

**Sovika Infotek Ltd. Vs. Ito**

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**Court :** Income Tax Appellate Tribunal ITAT Mumbai

**Decided On :** Jul-26-2007

**Judge :** R Gupta, J S Reddy

**Appellant :** Sovika Infotek Ltd.

**Respondent :** ito

**Judgement :**

1. Both these appeals are filed by the assessee and are directed against separate orders of Commissioner of Income-tax (Appeals) dated 12-3-2004 for the assessment years 1998-99 and 2000-01. For the sake of convenience both these appeals are heard together and disposed of by way of this common order.

2. We have heard Shri R.R. Vora on behalf of the assessee and Ms. Geeta Ravi Chandran on behalf of the revenue.

3. There are three issues in this appeal which are connected to disallowance of exemption under Section 10B, on income arising from sale of licences amounting to Rs. 1,21,274.

4. The first argument of the assessee, is on the issue of reopening.

The return for the assessment year 1998-99 was filed on 30-11-1998 and the same was processed under Section 143(1) on 8-11-2000. Notice under Section 148 was issued on 4-4-2002, i.e., within a period of four years. Thus, it is not a case where the original assessment was completed under Section 143(3) and

where the reopening is beyond a period of four years as claimed by the assessee. As the return was processed under Section 143(1), it cannot be said that the assessing officer formed an opinion and hence, there cannot be a question of change in opinion. Hence the re-opening is valid. We apply the judgment of the Apex Court in the case of Asstt. CIT v. Rajesh Jhaveri Stock Brokers (P.) Ltd. as the facts are similar and uphold the reopening of assessment. For these reasons these grounds of the assessee are dismissed.

5. Coming to next ground of appeal regarding computation of exemption under Section 10B, Section 10B as applicable for the assessment year 1998- 99 read as follows: Special Provision in respect of newly established hundred per cent export-oriented undertakings. - (1) Subject to the provisions of this section, any profits and gains derived by an assessee from a hundred per cent export-oriented undertaking (hereafter in this section referred to as the undertaking) to which this section applied shall not be included in the total income of the assessee.

6. The wording used in this section is any profits and gains derived by the assessee from 100 per cent export-oriented undertaking only is eligible for exemption. This is in contrast to the wordings in Section 80-IA wherein the wording is as under: Profits and gains derived from any business of an industrial undertaking.

7. The wording in Section 10B is similar to the wording used in Section 80-I, i.e., "any profits and gains derived from an industrial undertaking".

8. The decisions relied upon by the learned Counsel for the assessee in the case of Joint CIT v. Suditi Industries Ltd. in ITA No. 3490/M/2000 assessment year 1996-97 order dated 11-4-2005 "E" Bench is not applicable to the facts of this case for the reason that the Bench was concerned with the wordings profits and gains derived from any business of an industrial undertaking.

9. In view of the above discussion, we have to necessarily hold that the income from sale of import licence cannot be considered as profits and gains derived from 100 per cent EOU. It may be profits and gains derived from the business of 100 per cent EOU. As this income is not derived from exports by the 100 per cent

EOU, the decision of the Hon'ble Supreme Court in the case of CIT v. Sterling Foods is applicable to the facts of the case and this ground of the assessee is dismissed.

10. The last ground is against levy of interest under Sections 234B and 234C.11. The levy of interest is consequential in nature and as such this ground of the assessee is dismissed.

14. In this appeal the main ground of the assessee is on the partial disallowance of his claim under Section 10B.15. The assessee has claimed exemption under Section 10 of Rs. 28,94,353 and whereas the assessing officer allowed exemption of Rs. 1,56,350.

On the facts and in the circumstances of the case, the learned Commissioner (Appeals)-XXIX, Mumbai ('Commissioner (Appeals)')-

1. erred in confirming the order of the assessing officer assessing the total income at Rs. 23,47,637 as against NIL income returned by the Appellant;
2. erred in confirming the action of the assessing officer, of recalculating the exemption allowable under Section 10B at Rs. 1,56,350 as against Rs. 28,94,353 claimed by the Appellant;
3. erred in confirming the non-allowability of exemption under Section 10B on the technical charges/fees received of Rs. 20,00,000 for software installation/implementation without appreciating the facts properly;
4. should have appreciated that the fees received was part of the operational income of the business of the appellant and therefore eligible for exemption under Section 10B;
5. erred in confirming the action of the assessing officer, of reducing the training income received of Rs. 1,48,000 while working the profits exempt under Section 10B;
6. failed to appreciate that the income from technical service fees as well as training income was intrinsically and inextricably linked with the export activity of

the appellant and hence eligible for exemption under Section 10B;

7. erred in confirming the action of the assessing officer, in denying the exemption under Section 10B on the interest income by treating the same as income from, other sources;

8. should have appreciated that the same were arising out of the business funds of the appellant and hence business income;

9. Without prejudice to the above, was not justified in denying the exemption under Section 10B on the "Gross" income (technical fees drawing income/interest) and what could have been considered in only the "Net" income, after considering the expenditure incurred for earning such income;

10. was not justified in not giving specific finding/directions in respect of this issue;

11. Interest under Sections 234B and 234C erred in confirming the levy of interest under Sections 234B and 234C under the Income Tax Act.

17.1 The assessee is a public limited company engaged in the business of computer software development and sale of software. It filed its return of income for assessment year 2000-01 on 30-11-2000 and returned 'nil' total income. The return was processed under Section 143(1) without any adjustments. Thereafter, the assessment was reopened under Section 147 and notice under Section 148 was issued on 4-6-2002. The assessing officer in the reassessment order found that the assessee has shown income of Rs. 1,17,04,556 consisting of: 17.2 After debiting all the expenses, the assessee showed a net profit as per profit and loss account of Rs. 28,94,353 which includes business income of Rs. 25,03,987. This income was claimed as exempt under Section 10B of the Income Tax Act.

17.3 The assessing officer denied the exemption on the following grounds: (a) That interest from bank deposits and on advances should be taxed under the head "Other sources" and no exemption can be allowed on the same under Section 10B. (b) That income from training and profit on sale of motorcycle cannot be considered as income derived from the business of an industrial undertaking and the same does not qualify for exemption under Section 10B. (c) That the

professional fees and other sales affected locally amounted to Rs. 26,11,928, i.e., professional fee Rs. 20,00,000 and other sales Rs. 6,11,928.

(d) That it is clear from Sub-section (2)(ib) of Section 10B, export of such articles and things should not be less than 75 per cent of the total sales in the previous year.

(e) That the proviso mandates that the sales of the computers software ought to have been made locally i.e., in the domestic market. That in the instant case the assessee had not sold any software product in the domestic market but received fees in form of consultancy service and this cannot be considered 'sale'. That professional and consultancy fees received, have not been derived from sale of computer software.

(f) That since the professional fee earned is income which is not derived from or directly relatable to the sale of computer software, such services rendered do not qualify for deduction under Section 10B and the assessee does not satisfy the deeming provisions of Sub section (2)(ib) to Section 10B.17.4 The first appellate authority, after considering the detail arguments of the assessee upheld the order of the assessing officer.

Further aggrieved the assessee is in appeal before us.

18. The learned Counsel for the assessee Shri R.R. Vora reiterated the contentions made by him before the first appellate authority and Ms.

Geeta Ravi Chandran, learned Departmental Representative supported the order of the first appellate authority.

19. We have heard the rival contentions. On a careful consideration of the facts and circumstances of the case and on the perusal of the orders of the authorities below as well as the case laws cited before us we hold as follows: (i) The issue here is whether interest of Rs. 1,99,637 derived from deposits and advances made, out of funds which were not immediately required, and were temporarily available, is taxable under the head 'Income from business' or 'Income from other sources'.

19.1 The assessee has submitted before the assessing officer as well as the Commissioner (Appeals), that these funds had to be kept ready for meeting the immediate requirements if any, of the assessee so as to achieve smooth flow of exports. It was explained that the practice was followed keeping in mind the conservative approach of the banks in lending money on demand and to avoid the worry of non-availability of the funds as and when required.

19.2 On the facts we follow the following decisions of the Hon'ble Bombay High Court in the case of CIT v. Punit Commercial Ltd. and CIT v. Indo Swiss Jewels Ltd. and hold that the interest income in question is assessable under the head "Income from business" and not under the head "Income from other sources", for the reason that the deposits or advances given, were not out of surplus funds kept in safe custody.

