IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Income Tax Appeal No. 101 of 2015 (O&M)

Date of Decision: 24th August, 2016

The Commissioner of Income Tax, Faridabad ..Appellant

versus

M/s Mercer Consulting (India) Pvt. Ltd. Gurgaon ..Respondent

CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE DEEPAK SIBAL, JUDGE

Present : Mr. Tejender K.Joshi, Advocate, for the appellant.

Mr. Deepak Chopra, Advocate,
Mr. Deepak Aggarwal, Advocate,
Ms. Manasvini Bajpai, Advocate,
Mr. Piyush, Advocate and
Mr. Rohit Gupta, Advocate, for the respondent.

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S.J.VAZIFDAR, CHIEF JUSTICE

This is an appeal against the order of the Income Tax Appellate Tribunal allowing partly the respondent's appeal against the order of the Disputes Resolution Panel. The dispute pertains to the assessment year 2009-10.

2. This appeal is only in respect of the determination of the 'Arm's Length Price' (ALP) of certain international transactions between the assessee and its associated enterprises.

3. The appeal is admitted on the following questions of law:-

i) Whether the ITAT rightly held Sr. Nos. 2 and 8 to be suitable comparables and Sr. Nos. 5, 6 and 9 not to be suitable comparables?

ii) Whether on the facts and in the circumstances of the case the ITAT has erred in law by excluding an

> amount of ₹57,02,875/- on account of communication charges incurred in foreign currency attributable to delivery of computer software outside India from total turnover in order to compute deduction under section 10AA of the Income Tax Act, 1961?

Re: Question No. (i)

4. The assessee is a wholly owned subsidiary of Mercer Mauritius Limited, Mauritius. It is engaged in rendering to its various associated enterprises (AEs') IT and IT enabled services such as in the nature of applicant development, quality assurance and application maintenance. The services were rendered to the clients of and for and on behalf of the assessees for which it was compensated on a cost plus basis.

5. The assessee reported three types of international transactions in its audit report in Form 3CEB. The Assessing Officer referred the same to the Transfer Pricing Officer (TPO) for the determination of the arm's length price thereof. The assessee submitted a transfer pricing study. Two types of transactions were accepted by the TPO to be at an arm's length price. The TPO by his order under section 92(A)(3) proposed an adjustment of about ₹ 6.16 crores. The Assessing Officer served upon the assessee a draft assessment order. The assessee filed objections before the Disputes Resolution Panel (DRP). The Assessing Officer was directed to complete the assessment proceedings according to the directions issued by the Disputes Resolution Panel (DRP) under section 144(C) of the Income Tax Act, 1961 (for short 'the Act'). The Tribunal on this issue allowed the assessee's appeal by the order impugned in this appeal.

6. The filters adopted by the assessee and the TPO's remarks in respect thereof are tabulated below:-

Sr. No.	**Particulars**	**Remarks of TPO**
1.	Companies for which sufficient financial or descriptive information was not available to perform analysis.	This is an appropriate filter.
2.	Companies that were declared sick or had persistent negative net worth.	This may be seen from case to case basis.
3.	Companies that had ceased business operations or were inactive.	This is an appropriate filter.
4.	Companies that undertook significantly different functions compared to the taxpayer.	An appropriate filter will be rejecting companies whose service revenue is less than 75% of the total operating revenues.
5.	Companies that did not have significant (<25%) foreign exchange earnings.	The appropriate threshold limit in this regard is 75% as your exports earning are more than 90% (infact 100%) of the total income.
6.	Companies that had substantial (>25%) transactions with related parties.	This is an appropriate filter.
7.	Companies which had been incurring persistent operating losses.	This is an appropriate filter.
8.	Companies that had exceptional year(s) of operation.	This is an appropriate filter.

7. The comparables furnished by the assessee and the TPO's response thereto are tabulated below:-

Sr. No.	**Name of the company**	**Remarks of this office**
1.	Aditya Birla Minacs Worldwide Limited.	This is a suitable comparable.
2.	Allsec Technologies Limited.	Diminishing sales for the last three years. The export revenues are less than 75% of total turnover, hence not a suitable comparable.
3.	C G-VAK software & Exports Ltd.	Significant income of the company is from software development. The income from BPO operations is only Rs.86

		lakhs. This will not be a good comparable.
4.	Cepha Imaging Private Limited.	The annual report of the company has been perused. The company is in the business of E-Publishing Services. E-Publishing services include Typesetting, Composition, Art work, proof reading, project management, XML conversions and multimedia services, provided to publishers of books and journals. This is quite different from your functional profile that has been described earlier. That apart, this company cannot be classified as an ITES entity simply because it is using computer based technology for its publishing activities. This is not a suitable comparable.
5.	Cosmic Global Limited.	This is a suitable comparable.
6.	Genesys International Corporation Ltd.	This is a suitable comparable.
7.	Infored Technologies Limited.	This is a suitable comparable.
8.	R Systems International Limited.	This company has year ending other than March. Reliable financial data will not be available for a 12 month period. This cannot be used as a comparable.
9.	Vishal Information Technologies Limited (Now known as Coral Hub Ltd.)	This is a suitable comparable.

