आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

श्री डी. करुणाकरा राव,लेखा सदस्य,
एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष

BEFORE SHRI D. KARUNAKARA RAO, AM
AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं./ ITA No. 359/PUN/2013
निर्धारण वर्ष / Assessment Year : 2008-09

M/s. Honeywell Automation
India Limited,
56/57, Hadapsar Industrial Estate,
Hadapsar, Pune – 411 013
PAN : AAACT3904F .....अपीलार्थी / Appellant

बनाम / V/s.

ACIT, Circle-7, Pune .....प्रत्यर्थी / Respondent

Assessee by : Shri Kamal Sawhney & Ms. Rhea Amar
Revenue by : Shri Rajeev Kumar, CIT-DR

सुनवाई की तारीख / **Date of Hearing : 10.10.2018**		घोषणा की तारीख / **Date of Pronouncement : 02.11.2018**

आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

This appeal is filed by the assessee against the order of DRP/TPO/AO involving A.Y. 2008-09.

2. Grounds raised by the assessee read as under :

"On the facts and in the circumstances of the case and in law, the Hon'ble DRP and consequentially the learned AO has:

General

1. erred in assessing the total income at Rs. 90,95,94,040 as against income of Rs. 65,78,09,980 (as per the revised computation of income filed by the Appellant with the learned AO during the course of assessment proceedings);

A. Denial of tax holiday claim under section 10A of the Act amounting to Rs. 5,22,56,867 with respect to Software Technology Parks ('STP') operations; Rs. 2,37,68,534 with respect to Electronic Hardware Technology Parks ('EHTP') operations of the Appellant and tax holiday claim under section 10AA of the Act amounting to Rs. 1,87,497 with respect to Special Economic Zone ('SEZ') operations of the Appellant

2. erred in recomputing the deduction under section 10A at Rs. 11,39,56,076 as against Rs. 16,62,12,943 with respect to STP operations, Rs. 5,18,31,824 as against Rs. 7,56,00,358 with respect to EHTP operations and deduction under section 10AA at Rs. 4,08,873 as against Rs.5,06,370 claimed by the Appellant in the return of income filed on 30 September 2008, thereby denying deduction under section 10A to the extent of Rs. 7,60,25,40/and under section 10AA to the extent of Rs. 1,87,497;

Invoking the provisions of section 10A(7) and section 10AA(9) read with section 801A(10) in the Appellant's case

3. erred in invoking the provisions of section 10A(7) and section 10AA(9) read with section 80IA(10) in the Appellant's case, on the ground that transactions between the Appellant and its associated enterprises are arranged to produce more than ordinary profits;

4. failed to appreciate that provisions of section 10A(7) and section 10AA(9) read with section 80IA (10) could only be invoked where both the connected parties are taxable in India and there is tax erosion in India due to 'arrangement' between those persons and not otherwise;

Usage of arithmetic mean as per the transfer pricing study report for determination of 'ordinary profits' for the purpose of section 10A(7) and section 10AA(9) read with section 80IA(10)

5. erred in law by adopting the arithmetic mean of operating margins earned by comparable companies as per the transfer pricing study report as benchmark of 'ordinary profits' computed for the purposes of section 10A(7) and section 10AA(9) read with section 80IA(10);

Appellant earning 'more than ordinary profits'.

6. erred in concluding that the profits earned by the Appellant are more than ordinary profits from its STP operations, without appreciating and considering the business model under which the Appellant operates;

7. failed to appreciate that the rates charged by the Appellant to its Associated enterprise ('AE') were comparable with the rates charged to other customers ('non-AE') and the rates charged in earlier years;

8. failed to appreciate that the onus is on the Department to prove with substantial evidences that the business of the Appellant is 'arranged' so as to have supernormal profits and mere inferences without substantiating the allegations would not suffice;

9. should have appreciated that the Appellant has offered to tax similar level of profits in earlier and later years in case of STP operations and hence the Appellant could not be considered to have earned 'more than ordinary profits' during the year under appeal;

