO has erred in interpreting and relying on the decision in the case of CIT v. Alpine Solvex Ltd. (176 Taxman 285)(MP).

3.2 The Id. AR, further submitted that in view of the provisions of sec.10A(4) of the Act, it is to be considered as part of the business income of the assessee. He submitted that sub-sec.(4) of sec.10A of the Act, says that profits derived from export of articles or things or computer software shall be the account which bears to the profits of the business of the undertaking and

not the profits and gains from export of articles. According to him, profits and gains derived from export of articles is different from the income derived from the profits of the business of the undertaking. The profits of the business of the undertaking includes the profits and gains from export of the articles as well as all other incidental incomes derived from the business of the undertaking. He submitted that the provisions of sec.80HHC of the Act cannot compare to sec.10A of the Act, as they are standing on different footing. Further, he placed reliance on the decision of the Tribunal, Special Bench, Indore in the case of Maral Overseas Ltd. V. Addl. CIT in ITA Nos.777 & 900/Ind/2004 and 295 & 356/Ind/2006) and the judgment of the Bombay High Court in the case of CIT v. M/s. Solix Technologies Pvt. Ltd. in ITA No.1731 of 2013 and 1735 of 2013 dated 10.8.2015.

4. On the other hand, the Id. DR submitted that the interest income earned from fixed deposit cannot be considered as part of the export business income of the assessee. According to him, only the income from export is entitled for deduction u/s.10A of the Act. He also relied on the decision of the co-ordinate Bench in the case of Changepond Technologies (P) Ltd.CIT

reported in 22 SOT 220 (Chennai) and in the case of Orchid Chemicals & Pharmaceuticals Ltd. vs. JCIT (97 ITD 277)(Chennai), wherein it was observed as under :

“In the context of expression ‘derived from’ or ‘attributable to’, the nature of the income is important and the nature of income has to be decided on the facts of each case. In the instant case, the assessee had earned the interest on margin money deposit made for obtaining letter of credit for purchase of raw materials. Actually, the income of interest had been earned from deposit of margin money with the bank. The question was as to what was the real character of the income and not what the parties called it. The element of source of income was deposit in the bank and the assessee derived interest income therefrom. The income and heads of income are provided in section 14. Where an item of income falls specifically under one head, it has to be charged under that head and not other. Whatever be the nature of the activity or the nature of the income, the income of an assessee is to be classified and computed under the specific heads enumerated in section 14. Even if such income arose in the course of business, if the same falls clearly under some other head or satisfies the test of any specific head, then such income has to be classified and computed only under such head. The several heads of income are mentioned in section 14 and dealt with separately in sections 15 to 59. A particular variety of income must be assignable to one or the other of these sections. If the income under consideration is taxable under any particular section, say, section 22 or 28, then it cannot be taxed under section 56 or vice versa. Similarly, interest on securities, which is specifically made chargeable to tax under section 18 up to the assessment year 1988-89 as a distinct head, falls under that section and cannot be brought under section 28, whether the securities are held as trading assets or capital assets. The fact that income falling under a

specific head may indirectly be covered by any other head will not make it taxable under the latter head.

The interest income earned from deposits with the bank was not connected with profits and gains which were derived from hundred per cent export-oriented undertaking or from manufacturing any article or thing. The expression 'any profits and gains' derived by the assessee from a hundred per cent export oriented undertaking to which this section applies as used in section 10B has a distinct but narrow meaning and it cannot receive a flexible or wider concept. The assessee is entitled to claim deduction of the amount which it derives as direct profit by export of goods manufactured in its newly established hundred per cent export-oriented undertaking. Any indirect or incidental profit cannot be regarded as profit earned out of the main business activity."

5. We have heard both the parties and perused the material on record. In this case, the claim of assessee is that the assessee has deposited the export realization in bank deposits and earned interest income from it and it is a part of the profit and gain from the industrial undertaking as stipulated in Sec.10A(4) of the Act. In our opinion, similar issue came for consideration before Jurisdictional High Court in the case of CIT Vs.Menon Impex P. Ltd. in [2003] 259 ITR 403 (Mad) wherein held that:-

"the interest received by the assessee was on deposits made by it in the banks. It was the deposit which was the source of the interest income. The mere fact that the deposit was made

for the purpose of obtaining letters of credit which were in turn used for the purpose of the business of the industrial undertaking did not establish a direct nexus between the interest and the industrial undertaking”.

Similar view was taken by the Jurisdictional High Court in the case of M/s.India Comnet International Vs. ITO in [2008] 304 ITR 322 (Mad) wherein held that interest received on export profit deposited with bank does not qualify for relief u/s.10A of the Act. Further, the Delhi High Court in the case of M/s.Thomson Press (INDIA) Ltd. Vs. CIT in [2015] 379 ITR 222 (Del) wherein held that the interest cannot be considered as profit and gain derived by assessee from the eligible undertaking as it does not bear a direct nexus with the activities of the eligible undertaking only, the profit and gains of assessee which has direct nexus with the undertaking to which S.10A apply, interest would be excluded from the income of assessee.

6. In view of the above discussion, we are inclined to held that the interest income earned by the assessee from the bank deposits cannot be included as profit and gain from eligible undertaking so as to grant deduction u/s.10A of the Act and it is

to be excluded from profit and gains of the business undertaking.

Accordingly, this ground raised by the assessee is dismissed.

7. In the result, the appeal of the assessee is dismissed.

Order pronounced on 22nd December,2016 at Chennai.

(चंद्र पूजारी)

(Chandra Poojari)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 22nd December, 2016.

K S Sundaram

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.