IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF JANUARY 2021

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE NATARAJ RANGASWAMY

I.T.A. NO.353 OF 2014

BETWEEN:

M/S. HARMAN CONNECTED SERVICES
CORPORATION INDIA PVT. LTD.,
(FORMERLY KNOWN AS ADITI TECHNOLOGIES PVT LTD)
PLOT NO.3 & 3A, EOIZ INDUSTRIAL AREA
SY. NO.85 AND 86, SADARAMANGALA VILLAGE
KRISHNARAJAPURAM HOBLI, BENGALURU-560066
[REP. BY ITS VICE PRESIDENT-FINANCE
MR. VIVEK KHEMKA, AGED ABOUT 42 YEARS
S/O SRI. SUDARSHAN KUMAR KHEMKA]

.... APPELLANT

(BY MR. CHYTHANYA K.K. ADV.,)

AND:

1. COMMISSIONER OF INCOME TAX
BANGALORE-I, 1ST FLOOR
C.R. BUILDING, QUEEN'S ROAD
BANGALORE.

2. INCOME-TAX OFFICER
WARD-11(1), 14/3 R.P. BHAVAN
NRUPATHUNGA ROAD, BANGALORE.

... RESPONDENTS

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

THIS I.T.A. IS FILED UNDER SEC. 260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 14.03.2014 PASSED IN ITA NO.379/BANG/2013 FOR THE ASSESSMENT YEAR 2008-09, PRAYING TO:

(i) FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE.

(ii) ALLOW THE APPEAL AND SET ASIDE THE IMPUGNED ORDER OF THE ITAT, BENGALURU, 'A' BENCH IN ITA NO.379/BANG/2013 DATED 14/03/2014 FOR THE ASSESSMENT YEAR 2008-09.

THIS I.T.A. COMING ON FOR HEARING, THIS DAY, **ALOK ARADHE J.,** DELIVERED THE FOLLOWING:

JUDGMENT

This appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the Act for short) has been preferred by the assessee. The subject matter of the appeal pertains to the Assessment year 2008-09. The appeal was admitted by a bench of this Court vide order dated 24.02.2015 on the following substantial questions of law:

> *"(i)Whether on the facts and in the circumstances of the case, the Honourable ITAT was right in law in upholding the invocation of section 263 of IT Act though the matter was subject matter of appeal before the learned Commissioner of Income-tax (Appeals) and Hon'ble ITAT?*

(ii) Whether on the facts and in the circumstances of the case, the Honourable ITAT was right in law in upholding the initiation of proceedings under section 263 in respect of an order which got merged with the consequential order under section 143(3) of the IT Act dated 17-01-2012?

(iii) Whether on the facts and in the circumstances of the case, the Honourable ITAT was right in law in upholding the order under section 263 of IT Act by the learned First Respondent though the latter was himself unclear as to the correctness of action of the Learned Assessing Officer in allowing tax holiday under section 10A?

(iv) Whether on the facts and in the circumstances of the case, the Honourable ITAT was right in law in upholding the initiation of proceedings under section 263 though there is no lack of enquiry?

(v) Whether on the facts and in the circumstances of the case, the Honourable ITAT was right in law in upholding the denial of benefit of section 10A for AY 2008-09 on the ground that the appeliant's tax holiday period expired prior to AY 2008-09?

(vi) Whether on the facts and in the circumstances of the case, the Honourable ITAT was right in law denying the claim of the appellant to treat each unit as a separate undertaking for the purpose of section 10A of the IT Act?

(vii) Whether on the facts and in the circumstances of the case, the Honourable ITAT was right in law in upholding the denial of benefit under section 10A in respect of income from staffing activity?".

2. Facts leading to filing of this appeal briefly stated are that the assessee is a private limited company incorporated under the Companies Act, 1956

and is engaged in the business of development software and certain Information Technology Enabled Services (ITEs) activity. The assessee was initially accorded approval for setting up a unit under software technology park scheme on 06.09.1994. The licence granted to the assessee was valid upto 05.09.2009 which was renewed subsequently upto 05.09.2014. For the Assessment Year 2008-09, the assessee filed the return of income on 25.10.2008, by which total income was declared as 'NIL' after claiming exemption of Rs.16,20,65,750/- under Section 10A of the Act.