B. Denial of additional tax holiday claim of Rs.6,04,42,900 under section 10AA of the Act arising pursuant to the retrospective amendment to section 10AA(7) of the Act by Finance Act 2010

10. erred by denying additional tax holiday benefit (amounting to Rs 6,04,42,990) claimed by the appellant during the course of the assessment proceedings by way of filing a revised tax computation with the learned AO computed considering impact of the retrospective amendment to section 10AA(7) of the Act by Finance Act 2010;

C. Denial of additional tax holiday benefit under section 10A and 10AA of the Act claimed during the assessment proceedings by way of filing revised computation of income, computed considering inclusion of export proceeds realised but not considered in the return of income as part of 'eligible export turnover' for the purposes of claiming deduction under section 10A and 10AA of the Act

11. erred by denying additional tax holiday benefit under section 10A and 10AA of the Act (amounting to Rs 55,24,290) claimed by the Appellant during the assessment proceedings by way of filing of revised computation of income, computed by inclusion of export proceeds realised but not considered in the return of income as 'eligible export turnover' for the purposes of claiming deduction under section 10A and 10AA of the Act;

D. Denial of tax holiday claim amounting to Rs.2,37,68,534 in respect of Electronic Hardware Technology Parks ('EHTP') operations of the Appellant.

12. erred in invoking the provision of 10A(7) of the Act to Appellant's EHTP unit despite the fact that margins of comparable companies considered relates to software services segment and cannot be compared with margins earned by EHTP unit which was engaged in manufacturing of electronic parts/components;

E. Denial of credit for additional taxes deducted at source claimed by the Appellant during the course of assessment proceedings by way of filing revised computation of income.

13. erred in denying credit for additional taxes deducted at source (TDS) (amounting to Rs.69,35,684) claimed by the Appellant during the assessment proceedings by way of filing revised computation of income.

F. Transfer Pricing adjustment under provisions of Chapter X of the Act in respect of International Transactions.

14. On the facts and in law, the learned AO and the learned Transfer Pricing Officer ('TPO') erred in determining and DRP has erred in conforming the arm's length price for international transactions in respect of availing of intra-group services, i.e. Administrative and Managerial Services by the Appellate from its AE at Rs. NIL as against the sum of Rs. 7,53,73,889 as determined by the Appellant and thereby proposing an adjustment of Rs. 7,53,73,889.

15. On the facts and in law, the learned AO/TPO erred in disregarding the Service Agreement, invoices, note on Administrative and Managerial Services, detailed working of Administrative and Managerial Services, US Regulations and detailed documentary evidences filed by the Appellant from time to time to substantiate the receipt of services, benefits derived

there from.

16. On the facts and in law, the learned AO/TPO erred in questioning the commercial expediency for availing such services and not appreciating the jurisprudence that the learned AO/TPO cannot go beyond his powers in questioning commercial decision of the assessee.

17. On the facts and in law, the learned AO/TPO and the Hon'ble DRP erred in disregarding the transfer pricing documentation maintained by the Appellate using the Transaction Net Margin Method ('TNMM') and erroneously and inappropriately applied no method to determine the arm's length price as NIL, without providing any comparable transaction and without any cogent reasoning, thereby disregarding Rule 10B and Rule 10C.

18. On the facts and in the circumstances of the case and in law, the learned AO erred in initiating penalty proceeding under section 27(1)(c) of the Act."

3. At the outset, Ld. Counsel for the assessee brought our attention to the grounds and submitted that they involve TP issues on one side, i.e. (Ground Nos. 14 to 17) and the corporate issues on the other, i.e. (Ground Nos. 2 to 13).

TP issues on Ground Nos. 14 to 17

4. Regarding the TP issues, i.e. Ground Nos. 14 to 17, Ld. Counsel for the assessee submitted that the issues raised in these grounds are identical both on facts and on law to that of the issues settled vide the Advanced Pricing Agreements (APA) made u/s.92CC of the I.T. Act, 1961. Bringing our attention to the Advanced Pricing Agreement, Ld. Counsel submitted that it was agreed upon between the assessee and the CBDT vide agreement dated 30-03-2017 on the AP of the Intra-group Managerial & Administrative Services and the same is relevant for the A.Yrs. 2015-16 to 2019-20.

