

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ 'के', मुंबई ।

IN THE INCOME TAX APPELLATE TRIBUNAL "K", BENCH MUMBAI

सर्वश्री आर.सी.शर्मा, लेखा सदस्य एवं श्री विवेक वर्मा, न्यायिक सदस्य

BEFORE : SHRI R.C.SHARMA, AM

&

SHRI VIVEK VARMA, JM

आयकर अपील सं./ITA No.6394/Mum/2014

(निर्धारण वर्ष / Assessment Year : 2005-2006)

Hinduja Ventures Ltd., 49/50, In Centre, MiDC, 12 th Road, Marol, Andheri (East), Mumbai-400 093	Vs.	DCIT, Cir-8(2), Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACH 2058 N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri S.M.Lala, Sh.Harsh Shah & Shri Paras Savla

राजस्व की ओर से /Revenue by : Shri Kishan Vyas

सुनवाई की तारीख / **Date of Hearing** : **29th Oct.2014**

घोषणा की तारीख/**Date of Pronouncement** : **21/01/2015**

आदेश / O R D E R

PER R.C.SHARMA (A.M.) :

This is an appeal filed by the assessee against the order of CIT(A), dated 25-8-2014 for assessment year 2005-06, in the matter of order passed u/s. 143(3) r.w.s.254 of the I.T. Act.

2. The grievance of the assessee relates to disallowance of claim of deduction u/s.10A in respect of Unit No.2 & 3. The assessee is also aggrieved for the disallowance made u/s.14A.

3. Rival contentions have been heard and record perused. Facts in brief are that in the return of income, the assessee claimed that it has four units engaged In the business of Information Technology (IT) and I.T. enabled services. In respect of income of Unit-I and Unit-IV, the assessee did not claim any . deduction u/s.10A of the Act whereas it' has claimed

deduction u/s.10A of the Act in respect of income of Unit-II & III. The assessee claimed that Unit-I is engaged in IT services. Unit-II is engaged in IT enabled business of insurance claim processing, Unit-III is engaged in the business of call center and Unit-IV is engaged in domestic call center. As per Audit Report in Form No.56F under Rule 160 relating to Unit-II is stated to be set up at 1st & 2nd floor, HTMT House, 614, Vajpayee' Nagar, Bommanahalli, Hosur Road. Bangalore-50 068. The date of initial registration with the Software Technology. Park is stated to be on 22.07.1992 whereas the date of commencement of manufacture or production of computer software is claimed to be in June 2000 .. Further. as per Audit Report in Form NO.56F relating to Unit-III, Unit-III is stated to be set up at Ground and 3rd Floor, HTMT House, 614, Vajpayee Nagar, Bornmanahatti, Hosur Road, Bangalore-560 068. The date of initial registration with the Software Technology Park is 'stated to be on 22.07.1992 whereas the date of commencement of manufacture or production of computer software is claimed to be on 19.11.2001.

4. The facts as reported in the audit report for unit -II are as under: .

"It is claimed that "unit +II" is set up at 1st & 2nd floor, HTMT House, 614, Vajpayee Nagar, Bommanahalli, Hosur Road, Bangalore -560068. It is certified that unit -II is registered with Software Technology Parks of India, Bangalore and quantified the admissible deduction u/s. 10A of the Act at a sum of Rs. 12, 41,79, 095/-. Nature of the business of the unit is stated to be insurance claim processing. The date of initial registration with the Software Technology Park is stated to be on 22.07.1992. It is claimed that the unit started the manufacture or production of computer Software in June 2000 and it is 5th year of the deduction u/s10A. The total turnover of the undertaking/unit was quantified at a sum of Rs. 55. 96 Cr and the total turnover of the business was quantified at a sum of Rs. 166.13 Cr. The total profits derived by the undertaking / unit was quantified at a sum of Rs. 13.24 Cr and the total profit derived by the business was quantified at a sum of Rs. 74 Cr.

