

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'D' अहमदाबाद ।**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"D" BENCH, AHMEDABAD**

*(Convened through Virtual Court)*

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER  
& SMT. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 1645/Ahd/2014

(निर्धारण वर्ष / Assessment Year : 2005-06)

<b>TTEC India Customer Solutions Private Limited</b> (Formerly known as Motif India Infotech Private Limited) Opp L J College, Off S G Highway, Makarba, Ahmedabad - 382210	<b>बनाम/</b> Vs.	<b>Income Tax Officer</b> Ward 4(4), Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCM1005A		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Dhinal Shah, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri Lalit P. Jain, Sr.D.R.

सुनवाई की तारीख / Date of Hearing	02/09/2020
घोषणा की तारीख /Date of Pronouncement	07/09/2020

**आदेश/ORDER**

**PER PRADIP KUMAR KEDIA - AM:**

The captioned appeal has been filed at the instance of the assessee against the order of the Commissioner of Income Tax

(Appeals)-XXI, Ahmedabad ('CIT(A)' in short), dated 31.03.2014 arising in the assessment order dated 29.12.2008 passed by the Assessing Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AY. 2005-06.

2. The solitary ground of appeal raised by the assessee reads as under:-

*"1. On the facts and in the circumstances of the case the learned CIT(A) has erred in holding that export revenue subsidy of Rs.1,933,024, Miscellaneous income of Rs.10,108 and sundry balances written off of Rs. 37,630 aggregating to Rs. 1,980,762 is not derived from the business carried on by the Appellant and hence not eligible for deduction under section 10A of the Act."*

3. The grievance of the assessee concerns eligibility of deduction of export revenue subsidy, miscellaneous income and sundry balances written off etc. aggregating to Rs.19.80 Lakhs for the purposes of deduction under Section 10A of the Act.

4. We have heard the rival submissions on the issue.

5. The assessee company is engaged in the business of export of software and support services. In the course of the scrutiny assessment of the return filed for the AY 2005-06 in question, the AO noticed that the assessee has *inter alia* claimed deduction towards export revenue subsidy Rs.19,33,024/-, miscellaneous income Rs.10,108/- and sundry balances of Rs.37,360/- aggregating to Rs.19,80,762/- under s.10A of the Act. The AO took the view that the aforesaid streams of income are not 'derived from' the export business *per se* carried out by the eligible undertaking but has only arisen as an incidental income and thus is, at best, only 'attributable to' the export business. The AO thus took a view that such incidental income is not akin to 'profits derived' as laid down

in Section 10A(1) of the Act and consequently such export revenue subsidy etc. do not form part of profits derived from the export articles or things etc. as contemplated under s.10A of the Act. The benefit of deduction claimed by assessee under s.10A of the Act has thus denied.

6. Aggrieved, the assessee preferred appeal before the CIT(A) and submitted that the AO has mis-directed itself in law and on facts in denying deduction of export revenue subsidy and other income mentioned earlier which arose from the business activity of the export undertaking. The CIT(A), however, refused to entertain the case made out by the assessee. The relevant para of the order of the CIT(A) reads as under:

*“12.5 I have considered the assessment order and the submissions made by the appellant. The appellant has misc. income of Rs.10,108/-, sundry balance written off of Rs.37,630/- and export subsidy of Rs.19,33,024/- as profit and gains derived from exports and claimed exempt u/s.10A. Sundry balance written off of Rs.37,630/- and misc. income of Rs.10,108/- are clearly not in the nature of export The export subsidy of Rs.19,33,024/-claimed is in fact cash incentive given by Gujarat Government on the export. Therefore, it is not income derived from exports but income received from Government. The deduction u/s. 10A is allowable in respect of profit and gains derived by an undertaking from the export of article or thing or computer software. The income mentioned above, at the best, may be attributable to the business activity of the undertaking but not derived from the export of article or thing or computer software. The appellant relied upon the decision of Hon'ble Gauhati High Court in the case of CIT vs. Meghalaya Steels Limited 356 ITR 256. The facts of this case is entirely different from the present case. The above case is on whether transport subsidy, power subsidy, insurance subsidy and interest subsidy which reduces the cost of production of an undertaking and have direct nexus with the profit of an industrial undertaking or eligible for deduction under provisions of Section 80IB/80IC. In the present case, export subsidy is in the nature of cash incentive and shown as a profit in profit and loss account and does not go to reduce the cost export. The facts of this case is similar to the case of Liberty India Vs. CIT 317 ITR 218 in which the Hon'ble Supreme Court has held that DEPB is an incentive and*

*it is given under duty exemption remission scheme which is essentially an export incentive. The Hon'ble Supreme Court has held that DEPB/duty draw back were incentives which flow from the schemes framed by Central Government are from Section 75 of the Custom Act, 1962, hence incentive profits were not profits derived from the eligible business u/s. 80IB. They belonged to the category of ancillary profits of such undertakings. In view of the above, appellant is not eligible for deduction u/s. 10A in respect of miscellaneous income, sundry balance and export subsidy amounting to Rs.20,74,209/-. The disallowance made by the Assessing Officer is therefore confirmed.”*

7. Further aggrieved, the assessee preferred appeal before the Tribunal.

8. We find that the issue is substantially covered in favour of the assessee by the decision of the Hon'ble Gujarat High Court in case of *Priyanka Gems (2014) 367 ITR 575 (Guj)* as well as Hon'ble Bombay High Court in the case of *CIT vs. Gem Plus Jewellery India Ltd. (2010) 194 Taxman 192 (Bom.)*. The issue is also similarly settled in favour of the assessee by long line of judicial precedents where the consistent view has been taken that such income arising as a result of business of export cannot be divested from the export business of the undertaking for the purposes of Section 10A/10B of the Act. Once export is made, the profits/losses may arise due to variety of reasons from such export activity. Noticeably, sub-section (4) to Section 10A of the Act explicitly explains the term 'profits derived from the export of particles or things' to mean amount which bears to the 'profits of the business of the undertaking', the same proportion as the export turnover bears to the total turnover of the business carried on by the undertaking. Thus, what is required to be determined is 'profits of the business undertaking'. In short, the profits derived from export have been equated with business profits of the undertaking in view of the statutory formula provided in Section 10A(4) of the Act. In view of

the statutory formula available for determination of quantum of deduction, the expression 'derived from' used in Section 10A(1) fades into insignificance and the quantum of deduction is required to be determined as per the aforesaid formula provided in Section 10A(4) of the Act. We thus find considerable weight in the plea advanced on behalf of the assessee for eligibility of deduction of the incidental profits alongwith the export profits for the purposes of Section 10A of the Act. We thus set aside the order of the CIT(A) on the point. The AO is directed to compute the quantum of deduction under s.10A of the Act in the light of formula provided in Section 10A(4) of the Act.

9. In the result, the appeal of the assessee is allowed.

**This Order pronounced on 07/09/2020**

Sd/-  
(MADHUMITA ROY)  
JUDICIAL MEMBER  
Ahmedabad: Dated 07/09/2020

Sd/-  
(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER

*True Copy*

*S. K. SINHA*

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /  
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण, अहमदाबाद ।