5. Referring to the issues in the present assessment year under consideration, i.e. A.Y. 2008-09, Ld. Counsel fairly submitted that this year is not actually covered by the said agreement. However, he brought our attention to various decisions as well as the facts relevant to the year under consideration and submitted that the issue stands covered by the said Advanced Pricing Agreement for this year also. In this regard, he filed the following written submissions :

> *"On March 2017, the Appellant has entered into a unilateral APA with CBDT for the transaction of Availing of centralized management, administrative and other services from Honeywell International Inc., USA (H11) (Transaction I). The Agreement is valid from A.Y. 2011-12 to A.Y. 2014-15 (rollback period) and AY.2015-16 to 2019-20 (APA Period).*
>
> *Though, A.Y. 2008-09 is not covered under the APA, the Appellant wishes to submit that the facts of the said transaction are similar to the facts as covered in the APA year.*
>
> *Under the APA, Transactional Net Margin Method ('TNMM') was selected the most appropriate method and the AE; i.e. H11 as tested party."*

5.1 Further, bringing our attention to the decision of Coordinate Bench of the Tribunal in the case of Abicor Binzel Production (India) Pvt. Ltd. Vs. Dy.CIT in ITA Nos.2253 to 2255/PUN/2014 and ITA No.139/PUN/2014, Ld. Counsel for the assessee submitted that in this case the APA is found applicable to the earlier assessment years in those cases, as the case may be, when the facts of the A.Y. 2008-09 are similar to that of the assessment year covered in the APA. For the sake of convenience, the same are extracted here as under :

> 1. *In the case of Abicor Binzel Production (India) Pvt. Ltd. Vs. Dy.CIT (ITA Nos. 2253 to 2255/PUN/2014*
>
> *"In the light of fact that assessee has entered into APA, the Coordinate Bench of the Tribunal in the assessment year 2009-10 has directed Assessing Officer to decide the issue in accordance with the terms and conditions of APA as nature of transactions are similar.*
> *..*

If they are of similar nature, the same can be decided afresh in line with the terms and conditions of APA. The appeals of the assessee are thus, allowed for statistical purpose with aforesaid directions."

2. *In the case of Abicor Binzel Production (India) Pvt. Ltd. Vs. Dy.CIT (ITA No.139/PN/2014)*

"The assessee has made a request since it had entered into Advance Pricing Agreement (APA) with CBDT covering nine years from AY 2010-11 to AY 2013-14 under rollback provisions and from AY 2014-15 to 2018-19 being the balance APA period, similar proposition should be applied to the year under consideration also as the international transactions entered into by the Assessee with its AEs in the instant assessment year are identical to the international transactions which were part of the APA proceedings. …The grounds of appeal raised by the assessee are thus, allowed."

3. *In the case of Ranbaxy Laboratories Ltd. Vs. ACIT (ITA No.196/Del/2013)*

"it is clear that if the international transactions are same in the year of APA and the year for which rollback is applied, roll back is allowed to the assessee on certain normal condition of filing return of income, Report of accountant and a request in specified format. Offcourse, it has also normal revenue safeguarding exclusion clauses of income going below the returned income and where ITAT has passed an order on the subject. Therefore even the rules provide that if the International Transactions are same in the year of APA and in the past year than both the parties, assessee and CBDT may agree for applying the agreements contained in APA agreed.

…

Needless to say that Ld.TPO/AO shall give due weightage to the Advance Pricing agreement signed by the assessee with CBDT on other issues also (other than the issue of selection of tested party) for determination of ALP and in case of any divergent view, the assessee shall be granted an adequate opportunity to substantiate any claim/arguments on the manner of determination of ALP.