3.3 The facts as reported in the audit report in respect of unit -III are as under:

It is claimed that unit -III was set up at Ground & 3rd floor, HTMT House, 614, Vajpayee Nagar, Bommanahalli, Rosur Road, Bangalore -560068. It is certified that unit -III is registered with Software Technology Parks India, Bangalore and quantified the admissible deduction at a sum of Rs. 38,32,05,319/-. u/s IOA of the Act. Nature of the business of the undertaking is stated to be a call center. The date of initial registration in the Software Technology Park is stated to be on 22.07.1992. It is claimed that the unit started the manufacture or production of computer Software on 19th November 2001 and it is 4th year of the deduction u/s 10A. The total turnover of the undertaking / unit was quantified at a sum of Rs. 69. 87 Cr and the total turnover of the business was quantified at a sum of Rs. 166.13 cr. The total profits derived by the undertaking was quantified at a sum of Rs.38.86 crores and the total profits derived by the business was quantified at a sum of Rs.74 cr. The total export turnover of the business was a sum of Rs.118.98 cr. From the audit report it can be seen that the assessee had obtained the initial registration of Unit-II & Unit- III under the STP scheme on 22. 7.1992.

5. The AO observed that Initially, assessee's name was Hinduja Finance Corporation Ltd. Later on changed its name into Hinduja TMP Ltd and presently known as Hinduja Ventures Ltd. The assessee has demerged its IT business to HTMT Global solutions Ltd. with effect from 1.10.2006. There was an associated company with the name Ashok Leyland Information Technology Ltd. (hereinafter known as ALIT). That this company was amalgamated with Hinduja Finance Corpn. Ltd w.e.f. 1st July,1999. The AO further stated that claim of assessee is that Unit No. II and Unit No. III have begun the production of computer software in June, 2000 and November, 2001 respectively. The AO stated that letter dt. 25.11.2008 was addressed to the Director, Software Technology Parks of India, Bangalore (hereafter known as STPI). The Director of STPI furnished various details and documents relevant to deduction u/s.10A vide letter dt. 10.12.2008. It was stated that initially STPI accorded

permission in the name of AL Information Tech Ltd. vide approval number 15(63)/92SDA dt. 22.7.1992. On the application of ALIT under Software Technology Park Scheme, Inter Ministerial Standing Committee of Department of Electronics had approved the setting up of 'Unit' at a total foreign exchange outflow of US\$ 81.76 lakhs over the five years of project. ALIT had executed a legal undertaking of its unit with STPI on 28th September, 1992 which is valid for a period of 10 years i.e. upto 21.7.2002 for carrying out development and 100% export of software using Data Communication Link or in the form of Physical export. The Unit of ALIT had stated operating under customs bonded warehouse licence No. 10/93 (customs) dt. 22.4.1993, which was valid upto 22.7.2002. The AO further stated that in response to letter dt. 25th November, 2008, Director STPI vide her letter dt. 10.12.2008 has categorically stated that Unit-II & III are not separate units under the STP Scheme and they were only the expanded locations of the initial letter of permission dt. 22.7.1992 and no separate STPI registration was accorded. The AO has stated that Director, STPI, categorically stated that assessee has made or converted the initial unit as Unit-II & III for the 'operational ease' and such bifurcation by assessee as Unit-II & III should not be construed as two separate units. AO stated that Director, STPI also clarified that assessee expanded its existing STPI facility and therefore no separate registration under STPI scheme is required for the expanded locations, unless it claims that a separate unit is formed. Considering these facts, the AO held that assessee is not entitled to deduction u/s.10A of the Act in respect of Unit-II & III and accordingly disallowed claim of assessee.