19.3 Having said so, we now examine whether the interest income in question is eligible for deduction under Section 10B for the assessment year 2000-01. For the impugned assessment year, Explanation under Section 10B is available for profits and gains derived by the assessee from 100 per cent export-oriented undertaking. As this interest income cannot be said to have been derived from the export-oriented undertaking, the same cannot be considered as profits eligible for deduction under Section 10B. Thus though the interest income is to be assessed as income from business, that assessee is not entitled to claim exemption under Section 10B on the same.

19.4 On the issue of professional fees it was submitted that ICRM is designed with a multi-tier architecture using the internet and object technologies. The clients are of two categories, i.e., thin or full client. Thin client has specific user interfaces and whereas the full clients includes certain application objects. Assessee had developed a static website and further implemented the ICRM modules as well as developed WEB strategies for M/s. Fortune Financial Services (India) Ltd. for such implementation of ICRM Modules etc. in FFS. The assessee received professional fees of Rs. 20 lakhs. The assessee claims the above income was part of operational income and has to be considered as part of turnover. Thus, he submits that export turnover in question exceeds 75 per cent of the total turnover and thus

the deeming provision of Sub-section (2)(ib) of Section 10B makes it eligible for deduction.

19.5 The learned Departmental Representative submits that the receipt in question is not local sales and that the receipt cannot be said to be derived from the export-oriented undertaking.

20. On a careful consideration of the facts and circumstances of the case we hold as follows: (2)(ia): in relation to an undertaking which begins to manufacture or produce any article or thing on or after the 1-4-1994, its exports of such articles and things are not less than seventy-five per cent of the total sales thereof during the previous year; 20.2 A plain reading of this sub-clause shows that an export-oriented undertaking, which has less than 25 per cent of the total sales in the local market would be considered as a 100 per cent export-oriented undertaking for the purpose of allowing deduction under Section 10B. The words used herein are that exports of such articles and things are not less than seventy five per cent of the total sales. The total sales for the assessee-company has culled out from the assessment order is 1,13,53,430. The total export turnover is Rs. 87,40,502. If the revenue's contention that the professional fee cannot form part of total sales is accepted, then the companies total sales turnover would be Rs. 93,53,430 and the export turnover would be Rs. 87,41,502, and this would constitute more than 75 per cent of the total sales. Thus, we are of the opinion that both the assessing officer and Commissioner (Appeals) have committed an error in not applying Sub-section (2)(ia) of Section 10B, in the proper way.

20.3 Even otherwise, going by the nature of receipt, we find that the assessee had developed a static website for a client and also implemented ICMR modules and developed WEB strategies. The receipt of professional fees for such activity is a business receipt and this definitely is an operational income. Such incomes have arisen from the export undertaking. Thus we allow this ground of the assessee.

21.1 The assessee submitted that the ICRM module is highly sophisticated application software. This package has been sold to companies in India as well as overseas. Since the assessee's EOU is to maintain competitiveness and customer's satisfaction, the assessee claims to have undertaken training

programme for students to get them acquainted with the technologies etc. It also submitted that to attract good talent it had charged a nominal fees from the trainees who are then deputed for software development projects for overseas customers.

21.2 On these facts, as the activity in question i.e., training, is intrinsically connected with a software development, sale, maintenance etc., the income is to be classified as operational income. Thus, in our view it has to be taken into consideration for the purpose of computation of deduction under Section 10B. Thus, this ground of the assessee is allowed.

22. Coming to the alternative ground of the assessee i.e., the exemption under Section 10B should have been computed only on the net income arising in each activity, in case they are excluded as ineligible for deduction under Section 10B, we hold that while eliminating interest income, the expenditure incurred for earning such income should be set off and only net income be considered for exclusion from the quantum of deduction as it is the net figure of interest, which goes into the profit of firm. Thus, this ground of the assessee is also allowed.

23. The last ground is on the levy of interest under Sections 234B and 234C.23.1 The same is mandatory and consequential in nature. Thus this ground of the assessee is dismissed.

24. In the result, appeal for assessment year 1998-99 is dismissed and that for assessment year 2000-01 is allowed in part.

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