4. In the case of RBS India Development Centre Pvt. Ltd. VS. ACIT (ITA No.5538/Del/2010), the TPO did not take into consideration other income which was in the nature of operating income. The AR placed the APA before the Hon'ble Bench and pointed out that the other income was part of operating income as per the terms of the Agreement. The issue was restored back to the file of the Ld. AO/TPO for verification of the assessee's claim."

6. Considering the above, we are of the opinion that the matter should be remanded to the file of AO/TPO, as the case may be, for the purpose of comparing the facts of the case and the relevant terms of agreement between the CBDT and the assessee. AO is directed to

examine the facts closely and conclude the assessee on the issue of applicability of APA to the assessee's case for the year under consideration in principle. AO is also directed to consider the above cited decisions of Pune Bench of the Tribunal as well as Delhi Bench of the Tribunal for the legal proposition of deciding the issue in the light of APAs. Accordingly, the grounds Nos. 14 to 17 raised by the assessee are allowed for statistical purposes.

Corporate Issues

7. Regarding the non corporate issues, Ld. Counsel for the assessee brought our attention to Grounds A2 to A9 and submitted that all these grounds deal with the claim of deduction of the assessee u/s.10A, 10AA of the Act for the A.Yrs. 2006-07 and 2007-08. Ground 1 is general in nature and the same can be dismissed as such. Mentioning that this issue is actually covered issue, in the assessee's own case for the earlier assessment years by the order of Tribunal vide ITA No.18/PUN/2011, dated 25-02-2015, Ld. Counsel submitted that, like in other years, AO decided to reduce the profits by invoking the provisions of section 10A(7) r.w.s. 80IA(10) of the Act. It is also submitted that, on similar facts, the Tribunal granted relief to the assessee in the said earlier year. Ld. Counsel for the assessee furnished written submissions in this regard. He relied on the another order of the Tribunal in the case of Eaton Industries Ltd in ITA No.2544/PUN/2012, dated 30-10-2017 and jurisdictional High Court judgment in the case of Smith India Pvt. Ltd. in ITA No.1382/2013, dated 24-06-2015 where the Hon'ble High Court held that the extraordinary profits cannot automatically lead to the conclusion that there is arrangement between the parties. On hearing

both the sides on this issue, we proceed to extract the written submissions here as under :

"Grounds A2 - A9

Denial of tax holiday** u/s **10A & 10AA on the ground that margins shown by the Appellant are higher than the margins of the comparables

1. The appellant is an indirect subsidiary of Honeywell Inc. USA and is engaged in the business of providing Software services and industrial automation manufacturing to its group companies. For AY 2008-09 it had two Software Technology Parks located in Pune & Chennai (S.10A units) and an SEZ Unit (S. 10AA Unit) located at Pune.

2. For the years under consideration, the appellant had claimed the following deductions from its total income:

AY	*Section 10A Deduction*	*Section 10AA Deduction*	*Page Reference*
2008-09	*Rs.7,60,25,401 (STP – 5,22,56,867 EHTP – 2,37,68,534*	*Rs.1,87,497*	*Pg. 40 of the Appeal Set.*

3. The AO however granted only a partial deduction of the above sums by invoking section 10A(7)/ 10AA(9) of the Act read with section 80IA (10) of the Act on the ground that the Appellant was claiming a substantially higher deduction than the ordinary profits of the comparable entities.

*4. **In** coming to this conclusion the AO has **primarily relied on the reasoning adopted by its predecessors** for AY 2006-07 & 2007-08. This is evident from a bare reading of the final assessment order from pg. 6 onwards - (page 12 of the Appeal set).*

5. In the previous assessment years, the AO had come to the conclusion that as 81 % of the shareholding of the Appellant was held by the US entity (Honeywell lnc. USA) there existed a close connection with the appellant as a result of which the Indian entity was generating substantially higher profits compared to the comparable companies. It was on this basis that provisions under section 10A(7) read with section 801A were invoked and the deduction was restricted to the aggregate margins earned by the comparable entities.'