8. There is no dispute regarding the filters as suggested by the assessee and as qualified by the TPO. It is the application of the filters that requires consideration. Further, there is no dispute regarding the comparables at Sr. Nos. 1, 3, 4 and 7. The dispute is with regard to the comparables at Sr. Nos. 2,5,6,8 and 9. We will now deal with each of the comparables in that order.

9. The comparables at Sr. Nos. 2, 3 and 5 to 9 were originally relied upon by the assessee. The comparables at Sr. Nos. 1 and 4 were suggested later. The TPO called upon the assessee to furnish the current year

profit margin in respect of seven comparables originally relied upon. The assessee furnished the same but sought to exclude from the original list three comparables and to rely upon two other comparables. The assessee, therefore, ultimately relied upon six comparables. The TPO, however, analyzed all the nine comparables i.e. the original seven and two additional comparables. However, the TPO included only three comparables which the respondent wanted excluded. We will now deal with each of the disputed comparables.

***Re: Alisec Technologies Limited*.**

10. Filter No.5 was adopted. The TPO's qualification was that the appropriate threshold limit ought to be 75% as the assessee's export earnings were more than 90% (infact 100%) of the total income. The qualification is not in dispute. The TPO also adopted another filter, namely, the exclusion of cases with diminishing revenues.

11. Mr. Joshi, the learned counsel appearing on behalf of the appellant-department supported the second reason given by the TPO for discarding this comparable, namely, that the export was less than 75% of the total turn over. The decision of the Tribunal to include this case is entirely justified. The TPO had rejected it merely because the actual ratio of export revenue to total turnover was 74.45% and not 75% which was the qualification adopted by the TPO. We are entirely in agreement with the Tribunal that the case could not have been rejected merely because there was a deviation of 0.55%. Mr. Joshi's submission that there can be no deviation to any extent whatsoever is erroneous.

12. There is nothing sacrosanct about the figure of 75%. A deviation that does not affect the result is acceptable. Transfer pricing is not an exact science. It is not capable of arithmetical precision.

13. Mr. Joshi's apprehension is that the acceptance of any deviation however insignificant would bring about uncertainty and confusion. He submitted that once a filter is chosen, it must be rigidly followed and there cannot be any deviation at all. He submitted that if deviations were permissible, the TPO could have relied upon other comparables. He further contended that in that case there would be uncertainty as to the extent of the permissible deviation.

14. A minuscule difference cannot result in the rejection of the case if it is otherwise comparable. There is no difficulty in permitting reasonable deviation so long as the deviation does not render the case incomparable to the one in question. The extent of deviation that ought to be accepted would of necessity vary from case to case. In a given case a minor deviation may render the case incomparable. In another case a larger deviation may not affect the comparison and relevance of the case. The TPO must take all the factors into consideration and decide whether the deviation renders the case comparable to the one in question or not.

15. The submission that by permitting a deviation the TPO is deprived of the opportunity of relying upon other comparables within that deviation is also not well founded. Indeed even the TPO would be entitled to refer to cases which deviate from the filter. The same test would apply even to the cases relied upon by the TPO. The DRP or the CIT (Appeals) as the case may be, the ITAT and the Courts would apply the same test, namely, whether the deviation ought to be permitted or not. Nothing prevented the TPO from doing so.

16. The appellant's contention that the case at Sr. No.2 is not comparable to the international transactions is, therefore, rejected.

Re: Cosmic Global Limited

17. This was one of the seven cases originally submitted by the assessee but was later sought to be excluded by the assessee itself. The TPO, however, included the same in the list of comparables. The respondent challenged the inclusion successfully before the Tribunal.

18. The outsourcing charges of the assessee constitute 57.31% of its total operating costs. The annual account of Cosmic Global Limited indicates a total revenue from operations of Rs.7.37 crores of which ₹ 9.90 lacs were in respect of medical transcription and consultancy services, ₹ 6.99 crores were towards translation charges and only ₹ 27.76 lacs were on account of the BPO services. Thus the assessee's outsourcing activities constitute 57% of its total expenses whereas the similar activity of Cosmic Global Ltd. viz. the BPO segment was only ₹ 27.76 lacs which is but a small fraction of its total revenue from all its operations.

19. The Tribunal rightly held that the results of Cosmic Global Limited on account of its activities other than those relating to the accounts BPO segment cannot be examined. The financial results of enterprises involved in dissimilar activities cannot be compared. Similarly the financial aspects of dissimilar activities of two enterprises cannot be compared. Only the similar activities of the two can be considered provided however they are financially comparable.

20. Before dealing with this case further, it is important to note that the Tribunal excluded Cosmic Global Ltd. from the list of comparables for the same reason that it excluded CG-VAK Software & Exports Ltd. from the list of comparables. The assessee has not challenged the exclusion of CG-VAK Software & Exports Ltd. from the list of comparables by the Tribunal.