3. The case of the assessee was selected for scrutiny and a notice under Section 143(2) and Section 142 of the Act was issued to the assessee. The assessee responded to the aforesaid notices by filing replies and by furnishing documents. The Assessing Officer by an order dated 24.12.2010 inter alia held that assessee is entitled to deduction under Section 10A of the Act and quantified the amount claimed as deduction under

Section 10A of the Act.

4. The assessee thereupon filed an appeal before Commissioner of Income Tax (Appeals) who by an order dated 02.11.2011 partly allowed the appeal preferred by the assessee. The Assessing Officer by an order dated 07.01.2012 gave effect to the order passed by the Commissioner of Income Tax (Appeals). The revenue filed an appeal before the Income Tax Appellate Tribunal (hereinafter referred to as 'the tribunal' for short) against order dated 02.11.2011. However, the tribunal dismissed the appeal. Thereupon, the revenue filed an appeal before this court, which was allowed with the direction to the Assessing Officer that Assessing Officer shall pass consequential order in the light of judgment of the Supreme Court in the Special Leave Petition filed by the revenue in the case of TATA ELXSI LTD.

5. The Commissioner of Income Tax (Appeals) issued a notice under Section 263 of the Act dated 16.07.2012 to the assessee inter alia on the ground that the assessee is not eligible to claim deduction under Section 10A of the Act for Assessment Year 2008-09 as the period of 10 years in the case of assessee expired with Assessment Year 2007-08 and the Assessment Year in case of assessee has to be reckoned from Assessment Year 1998-99. It was also mentioned that the assessee is deriving the revenue from 'staffing' from STPI unit. Therefore, the assessee is not engaged in export of computer software. It was further held that the Assessing Officer did not examine the aforesaid aspect of the matter and has wrongly allowed the deduction under Section 10A of the Act. It was further held that the order of assessment has been passed without proper application of mind and therefore, order of assessment passed by the Assessing Officer is erroneous and is prejudicial to the interest of the revenue. The assessee

thereupon was asked to file his objections and was given an opportunity of being heard. After affording an opportunity of hearing to the assessee, the Commissioner of Income Tax (Appeals) by an order dated 23.01.2013 set aside the order of assessment made by the Assessing Officer with the direction to the Assessing Officer not to allow deduction under Section 10A of the Act to the assessee and to examine the services provided by the assessee under the caption 'Human Resources Services' as per Notification dated 26.09.2000. The Assessing Officer was also directed to examine the facts and take view with reference to the Notification issued by the Central Board of Direct Taxes (CBDT) vide circular No.1/2013 dated 17.01.2013. The assessee thereupon filed an appeal before the tribunal. The tribunal by an order dated 14.03.2014 has dismissed the appeal. In the aforesaid factual background, the assessee has filed this appeal.

6. Learned counsel for the assessee submitted that the Assessing Officer had made enquiries during th scrutiny proceeding and the Assessing Officer has taken one of the plausible views. Therefore, the tribunal ought to have appreciated that the Commissioner of Income Tax committed an error of law in invoking the powers under Section 263 of the Act in the fact situation of the case. It is further submitted that human resource services would qualify for deduction under Section 10A of the Act and the aforesaid view was taken by the tribunal was taken by the division bench of Delhi High Court vide decision dated 03.09.2014 passed in I.T.A.No.1255/2011, which was followed by this court in ***COMMISSIONER OF INCOME TAX AND ANR. MS. NTT DATE GLOBAL ADVISORY SERVICES PVT. LTD. IN ITA NO.544/2013 decided on 12.11.2020***. It is further submitted that in view of Section 10A(8) of the Act, which begins with a non obstante clause. It was permissible for the assessee to opt out of the provisions

of Section 10A of the Act and therefore, the assessee did not opt for the benefit of the provisions for the Assessment Year 1995-96, 1996-97, 1997-98, 2002-03, 2004-05 and therefore, period of ten years expired in the year 2010-11.