6. The above contentions of the AO were confirmed by the Ld. CIT(A) during the proceedings for AY 2007-08 wherein it was held that the key factors required for the AO to invoke its powers u/s.10A r.w s. 80IA are 'close connection' and 'arrangement' between the Appellant and the other persons and such arrangement produced more than 'ordinary profits' in the eligible business.

7. In the present case, the AO as also the Ld. DRP have followed the orders of their superiors/predecessors and reduced the extent of the deduction to the aggregate margins earned by the comparables. This is evident from a perusal of the final assessment order wherein the AO has held as follows:

> *"After going through the said written submission, I found myself unable to deviate from the decision taken by my predecessor as the said decision was correctly taken by him. "*

8. The issue in regards the above is squarely covered by the judgment of this Hon'ble Tribunal in the Appellant's own case for AY 2006-07 & AY 2007-08. In ***ITA 18/Pune/2011 order dated 25.02.2015*** *this Hon'ble Tribunal has held that:*

> *i. Para 23 .....The existence of substantial or more than ordinary profits by itself does not sufficiently empower the AO to disregard them and determine the profits which he may consider to be reasonably deemed to have been derived therefrom in other words the import of the expression "so arranged" has to be read in conjunction with the legislative intent that there should not be any abuse of tax concession by manipulation of profits. Therefore, section 10A(7) r.w.s. 80-IA(10) of the Act can be invoked only where it is shown that the course of business is so arranged which reflects an abuse of tax concession whereby the business transacted between two entities is so arranged, which produces to the assessee more than the ordinary profits which might be expected to arise in such eligible business.*
>
> *ii. The mere existence of (i) a close connection between the assessee and the other person; and, (ii) more than ordinary profits is not sufficient to justify invoking of section 80-IA (10) of the Act in the absence of there being any material to say that the course of business between them is "so arranged" to abuse the tax concessions granted u/s 10A of the Act by manipulating profits between associated persons.*

9.. It was on this basis that the Hon'ble Bench came to the conclusion that the revenue was unable to justify the business between the Appellant and the AE had been arranged to produce more than ordinary profits.

> *"Ostensibly, in the present case, the Revenue would have to justify that the course of business between assessee and the associated enterprises has been 'so arranged' which produces to the assessee more than the ordinary profits which might be expected to arise in such eligible business with the intention of abusing the tax concession granted in section 10A of the Act. "*

10. Further, in regards the expression 'arranged' the Hon'ble Bench held that a mere agreement between the Appellant and the associated enterprises for transacting business is not enough to invoke section 80-IA (10) of the Act. The same is provided for easy reference :

> *"Para 27.....In other words, as per the Revenue, the existence of close connection and high profits would lead to a presumption that there is an "arrangement" within the meaning of section 80-IA(10) of the Act. The aforesaid plea, in our view, not only belies the language of section 80-IA(10) but also the legislative intent which seeks to curtail the abuse of tax concession by manipulation of profits between associated*

concerns. Therefore, an arrangement which is referred to in section 10A(7) r.w.s.80-IA(10) of the Act has to be one which is prefaced by an intention to abuse the tax concessions, as per the intendment of the legislature. Therefore, existence of a mere agreement to do business is not enough to fulfil the requirement of section 10A(7) r.w.s. 80-IA(10) of the Act in the context of the words "the course of business between them is so arranged."

11. In addition to the above, reliance is also placed on a ruling of the Coordinate Bench of this Hon'ble Tribunal in the case of Eaton Industries Pvt. Ltd. Vs. ACIT (ITA 2544/Pun/2012 Order dated 30-10-2017) wherein it was held that :

"Once the arm's length price of International Transactions of provision of Engineering Design Services has been accepted...by the TPO in the transfer pricing order, then the Assessing Officer cannot re-examine the said transaction to allege that the assessee had earned more than ordinary profits as compared to those of comparables". Absent any evidence brought on record by AO to show that the man-hour rates charged by assessee were excessive and also to establish that there was an arrangement between the assessee and its AEs to charge such excessive rates, which resulted in more than ordinary profits in the hands of assessee, ITAT holds that "Where the assessee had adopted a price mechanism based on third party comparables, which in turn, has been accepted by the TPO to be at arm's length price, there is no merit in the order of Assessing Officer in applying the provisions of section 10A(7) r.w.s. 80IA(10) of the Act."