6. By the impugned order, the CIT(A) confirmed the action of the AO.

7. We have considered rival contentions and found from the record that assessee company is engaged in the business of providing IT and IT enabled services, Finance/Investment activities and consultancy services. The assessee executes a BPO (insurance claim processing) Project handling various types of claims. The assessee has also diversified into Call Centre business and handles billing and marketing related calls and service calls. Besides having IT as its core business it has different subsidiaries in media and telecom business. The assessee filed its return of income on 31-10-2005 declaring total income of Rs.99,81,560/-. The AO framed assessment u/s.143(3) of the Act determining income of the assessee at Rs.74,30,55,780/-. Thereafter, the assessee filed an appeal before CIT(Appeals) where the assessee got relief on two grounds of Capital Gains from sale of shares wrongly treated as Business Income and' adjustments in international transactions but did not succeed in respect of the other two grounds of claiming exemption u/s 10A & disallowance u/s 14A. Against the order of CIT(Appeal), both the assessee Company and the department filed an appeal before Hon'ble ITAT and ITAT has disposed both the appeals under combined order dated 31st January 2012. The Tribunal has dismissed the appeal filed by the department on the grounds of Capital Gain on sale of shares and adjustment in International transactions, and sent the matter back to the files of AO in regard to the appeal filed by the assessee Company, with the direction to re-examine the issues pertaining to exemption u/s 10A and disallowance u/s 14A. The main issue in appeal was rejection of the claim of the assessee u/s.10A of the Income-tax Act on the ground that the two units being Unit II and Unit III were not independent units but were

units construed as split up of the existing Unit 1 based on the correspondence raised by the AO from STPI which used the word expansion in the letter submitted to the AO dated 10/12/2008. We found that the Tribunal in its order after observing that there is a substance in the submission of Ld. AR that AO has not examined as to whether Unit Nos. II & III set up by assessee are independent units or expansion of existing undertaking of assessee, set aside the orders of authorities below and restore the matter to file of AO for the limited purpose to re-examine as to whether Unit Nos. II & III set up by assessee are independent units to the existing undertaking or merely an expansion of the existing undertaking in the light of principles laid down by Co-ordinate Bench decision in the case of Patni Computers Ltd. (supra) and also in the light of letters including letter dt. 10.12.2008 issued by Director STPI and also on the basis of such evidences as may be filed by assessee after giving due opportunity of hearing.

8. In the set aside proceedings, the assessee filed complete detail before the AO and also relied on the decision of M/s Mara Overseas Ltd. and M/s Jayant Agro Organic Ltd. However, the AO has not considered the same and after reproducing the decision of his predecessor came to the conclusion that assessee was not entitled deduction u/s.10A in respect of Unit No.II & III. We found that on the evidence available on record and as called for by the Ld.AO during the course of the examination of the facts, the Ld.AO observed that Unit-II and III have been set up with fresh investment in plant and machinery, furniture and fixtures, etc. as can be seen from the tax audit reports for Financial Years 2000-01 and 2001-02. Separate books of accounts have been maintained

by each unit. The activities carried out by all the units of the appellant is a different from each other, the customer of each units are completely different or unrelated and the employees of each unit are also different. The Ld.AO also examined the various letters addressed by the appellant to the Director, STPI ,viz; letter dated 20-07-2000 addressed vide which the appellant intimated that it had entered into an agreement to process insurance claims in India and the processing of the claim will be carried out at Unit II. Further, in respect of Unit III, filed letter dated 31- 08-2000 addressed to Director, STPI, the appellant intimated that it had entered into an agreement to set up a call centre known as Unit III. The appellant submitted copy of the STPI letter dated 24-12-2008 recording the establishment according the establishment of unit II& III. The Ld.AO observed that it is therefore, evident that the appellant has commenced business activity in respect of unit II & III during the previous year relevant to the assessment year commencing on or after the first day of April, 1994. Therefore, the first condition was fulfilled. After obtaining permission from the STPI Authorities vide letter dated 12.09.2001, Unit No.3 was started at Bangalore for carrying on the business of an International Call Centre. The name of the assessee thereafter changed to HTMT Ltd and it is now known as Hinduja Ventures Ltd. on demerger. The company Hinduja TMT Ltd. w.e.f. 01.10.2006 demerged the IT / ITES business undertakings to Hinduja Global Solutions Ltd (Formerly HTMT Global Solutions Ltd). The Company has intimated STPI on 19/03/2007 for transfer of the License and change of name to HTMT Global Solutions Limited, which is confirmed by STPI on 09/04/2007 and the same has been changed on Green card also on 04/09/2007. Vide letter dated