7. It is further submitted that the Assessing Officer was not required to pass a detailed order. In support of aforesaid submissions, reliance has been placed on decision in ***'MARICO LTD. VS. ASSISTANT COMMISSIONER OF INCOME TAX', (2020) 425 ITR 177 (Bom)***. It is also pointed out that against the aforesaid order the Special Leave Petition has been dismissed by the Supreme Court by a speaking order, which is reported in (2020) 117 Taxmann.com 244 (SC). It is also urged that Section 10A of the Act is a complete code in itself. Reference has also been made to decision of this court in ***'COMMISSIONER OF INCOME TAX VS. YOKOGAWA INDIA LTD.', (2012) 341 ITR 385 (KAR)***. It is also urged that even if the view taken by

the Assessing Officer is not legally tenable but since, the order passed by the Assessing Officer was subjected to appeal before Commissioner of Income Tax (Appeals) in respect of Section 10A of the Act. Therefore, the powers under Section 263 of the Act could not have been invoked in the fact situation of the case. In support of aforesaid submission, reliance has been placed on decision of Gujarat High Court in ***'CIT VS. NIRMA CHEMICAL WORKS (P) LTD.', (2009) 182 TAXMAN 183 (GUJ).*** It is also urged that tribunal wrongly distinguished the decision rendered in Nirma Chemical Works (P) Ltd. supra. It is also urged that the alternate claim made by the assessee ought to have been considered and due enquiries were made by the Assessing Officer during the scrutiny proceeding and on the issue of staffing, a view was taken and the view taken by the Assessing Officer on tax holiday was a plausible view and the revisional powers could not have been invoked as the order of the Assessing Officer was

subject matter of the appeal.

8. On the other hand, learned counsel for the revenue submitted that as per Section 10A of the Act, which existed prior to amendment by Finance Act, 2000 which was applicable tot eh Assessment Year 2001-02 provided for deduction for five consecutive Assessment Years relevant to Previous Year in which undertaking begins to manufacture or produce such articles, things or computer software. It is pointed out that in the instant case, the assessee commenced manufacturing activities from Assessment Year 1995-96, however, the assessee did not claim deduction under Section 10A of the Act for Assessment Year 1995-96, 1996-97 and 1997-98 and therefore, the period of five years out of a period of eight years had to be completed from 1998-99 and the same expired in 2002-03. In view of the amendment to Section 10A of the Act by Finance Act, 2000 with effect from 01.04.2001, the assessee was permitted to claim benefit of Section 10A of the Act for

the unexpired period. It is urged that even as per amended provisions, the period of 10 consecutive years has to commence with Assessment Year relevant to Previous Year in which undertaking begins to manufacture or produce such articles, things or computer software. Thus, the period of 10 consecutive years would start from 1995-96 and would end with Assessment Year 2004-05.

9. It is also contended that incentive provision have been provided only for a particular period and the benefit cannot be extended beyond the outer limit of 10 consecutive Assessment Years commencing from first year of production i.e., Assessment Year 1995-96. It is also urged that eligibility of assessment for deduction under Section 10A of the Act for the Assessment Year 2008-09 beyond a period of 10 consecutive years was not subject matter of the order of assessment and therefore, the same could not be subject matter of the appeal before the Commissioner of Income Tax

(Appeals) and therefore, there was no bar in invoking the powers under Section 263 of the Act. It is also submitted that eligibility of the assessee for deduction under Section 10A of the Act in respect of income from staffing is concerned, no enquiries were made in this regard and therefore, the order passed by the Assessing Officer suffers from the vice of non application of mind and on this ground also invocation of powers under Section 263 of the Act is justified. It is further submitted that the issue with regard to eligibility of deduction under Section 10A of the Act was never examined by the Assessing Officer and the Assessing Officer has to record a finding that the activities carried on by the assessee constitute human resource services to be eligible for deduction under Section 10A of the Act. It is further submitted that since, the order passed by the Assessing Officer was erroneous and was prejudicial to the interest of the revenue, therefore, the powers have rightly been invoked by Commissioner of Income Tax (Appeals). In

support of aforesaid submissions, reliance has been placed on ***'COMMISSIONER OF INCOME-TAX VS. DSL SOFTWARE LTD.', (2012) 18 TAXMANN.COM 151 (KARNATAKA), 'COMMISSIONER OF INCOME TAX-II, NEW DELHI VS. ML OUTSOURCING SERVICES (P.) LTD.', 228 TAXMAN 54 (DELHI), 'SAINT GOBAIN CRYSTALS & DETECTORS (I) LIMITED VS. DEPUTY COMMISSIONER OF INCOME-TAX, ITA NO.441/2015, 'THE COMMISSIONER OF INCOME-TAX VS. M/S NTT DATEA GLOBAL ADVISORY'. ITA NO.544/2013.***