12. Further, this issue also stands settled in favour of the appellant by the judgment of the jurisdictional High Court in the case of CIT V. Schmetz India Pvt. Ltd. (ITA No.1382/2013 dated 24-06-2015) wherein the Hon'ble Court has held at Para 8 as under :

"So far as question (a) & (b) are concerned, we find that the Tribunal has considered the entire evidence and on facts come to the conclusion that the profits earned by Kandla division of the respondent-assessee is not abnormally high due to any arrangement between the respondent-assessee and its German Principal. The Tribunal correctly held that extraordinary profits cannot lead to the conclusion that there is an arrangement between the parties. This would penalize efficient functioning. Further, the authorities have also recorded a finding that the industrial sewing machine needles imported and traded by the Mumbai Division are different from those manufactured & exported by the Kandla division. Consequently, this also negatives any arrangement between the parties to show extraordinary profits in respect of its Kandla division so as to claim deduction under section 10A of the Act. These are findings one of fact. The appellant-revenue have not been able to show that the findings are perverse or arbitrary. In the circumstances, question (a) and (b) as formulated by the appellant/revenue do not raise substantial questions of law in the present facts and are therefore dismissed. "

It is also pertinent to note that the SLP preferred by the Revenue department against the above ruling of the Hon'ble High Court has been dismissed - SLP CC No 2013/2016 dated 08.02.2016.

13. Since the above rulings of the Hon'ble High Court as well as the Hon'ble Tribunal were given on a later date the benefit of the same was not available with the AO, the Ld. DRP, hence following the same it is humbly submitted that the present disallowance be deleted and the appellant be allowed to claim the entire deduction as per its revised computation of income.

7.1 Considering the above stated position and also binding nature on the issue in the assessee' own case as well as jurisdictional High Court judgment in the case of CIT Vs. Schmetz India Pvt. Ltd., we are of the opinion that the AO has not made out a case that there exists an arrangement and the said arrangement is malafide and it falls in the mischief of the provisions of section 80IA(10) r.w.s. 10A(7) of the Act. Accordingly, the grounds Nos. 2 to 9 raised by the assessee are allowed.

8. In view of the relief granted to the assessee in this regard, we find adjudication of the ground No.12, being raised without prejudice, becomes an academic exercise. Therefore, the said ground is dismissed as academic. Ground No.1 is general in nature and the same is dismissed. That leaves Ground No.B10 and C11 remains for adjudication.

9. Regarding the issue raised in grounds B10 and C11, the background facts include that there was an amendment to the provisions of section 10A(7) of the Act. By this amendment, the "total turnover of the business of the assessee" stands replaced by the "total turnover of the business carried on by the undertaking". As a result, the total turnover of undertaking is a relevant and has significant effect on the allowable deduction out of the eligible profits. During the

assessment proceedings, giving effect to the said amended provision of section 10(7) of the Act, assessee filed revised tax computation before the assessing authorities. The said revised computation is supplied by the assessee in the written submissions in a tabular form. In the said revised computation of income, assessee made a claim of additional tax holiday benefit amounting to Rs.55,24,290/- which is nothing but export proceeds received by the date of making of the said revised computation. AO denied the same without giving any reasoning. Ground No.11 is relevant in this regard.