19.07.2000 permission was sought to start Unit No.2 at Bangalore for carrying out the business of processing Insurance claims. Vide letter date 26.07.2000 the STPI Authorities at Bangalore granted the said permission to start a BPO for claim processing. Unit 3 was granted permission vide letter dated 12.09.2001 to do the business of International Call Centre. The Company has from time to time taken specific permission for additional premises (termed as expansion) for Unit -II and taken approval for custom bonding of these locations, as under:

- a) No. A206, 1st Floor, KSSIDC Complex, Block No.3, Electronic City, Bangalore- 561229- Unit II
- b) No. 614, First Floor & Second Floor, Vajpayee Nagar, Bomannahalli, Hosur road, Bangalore-68 - Unit 11
- c) No. 115, First, Second and Third Floor, 11th Mile, Garvebhavi Palya, Begur Hobli, Hongasandra, Bangalore. - Unit II
- d) No. 614, Ground Floor & Third Floor, Vajpayee Nagar, Bomannahalli, Hosur road, Bangalore-68 - Unit III
- e) 49/50, MIDC, 12th Road, Marol, Andheri (E), Mumbai - 400 093

9. From the record we found that on 28/10/2003 the Company i.e Hinduja TMT Limited has taken a separate registration with STPI, Mumbai for BPO Call Processing activity at Bangalore for the purpose of back end data backup. The first year of the claim of the appellant was for the Asst. Year 2001-02 which was allowed after a scrutiny assessment. Similarly the claims for the Asst. Years 2003-04 and 2004-05 were also allowed after a scrutiny assessment. For the Asst. Year 2005-06 the Assessing Officer however took a different stand and rejected the claim and thereafter reopened the assessments of the previous year as well. From the record we found that assessee is engaged in the business of IT Enabled services. In its computation of total income for the Asst. Year

2005-06, the it had claimed the exemption under section 10A of Rs 124,179,095 for Unit II and of Rs 383,205,319 for Unit III. No exemption has been claimed in respect of Unit 1. Unit-2 is engaged in non-voice BPO business (Insurance claim processing) whereas Unit-3 is engaged in voice BPO (Call Center). Units 2 and 3 were set-up in June 2000 and November 2001 respectively and accordingly the assessee started claiming exemption under section 10A in respect of each of these units from AYs 2001-02 and 2002-03 respectively. We also found that during the appellate proceedings, the CIT(A) has called a remand report from the AO, wherein the AO has categorically observed that assessee was engaged in its business activity in respect of its Units No.2 & 3 during previous year relevant to assessment year commencing on or after 1st April, 1994, therefore, the condition was fulfilled. The AO also observed that the Unit No.II & III have not been formed by splitting up or reconstruction of an existing business and are not formed by the transfer to a new business of machinery or plant previously used for any purpose. It is crystal clear from the remand report of AO that the units II and III fulfilled all the conditions prescribed under the relevant provisions of section 10A of the Act. The precise conclusion of the AO in his remand report dated 7-6-2014 was as under :-

“4.4 in view of the above, it is noticed that units II and III have been set up with fresh investments in plant and machinery, furniture and fixtures, etc. as can be seen from the tax audit reports for F.Y.rs. 2000-01 and 2001-02. Separate books of account have been maintained by each unit. The activities carried out by all the units of the assessee are different from each other. The customers of each unit are completely different or unrelated and the employees of each unit are also different.