10. We have considered the submissions made by learned counsel for the parties and have perused the record. Before proceeding further, it is apposite to take note of the relevant extract of Section 263 of the Act, which reads as under:

> *263. Revision of orders prejudicial to revenue*

(1) The Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he, may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

11. Thus, from close scrutiny of Section 263 it is evident that twin conditions are required to be satisfied for exercise of revisional jurisdiction under Section 263 of the Act firstly, the order of the Assessing Officer is erroneous and secondly, that it is prejudicial to the interest of the revenue on account of error in the order of assessment.

12. The aforesaid provision was considered by the Supreme Court in ***'MALABAR INDUSTRIAL COMPANY VS. CIT', 243 ITR 83*** and it was held that the phrase *'prejudicial to the interests of the revenue'* has to be read in conjunction with an erroneous order passed by the Assessing Officer and every loss of revenue as a consequence of the order of the Assessing Officer cannot be treated as prejudicial to the interest of revenue. It was further held that where two views are possible and the Income Tax Officer has taken one view with which the Commissioner does not agree, the order passed by the Assessing Officer cannot be treated as erroneous order prejudicial to the interest of the revenue. The principles laid down in the aforesaid decision were reiterated by the Supreme Court in ***'CIT VS. MAX INDIA LTD.,' 295 ITR 282 (SC)*** and recently in ***'ULTRATECH CEMENT LTD. AND ORS. VS. STATE OF RAJASTHAN AND ORS.', CIVIL APPEAL NO.2773/2020 DECIDED ON 17.07.2020.***

13. In the backdrop of aforesaid well settled principles, the facts of the case in hand may be examined. As per Section 10A of the Act which existed prior to amendment of Finance Act, 2000 which was applicable for Assessment Year 2001-02 provided for deduction for a period of 5 consecutive Assessment Years. Thereafter, in view of amendment to Section 10A of the Act by Finance Act, 2000 with effect from 01.04.2001, an assessee was entitled to claim benefit for 10 consecutive years. In the instant case, the period of 10 consecutive years would start from Assessment Year 1995-96 and would end with Assessment Year 2008-09. It is pertinent to mention here that the period of 10 year commences from 1995-96 irrespective of the fact that whether or not the assessee has claimed benefit in between the Assessment Years and the period of 10 consecutive years therefore, in view of the plain language of the enactment cannot be extended. The Assessing Officer without examining the aforesaid

aspect of the matter granted the benefit of deduction Section 10A of the Act to the assessee. The view taken by the Assessing Officer cannot but be said to be erroneous and prejudicial to the interest of the revenue. The view taken by the Assessing Officer cannot be said to be a plausible view. It is also pertinent to mention here that no reasons have been assigned by the Assessing Officer for holding the assessee eligible for benefit of deduction under Section 10A of the Act. Since, the issue with regard to eligibility of the assessee for deduction under Section 10A of the Act for Assessment Year 2008-09 beyond a period of 10 consecutive years was not subject matter of order of assessment itself. Therefore, the same could not have been the subject matter of the appeal before the Commissioner of Income Tax (Appeals) and thus, in the fact situation of the case there was no bar in invoking the powers under Section 263 of the Act. The income of the assessee from staffing, which was not an income from export of

computer software was also allowed by the Assessing Officer without any application of mind and without any enquiry. Therefore, the Commissioner of Income Tax has rightly invoked the powers under Section 263 of the Act in the fact situation of the case.

In view of preceding analysis, the substantial questions of law are answered against the assessee and in favour of the revenue. In the result, we do not find any merit in this appeal, the same fails and is hereby dismissed.

Sd/-
JUDGE

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JUDGE

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