10. Before us, on the said issues, Ld. Counsel for the assessee submitted that the said rejection by the AO merely citing the Hon'ble Supreme Court's judgment in the case of Goetz India Ltd. 284 ITR 323 (SC) is not sustainable. The judgment is relevant for the proposition that assessee is allowed to make additional claims by way of revised return of income before the AO. In this regard, Ld. Counsel for the assessee submitted that it is the duty of the AO to make the assessment in tune with the provisions of the Act which includes amended provisions of the Act. But AO conveniently rejected the assessee's revised computation which is made based on the amended laws of section 10A(7) of the Act. In this regard, Ld. Counsel for the assessee filed written submissions and relied on the decision of CIT Vs. Pruthvi Brokers and Shareholders Pvt. Ltd. 349 ITR 336 and many others and they are relevant for the legal proposition that the CIT(A) is under obligation to consider the revised computation of income as there are no fetters imposed by the Court on the appellate authorities. We proceed to extract the contents of the said written submissions application to these grounds :

"1. The intention of the legislation was always to give benefit retrospectively including for years AY 2006-07,2007-08 and 2008-09 in whose case the due date for filing the revised return had already expired. Therefore, the legislators while introducing the retrospective amendment were very much aware and intended to allow benefit of such retrospective amendment by Finance Act 2010 for earlier years during the course of assessment / appellate proceedings.

2. The AO has not rejected the fact that the amendment is applicable to the Appellant, but he has just not accepted the revised computation.

For the above, the Appellant wishes to rely on the Circular No 14 (XL-35) of 11 April 1955 which is issued by the CBDT which explains the role of the assessing officers while conducting assessments.

"Officers of the Department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the Officers should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him. This attitude would, in the long run, benefit the Department for it would inspire confidence in him that he may be sure of getting a square deal from the Department. Although, therefore, the responsibility for claiming refunds and reliefs rests with assessees on whom it is imposed by law, officers should:

a) *draw their attention to any refunds or reliefs to which they appear to be clearly entitled but which they have omitted to claim for some reason or other;*
b) *freely advise them when approached by them as to their rights and liabilities and as to the procedure to be adopted for claiming refunds and reliefs. "*

As can be noted, the Circular provides that the officers of tax department must not take advantage of ignorance of a taxpayer and that although the responsibility for claiming refunds and reliefs rests with the taxpayer, the officers should draw the attention of taxpayer to any refund or relief to which he is entitled to and which he has omitted to claim. They should freely advise the taxpayers, when approached, as to their rights and liabilities and as to the procedure to be adopted for claiming refunds and reliefs.

Judicial precedents wherein Supreme Court decision in case Goetze (India) Ltd (relied by the AO) has been discussed and it has upheld that claims made by the assessee in the assessment proceedings should be allowed

1. CIT v. Pruthvi Brokers and Shareholders (P.) Ltd. [2012] 349 ITR 336 (page 115 to 124 of the legal paper book - CT)- The Bombay High court has stated that Assessing Officer may not be entitled to grant a deduction or an exemption on the basis of a revised computation of income, there was no such fetter on the appellate authorities. The extract of the case law is given below:

"It is clear to us that the Supreme Court did not hold anything contrary to what was held in the previous judgments to the effect that even if a claim is not made before the assessing officer, it can be made before the appellate authorities. The jurisdiction of the appellate authorities to entertain such a claim has not been negated by the Supreme Court in this judgment. In fact, the Supreme Court made it clear that the issue in the case was limited to the power of the assessing authority and that the

judgment does not impinge on the power of the Tribunal under section 254. "

2. E-funds International India (P) Ltd (Page 69 to 73 of the legal paper book - CT)- The High Court has considered the effect of the decision of the Supreme Court in Goetze (India) Ltd and stated that while an Assessing Officer may not be entitled to grant a deduction or an exemption on the basis of a revised computation of income, there was no such fetter on the appellate authorities. This court noted that the decision in Goetze (India) Ltd. (supra) "would not apply if the assessee had not made a new claim but had asked for re-computation of the deduction".

3. Western India Shipyard Ltd. [2015) 379 ITR 289 (Delhi HC) (page 102-103 of the legal paper book - CT)- while an Assessing Officer may not be entitled to grant a deduction or an exemption on the basis of a revised computation of income, there was no such fetter on the appellate authorities.

4. Chicago Pneumatic India Ltd. v DCIT 15 SOT 252 [2007] (page 76 - 91 of the legal paper book - CT)(Mumbai ITAT) - In this case, the taxpayer who had made claims in the original return revised the claim for deduction under sections 80HH and 80-I of the Act during the course of assessment proceedings without filing a revised return. The ITAT considered Circular no. 14(XL- 35) of 1955, dated 11-4-1955 and decision of the SC in the case of Goetze (Supra). It noted that a circular has been issued by the CBDT to grant reliefs/refunds while completing the assessment proceedings, even though such circular may be at variance with the law, but the same would be binding on the subordinate income-tax authorities. It also held that as the Circular issued in 1955 has not been withdrawn, the same has binding force on the subordinate authorities even as on date.

5. Ramco International [IT Appeal No.417 of 2008] (Page 100-101 of the legal paper book-CT) - Punjab and Haryana High Court - where a deduction under section 80IB was claimed through Form 10CCB in the assessment without filing a revised return, the Honorable High Court held that there was no requirement of filing any revised return to claim the deduction.

6. DCIT v Essar Oil Ltd [ITA No. 4177/MUM/2000] - The AO rejected a claim for grant of full deduction of expense on R & D as only a partial claim was made in the return of income. The AO denied the deduction on the basis that the claim was made through a letter in the course of assessment proceedings without furnishing a revised return. The CIT(A) allowed the taxpayer's claim. Before the [TAT, the Tax authorities relied on the decision of the SC in Goetze (India) (Supra). The ITAT upheld the CIT(A)'s order after referring to CBDT circular No. 14 (XL- 35) of 1955 dated 11-4-1955 and held that the circular was binding on the lower Tax authorities.

7. Moser Bear India Ltd v JCIT [108 ITD 80] (2007) (Del) (Page 92 - 99 of the legal paper book- CT)- The Hon'ble ITAT upheld the claim of the taxpayer. It observed that the reliance placed by the Tax authorities on the decision in Goetze (India) was misplaced as the decision was given in a different context when compared to the provisions of section 10A/10B which are a code in itself and contain scheme of taxation formulated by Government for taxability of units set up in the export processing zone.

Impossibility of performance - The retrospective amendment was introduced by the Finance Bill 2010 which got presidential assent on 8 May 2010 i.e after the time limit specified under section 139(5) of the Act for filing the revised return of income for the year under consideration.

Rectified order - The AO has given effect to the taxes paid as per the revised computation of income, however has rejected the claim in the revised computation, which proves the contradictory stand of the AO.

IV. Ground C11 - Erred by denying additional tax holiday benefit under Section 10A and 10AA of the Act (amounting to Rs. 55,24,290) claimed by the Appellant during the assessment proceedings by way of filing of revised computation of income, computed by inclusion of export proceeds realized by not considered in the return of income as 'eligible export turnover' for the purposes of claiming deduction under Section 10A and 10AA of the Act

The issues under this ground cover issues under Ground B 10, once that ground is allowed, this claim is consequential. However, this amount is an additional claim, (re-computation of the original claim) and will need to be addressed by the ITAT.

As per the revised computation of income, the revised claim under Section 10A and 10AA was recomputed. While filing the original return / computation, the export turnover earned by the specific unit was reduced by the unrealised export turnover. Therefore while filing the revised claim in the revised computation, the Appellant has also relooked at the unrealised export turnover for FY 2007-08.

10.1 Considering the above, we are of the view that this issue raised vide B10 and C11 should also be remanded to the file of AO for fresh adjudication. AO shall pass a speaking order giving conclusions on the merits of each of the issues raised in the said revised computation of income. AO shall grant reasonable opportunity of being heard to the assessee in accordance with the set principles of natural justice. Accordingly, the Ground Nos. B10 and C11 raised by the assessee are allowed for statistical purposes.

11. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced on 02nd day of November, 2018.

Sd/- Sd/-

(विकास अवस्थी /VIKAS AWASTHY) (डी. करुणाकरा राव/D. KARUNAKARA RAO)
न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER
पुणे / Pune; दिनांक / Dated : 02nd November, 2018.
Satish

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-
4. The Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "**ए**" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.