4.5 As per the provisions of section 10A(2) of the Act, in order to claim exemption u/s.10A of the Act, any undertaking has to fulfill the following conditions :-

- (i) *it has begun or begins to manufacture or produce articles or things or computer software during the previous year relevant to the assessment year*
 - (a) *commencing on or after the 1st day of April, 1981 in any Free Trade Zone; or*
 - (b) *commencing on or after 1st day of April, 1994 in any Electronic hardware technology park or software technology park; or*
 - (c) *commencing on or after 1st day of April, 2001, in any Special Economic Zone;*
- (ii) *it is not formed by the splitting up or the reconstruction of a business already in existence except in the circumstances and within the period specified in section 33B of the Income-tax Act;*
- (ii) *it is not formed by the transfer to a new business of machinery or plant previously used for any purpose.*

4.6 As discussed above paragraphs, vide letter dated 20.07.2000 addressed to Director, STPI the assessee intimated that it had entered into an agreement to process. the insurance claims in India and the processing of the claims will be carried out as Unit-II Further. In respect of Unit-III. vide letter dated 31.08.2000 addressed to Director. STPI, the assessee intimated that it had entered into an agreement to set up a call centre known as Unit-III. The assessee submitted copy of STPI letter dated 24.12.2008 recording the establishment of Units II and III. Thus, it is evident that the assessee has commenced its business activity in respect of Units II and III during the previous year relevant to the assessment year commencing on or after 1st day of April, 1994. Therefore, the condition was fulfilled. Further, perusal of the documents filed by the assessee as enumerated in 4.3 above that the unit nos. II & III have not been formed by splitting up or reconstruction of an existing business and are not formed by the transfer to a new business of machinery or plant previously used for any purpose. Thus, the units II and III fulfill all the conditions prescribed under the relevant provisions of section 10A of the Act.”

10. We have carefully gone through the letter from Director, STPI issued to the AO dated 10-12-2010; letter to Director, STPI intimating formation of Unit II; letter to Director, STPI seeking permission for bonding facility for Unit II; approval from Director, STPI for Unit II; letter to Director, STPI intimating formation of Unit III; letter to Director STPI seeking permission for bonding facility for Unit III and approval from Director, STPI for Unit III as placed on record. After considering the correspondence through above letters with Director STPI and conclusion drawn by the AO in his remand report and after applying the proposition of law laid down in

the judicial pronouncements referred by Id. AR during the course of hearing before us, the irresistible conclusion is that assessee is eligible for claim of deduction u/s.10A in respect of Unit II & II. Accordingly, we direct the AO to allow assessee's claim for deduction u/s.10A(2) of the Act in respect of Unit II and III.

11. The assessee is aggrieved for disallowance of expenses u/s.14A. The contention of Id. AR was that total expenditure claimed by assessee was Rs.13 lakhs, however, the AO has made disallowance of about Rs.16 lakhs. He further contended that Rule 8D is not applicable for the relevant assessment year under consideration. Accordingly, he requested for modifying the direction given by the CIT(A) with regard to computation of disallowance u/s.14A of the Act.

12. After considering the rival contentions, we direct the AO to compute the disallowance u/s.14A, in terms of directions issued by the Tribunal in assessee's own case vide order dated 31-1-2012, wherein the tribunal has directed the AO to consider all the materials placed by the assessee before it while computing disallowance u/s.14A of the Act. We direct accordingly.

13. In the result, appeal of the assessee is allowed in part.

Order pronounced in the open court on this 21/01/2015.

आदेश की घोषणा खुले न्यायालय में दिनांक: 21/01/2015 को की गई ।

Sd/-

(विवेक वर्मा)

(VIVEK VARMA)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated 21/01/2015

प्र.कु.मि/pkm, नि.स/ PS

Sd/-

(आर.सी.शर्मा)

(R.C.SHARMA)

लेखा सदस्य / ACCOUNTANT MEMBER

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A), Mumbai.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार
(Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai