IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 21ST DAY OF JUNE 2018

PRESENT

THE HON'BLE DR.JUSTICE VINEET KOTHARI

AND

THE HON'BLE MRS.JUSTICE S.SUJATHA

I.T.A.No.348/2017

BETWEEN :

1. THE Pr. COMMISSIONER OF INCOME-TAX
CIT(A), 5TH FLOOR, BMTC BUILDING,
80 FEET ROAD, KORMANGALA,
BENGALURU-560095.

2. THE INCOME-TAX OFFICER
WARD-11(1), PRESENT ADDRESS,
WARD-(1)(1)(2), 2ND FLOOR,
BMTC BUILDING, 80 FEET ROAD,
KORMANGALA,
BENGALURU-560095. ...APPELLANTS

(BY SRI ARAVIND K.V., ADV.)

AND :

M/S AROWANA CONSULTING LTD.,
No.76, SANSKRITHI SIGNET,
1ST CROSS, 36TH MAIN,
BTM LAYOUT, 2ND STAGE,
BENGALURU-560068.
PAN: AADCM 7560P. ...RESPONDENT

(BY SRI NARENDRA KUMAR J. JAIN, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER

DATED:05/08/2016 PASSED IN IT(TP)A NO.27/BANG/2014, FOR THE ASSESSMENT YEAR 2009-2010, PRAYING TO: I. FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN, II. ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT, BANGALORE IN IT(TP)A NO.27/BANG/2014 DATED:05/08/2016 CONFIRMING THE ORDER OF THE DRP AND CONFIRM THE ORDER PASSED BY THE INCOME TAX OFFICER, WARD-1(1)(2) AND ETC.

THIS APPEAL COMING ON FOR ADMISSION, THIS DAY, ***Dr. VINEET KOTHARI, J***., DELIVERED THE FOLLOWING:

JUDGMENT

Mr. Aravind.K.V., Adv. for Appellants - **Revenue**.
Mr. Narendra Kumar J. Jain, Adv. for Respondent – Assessee.

Learned Counsel for the Revenue submits that the issue involved in this Appeal is covered by the decisions of this Court in ***M/s.Tata Elxsi Ltd., vs. Asst.Commissioner of Income Tax,*** decided on **20.10.2015** since reported in ***(2015) 127 DTR 0327 (Kar)*** and ***Commissioner of Income-tax, Central – III vs. HCL Technologies Ltd., [2018] 93 Taxmann.com 33(SC).***

2. The relevant portion of the judgment of the Division Bench in the case of ***M/s.Tata Elxsi (supra)***, is quoted below for ready reference:-

> *"20. From the aforesaid provisions, it is clear that if a assessee wants to claim the benefit of Section 10A, firstly he must export articles or things or computer software. Secondly, **the said export may be done directly by him or through other exporter after fulfilling the conditions mentioned therein.** Thirdly, such an export **should yield foreign exchange** which should be brought into the country. If all these three conditions are fulfilled, then the object of enacting Section 10A is fulfilled and the assessee would be entitled to the benefit of exemption from payment of Income Tax Act on the profits and gains derived by the Undertaking from the export.*
>
> *21. Clause 6.11 of **Exim Policy** dealing with entitlement for supplies from the DTA states that supplies from the DTA to EOU/EHTP/STP/BTP units **will be regarded as 'deemed export',** besides being eligible for relevant entitlements under paragraph 6.12 of the Policy. They will also be eligible for the*

additional entitlements mentioned therein. What is of importance is when a supply is made from DTA to STP, it does not satisfy the requirements of export as defined under the Customs Act. However, for the purpose of Exim Policy, it is treated as 'deemed export'. Therefore, when ***Section 10A of the Act was introduced to give effect to the Exim Policy, the supplies made from one STP to another STP has to be treated as 'deemed export'*** *because Clause 6.19 specifically provides for export through Status Holder. It provides that an EOU/EHTP/STP/BTP unit may export goods manufactured/software developed by it through other exporter or Status holder recognized under this policy or any other EOU/EHTP/STP/BTP unit. What follows from this provision is that* ***to be eligible for exemption from payment of income tax, export should earn foreign exchange. It does not mean that the undertaking should personally export goods manufactured / software developed by it outside the country. It may export out of India by itself or export out of India through any other STP Unit.*** *Once the goods manufactured by the assessee is shown to have been exported out of India either by the assessee* *or by another STP Unit and foreign exchange is directly attributable to such export, then Section 10A of the Act is attracted and such exporter is entitled to benefit of deduction of such profits and gains derived from such export from payment of income tax. Therefore, the finding of the authorities that the assessee has not directly exported the computer software outside country and because it supplied the software to another STP unit, which though exported and foreign exchange received was not treated as an export and was held to be not entitled to the benefit is unsustainable in law. The substantial question of law is answered in favour of the assessee and against the revenue. The appeal is allowed. The impugned orders are set aside. The assessee is held to be entitled to deduction of such profits and gains derived from the export of the computer software. No costs".*

3. The relevant portion of the judgment of the Hon'ble Supreme Court in the case of ***HCL Technologies Ltd. (supra),*** is quoted below for ready reference:-

"17. The similar nature of controversy, akin this case, arose before the Karnataka High Court

*in **CIT v. Tata Elxsi Ltd**. [2012] 204 Taxman 321/17/taxman.com 100/349 ITR 98. The issue before the Karnataka High Court was whether the Tribunal was correct in holding that while computing relief under Section 10A of the IT Act, the amount of communication expenses should be excluded from the total turnover if the same are reduced from the export turnover? While giving the answer to the issue, the High Court, inter-alia, held that when a particular word is not defined by the legislature and an ordinary meaning is to be attributed to it, the said ordinary meaning is to be in conformity with the context in which it is used. Hence, what is excluded from 'export turnover' must also be excluded from 'total turnover', since one of the components of 'total turnover' is export turnover. Any other interpretation would run counter to the legislative intent and would be impermissible.*

18. XXXXXX

19. In the instant case, if the deductions on freight, telecommunication and insurance attributable to the delivery of computer software under Section 10A of the IT Act are allowed only in Export Turnover but not from the Total Turnover then, it would give rise to inadvertent, *unlawful, meaningless and illogical result which would cause grave injustice to the Respondent which could have never been the intention of the legislature.*

20. Even in common parlance, when the object of the formula is to arrive at the profit from export business, expenses excluded from export turnover have to be excluded from total turnover also. Otherwise, any other interpretation makes the formula unworkable and absurd. Hence, we are satisfied that such deduction shall be allowed from the total turnover in same proportion as well".

4. In view of the aforesaid decisions, present appeal filed by the Revenue is disposed of in same terms. No costs.

Sd/-
JUDGE

Sd/-
JUDGE

NC