

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “ B ” BENCH: BANGALORE

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

IT(TP)A No.374/Bang/2016
(Assessment Year: 2011-12)

M/s.Verisign Services India Pvt. Ltd.,
No.52, 3rd Floor, 100 Feet Main Road,
2nd Block, Koramangala,
Bangalore-560 034

....Appellant

Vs.

Assistant Commissioner of Income Tax,
Circle 7(1)(2), Bangalore.

.....Respondent.

Assessee By:	Shri Sumeet Khurana, C.A.
Revenue By:	Shri Muzaffar Hussain, CIT (D.R)

Date of Hearing :	03.08 .2020.
Date of Pronouncement :	14.08.2020.

ORDER

PER SHRI PAVAN KUMAR GADALE, JM :

The Hon'ble tribunal has allowed the assesses Misc.Petition M.P. No.12/Bang/2020 in IT(TP)A No.260 & 374/Bang/2016 on 17.3.2020 recalling the order of the Tribunal dt.3.5.2019 for limited purpose, for adjudicating Ground of appeal Nos.15 to 17.As per the directions, the appeal is posted for hearing for adjudicating three grounds of appeal which are as under:

15. That on facts and circumstances of the case and in law, the learned AO and the learned DRP erred in reducing other income in the nature of service tax refund, VAT refund, income from scrap sale and unrealised exchange gain amounting to INR 10,904,051 from the profit of the eligible undertaking in computing deduction under section 10A of the Income-tax Act, 1961 ('Act'). ***[Corresponding to Ground No. 6 of the original ground of appeal]***
16. That the learned AO and the learned DRP erred in not following the decision of the jurisdictional High Court in the case of **CIT v. Motorola Electronics Private Limited [2014] 46 taxmann.com 167** on inclusion of incidental income while computing the profits of the undertaking. ***[Corresponding to Ground No. 7 of the original ground of appeal]***
17. That the learned AO erred in granting TDS credit amounting to INR 4,606,544 as against INR 4,622,140 claimed by the Company in the return of income. ***[Corresponding to Ground No. 8 of the original ground of appeal]***

2. At the time of hearing, the learned Authorized Representative submitted that the grounds of appeal no15&16 are interconnected, and the assessing officer has erred in reducing other income including unrealized exchange gain from the profit of eligible undertaking for computing deduction under Section 10A of the Act, and relied on the judicial decisions. Further he submitted that the Assessing Officer erred in not considering the TDS credit claimed by the assessee in the Income Tax return and prayed for the relief. Contra, the learned Departmental Representative relied on the orders lower authorities.

3. We heard the rival contentions and perused the material on record. The contentions of the Id. AR that Ground of appeal Nos.15 & 16 relates to the income which was excluded in computing the deduction under Section 10A of the Act.

Whereas the assessee's income includes unrealized foreign exchange gain which has to be considered for allowing the deduction u/sec 10A of the Act and relied on the decision of co-ordinate Bench in the case of Wipro Limited Vs. DCIT (2016) 5 SOT 805 (Bang). We consider it appropriate to refer to the findings of the co-ordinate Bench decision in Wipro Limited Vs. DCIT (supra) at page 20 Para 5.1 & 5.2 which is read as under :

" 5.1 The next issue on which the assessee is in appeal before us is on the following issues and as all the issues are common and arising on account of exclusion made from profits of the s. 10A units, while computing the deduction under s. 10A by the AO, we are disposing them of together, though separate grounds have been taken by the assessee :

Asst. yr. 1998-99

Sl. No.	Issues	Amount (Rs.)
1.	Liquidated damages	1,57,193
2.	Write back of retention money	1,36,162
3.	Sales-tax recoveries	4,80,892
4.	Write back of credit balances	11,12,922
5.	Foreign exchange gain	29,046

Asst. yr. 1999-2000

Sl. No.	Issues	Amount (Rs.)
1.	Write back of credit balances	50,77,520
2.	Sundry creditors/stale cheques	49,37,397

3.	Reversal of employees credit balances	2,61,230
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5.2 The appellant had shown the above receipts/income as falling under the provisions of s. 10A as it is related to the industrial undertakings coming under s. 10A. In the assessment, the AO has considered it as income not derived from software export business and that the source of a particular income on which exemption is sought must directly emerge from the running of the industrial undertaking yielding profits and in doing so, has relied on the decision of the Supreme Court in the case of Sterling Foods Ltd. (supra). Assessee appealed before the CIT(A), who has confirmed the exclusion done by the AO. Being aggrieved with the orders of authorities below, the assessee is in appeal before us on the above issues."

Similarly, we find the observations of the Tribunal that the receipts/income from the profits of eligible undertaking has to be considered in computing the deduction under Section 10A of the Act held at page 23 Para 5.5 of the order which is read as under :

" 5.5. We have gone through the records, submissions and the decisions relied on by both sides. We find that the issues involved in the present appeal are similar in nature to that decided by the Tribunal in ITA No. 651/B/1994 for the earlier years. Though the findings are in relation to similar issue under ss. 80HH and 80-I, the said findings are applicable to the issue on hand as the provisions of s. 10A and ss. 80HH and 80-I are pari materia on such issues and following the said decision we hold that the receipts/income mentioned supra are eligible for exemption under s. 10A. It may be noted that we are dealing with appeals pertaining to asst. yrs. 1998-99 and 1999-2000. Sec. 10A, as it then stood, provided for exclusion of any profit derived by assessee from industrial undertaking to which this section applies. It is not the case of Revenue that s. 10A is not applicable. What is to be seen is whether provision of sub-s. (2) is applicable or not. Having found that the section applies to the various undertakings, which have fulfilled the conditions laid down in sub-s. (2), any profit derived by such undertaking is to be excluded while computing the total income of the assessee. After the amendment of s. 10A w.e.f. 1st April, 2001, only such profit derived by the

undertaking from the export of articles or things or computer software is to be excluded. However, prior to the amendment, the entire profit of such undertaking is to be excluded. Admittedly, all these items related to the industrial undertaking to which s. 10A applies. Accordingly, these items are not to be excluded atleast for asst. yrs. 1998-99 and 1999-2000. The appellant succeeds on the above issues and accordingly, we reverse the orders of the authorities below and direct the AO to include the above receipts/ income in the profits of business of industrial undertakings under s. 10A."

We found in the present case, the assessee has other income including unrealized exchange gain, which was excluded for claim of deduction u/sec10A of the Act. Accordingly, we follow the ratio of decision of Wipro Limited Vs. DCIT (supra) and restore this issue to the file of Assessing Officer to examine and consider the other income including unrealized exchange gain as the profits of the business of industrial undertaking under Section 10A of the Act and allow the grounds of appeal of the assessee for statistical purposes.

4. Similarly, the learned Authorized Representative argued that the Assessing Officer has granted TDS credit to the extent of Rs.4,606,544/- as against Rs.4,622,140/- claimed by the assessee in the Return of Income. we upon hearing the submissions, direct the Assessing Officer to examine and verify the correctness of claim and allow the ground of appeal of the assessee for statistical purposes.

5. In the result, the ground of appeal Nos.15 to 17 in assesses appeal are allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Dated: 14.08.2020.

*Reddy GP

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore