Order Received on 13/02/2017

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'D' NEW DELHI

BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT
&
SHRI K.N. CHARRY, JUDICIAL MEMBER

ITA No.-236/Del/2011
(Assessment Year: 2006-07)

ITO Ward 18(3), Room No. 248, C.R. Building, New Delhi.	vs	WNS Mortgage Service P. Ltd. PL-10, Godrej & Boyce Complex, Pirojshanagar, LBS Marg, Eastern Express Highway, Vikhroli (West), Mumbai. AABCT8951H

Assessee by	**Sh. Tarandeep Singh, AR**
Revenue by	**Sh. Umesh Chand Dubey, Sr. DR**

Date of Hearing	**09.02.2017**
Date of Pronouncement	**10.02.2017**

ORDER

PER K. NARSIMHA CHARRY, J.M.

This is an appeal by the Revenue challenging the order dated 15/11/2010 by the Commissioner of Income Tax (Appeals)-XXI, New Delhi (hereinafter referred for short called the Ld. CIT (A)). By way of this impugned order Ld. CIT (A) deleted the addition of Rs. 10,34,29,051/- made by the AO by disallowing the deduction u/s 10A of the Income Tax Act, 1961 (hereinafter for short called 'Act').

2. In the assessment order the Assessing Officer (for short hereinafter referred to as "the AO") observed that the name of the assessee is M/s Trinity Business Process Management Pvt. Ltd. was held by M/s Trinity Partners Inc., USA, the shares of M/s WNS Mortgage Services Pvt. Ltd. are held by M/s WNS (Holdings) Ltd. as is mentioned in the tax audit report in Form 3CD. He further observed that the assessee has not been able to prove satisfactorily that there was actual manufacture of software or export thereof, since the alleged transactions are entirely with its parent company and it is not known as to exactly what is the nature of services the foreign inward remittances had been received from the parent company. According to him even if the benefit of doubt is given and it is considered that the part of the foreign inward remittances that have been received is in connection with export of manufactured material/software, deduction u/s 10A of the Act will not be allowable since as per the provisions of that section 100% of the articles, things, software should have been manufactured.

3. Aggrieved by such an addition the assessee carried the matter in appeal and the Ld. CIT (A) having considered the notification No. SO 890(E), dated 26.09.2000 issued by the Central Board of Direct Taxes, and also the other circumstantial material available on record held that the case of the assessee squarely falls u/s 10A of the Act in respect of the claim for deduction. Accordingly, Ld. CIT (A) deleted the addition of Rs. 10,34,29,051/- made by the AO.

4. Challenging this order of the Ld. CIT (A) the Revenue is in appeal before us. According to the Ld. DR Ld. CIT (A) has erred in allowing the deduction when it was not established that the assessee company had developed or manufactured and exported any software at all. Per contra, it is the submission of the Ld. AR that in respect of the very same assessment year under consideration the Transfer Pricing Officer in his order dated 15/10/2009 observed that the assessee has provided BPM & IT enabled services to the parent company of the assessee i.e. Trinity Incorporation, USA, and as per the notification of CBDT referred by the Ld. CIT (A) at page nos. 9 & 10 of his order, this business

process management which includes back office operations, call centers content development or animation etc. answer the description of computer software for the purposes of claim of deduction u/s 10A of the Act. He further submitted that in respect of the A.Y. 2005-06 the claim of the assessee u/s 10A of the Act was allowed without any objection.

5. Point for determination is whether the order of the Ld.CIT (A) suffers any legal infirmity or a regularity warranting any interference.

6. A perusal of Section 10A Explanation 2(b) shows that computer software means any customized electronic data or any product or service of similar nature as may be notified by the Board. Under this provision the Board has issued a notification referred to by the Ld. CIT (A) at page nos. 9 & 10 of his order which covers as many as 15 activities which are as follows:

i. Back-office Operations;
ii. Call Centres;
iii. Content Development or Animation;
iv. Data Processing;
v. Engineering & Design;
vi. Geographic Information System Services;
vii. Human Resources Services;

viii. Insurance Claim Processing;
ix. Legal Databases;
x. Medical Transcription;
xi. Payroll;
xii. Remote Maintenance;
xiii. Revenue Accounting;
xiv. Support Centres; and
xv. Webs-site Services

7. In so far as the actual rendering of the service is concerned the Transfer Pricing Officer in his order dated 15/10/2009 in respect of the assessment year 2006-07 categorically recorded that the assessee has provided these services to the parent company. Further vide paragraph no. 5.8 the Ld. CIT (A) observed that the assessee drew his attention to the summary of invoices and copy of the SOFTEX forms submitted to the STPI Authorities along with a copy of invoices raised during FY 2005-06 and these documents were also submitted during the course of assessment proceedings before the AO vide its submission dated December 29, 2009.

In the circumstances, we will find it difficult to hold that the assessee could not prove the actual development or export of the software.

8. Reliance is placed by the AR on a decision of a coordinate bench of this Tribunal in Kiran Kapoor vs. ITO 150 ITD 237 (Del.), wherein at page no. 8 paragraph no. 15 it was held that "in our considered opinion the meaning of phrase or word had to be seen in the framework of the context in which it has been used. Phrase "Manufacture or produce" will have a different contextual meaning when it is read in a statute let us say for e.g. the Excise law, since the parliamentary intention there will be to attract levy of tax, however, in the present case we are called upon to interpret this phrase as applicable to a statute grating benefit of an exemption/deduction from taxable total income. In the instant case the intention of legislature is to provide benefit of deduction to enterprises which are not simply engaged in manufacture or produce any article or thing, but even to those assesses whose end product is any customized electronics data. Benefit of deduction u/s 10B of the Act, is also available on rendering of any of the services as notified by the Board like the item (ii) in the notification (supra) wherein even call centers, animation, etc. which are brought in the sweep of any product or services stated in clause (b) of item (i) Explanation 2 to Section 10B". It is pertinent to note

that this decision of the Tribunal was upheld by the Hon'ble Jurisdictional High Court in CIT vs. Kiran Kapoor 372 ITR 321 (Del.).

8. In view of the above facts and law, we find that the material on record amply justifies the reasoning and conclusions reached by the Ld. CIT (A), and the findings of learned CIT(A) are unassailable and do not warrant any interference. We, therefore, uphold the same.

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

Order pronounced in the open court on 10.02.2017

(G.D. AGRAWAL)
VICE PRESIDENT

(K. NARSIMHA CHARRY)
JUDICIAL MEMBER

Dated: 10.02.2017
*Kavita Arora

Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR, ITAT

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ASSISTANT REGISTRAR
ITAT, NEW DELHI