It is necessary nevertheless for us to consider the correctness of the exclusion for it is on the basis thereof that the Tribunal has also excluded Cosmic Global Ltd. from the list of comparables. While dealing with the case of CG-VAK Software & Exports Ltd. the Tribunal noted that the BPO segment which is a relevant segment of CG-VAK Software & Exports Ltd. was only ₹ 86.10 lacs. as against the assessee's revenue in the same segment at about ₹ 59 crores. We are entirely in agreement with the decision of the Tribunal in this regard. The Tribunal rightly relied upon the judgment of a Division Bench of Delhi High Court in case of *CIT v. Agnity India Technologies Pvt. Ltd. (2013) 219 Taxman 26 (Delhi)* where the TPO included Satyam Computer Services Ltd., L&T Infotech Ltd. and Infosys Technologies Ltd. in the list of comparables for working out the ALP of the international transactions of the assessee's in that case. The Tribunal upheld the decision of the DRP on the ground that a giant company cannot be compared with the assessee which was a captive unit of a parent company assuming only limited risks. The High Court upheld the decision of the Tribunal.

21. This brings us back to the case under consideration of Cosmic Global Ltd. The total revenue of Cosmic Global Ltd. of ₹ 7.37 crores is divided into three segments of which only ₹ 27.76 lacs pertained to the accounts BPO which is the comparable activity. The other activities were medical transcription consultancy services and translation charges in respect whereof the revenues were ₹ 9.90 lakhs and ₹ 6.99 crores respectively. The Tribunal rightly came to the conclusion that the case of Cosmic Global Ltd. is not comparable with that of the assessee for the total revenue of the

accounts BPO segment of the former was only ₹ 27.76 lacs whereas that of the assessee in the case before us is about ₹ 59 crores.

22. The Tribunal, therefore, rightly excluded Global Cosmic Ltd. from the list of comparables.

Re: Genesys International Corporation Ltd.

23. This case was also initially included in the list of seven cases submitted by the assessee but was later sought to be excluded. The TPO, however, included the same. The assessee challenged the inclusion successfully before the Tribunal.

24. The assessee provides various services to the customers of its AEs in relation to human resources which relate to the employees of the prospective clients. Genesys International Corporation Ltd. on the other hand provides a full range of geospatial services to its clients. Geospatial services relate to the relative position of things on the earth's surface. This includes 3D mapping, navigation maps, image processing and cadastral mapping etc. The two services are entirely different and therefore cannot be compared for the purpose of determining the ALP.

25. The TPO relied upon a CBDT circular dated 26.09.2000 which furnishes a list of products or services that may be considered as Information Technology Enabled Products/Services (ITES) for the purpose of sections 10-A and 10-B of the Income Tax Act, 1961. The circular enumerates fifteen categories. As rightly observed by the Tribunal these categories refer to products and services which are entirely different in description and functions. The manufacture of such products and the provision of such services also have entirely different financial requirements and consequences. The instances cited by the Tribunal are apposite. Geographical Information Systems Services and the assessee's services are

included in the circular and therefore, fall within the category of ITES. It does not follow that they are comparable to each other for the purpose of determining the ALP in respect of the assessee's international transactions. The circular is issued for entirely different reasons viz to enable an assessee to avail deductions in respect of certain activities. The sections do not contemplate or even remotely indicate that the activities referred to therein are comparable to each other. Much less do these provisions indicate that the activities included therein have any relevance to the transfer pricing mechanism for the purpose of determination of the ALP of international transactions.

26. The Tribunal rightly rejected this case from the list of comparables.

Re: R.Systems International Limited.

27. The TPO excluded the case of R. Systems International Limited from the list of comparables. The ITAT included the same. The TPO excluded the case of R.Systems International Limited on the ground that it follows the calendar year i.e. Ist January to 31st December for maintaining its annual account whereas the accounting year of the assessee is 1st April to 31st March. The TPO followed an order passed by the Mumbai Bench of the Tribunal in *ACIT v. Hapag Lloyd Global Services Ltd. 2013-TII-68-ITAT-MUM-TP* in which it had been held that a company with a different financial year ending cannot be compared.

28. We are unable to agree with the decision of the TPO and of the DRP that affirmed it. The view taken by the Tribunal commends itself to us. It is not the financial year per se that is relevant. Even if the financial years of the assessee and of another enterprise are different, it would make no difference. If it is possible to determine the value of the transactions during

the corresponding periods, the purpose of comparables would be served. The question in each case is whether despite the financial years of the assessee and of the other enterprise being different, the financials of the corresponding period of each of them are available. If they are, the TPO must refer to the corresponding period of both the entities in determining whether the two are comparable or not for the purpose of determining the ALP.

29. As noted by the Tribunal, the audit accounts of R System International Ltd. for the year ending 31.12.2008 had been given under one column and the data for the quarter ending 31.03.2009 and 31.03.2008 (both audited) had been given in two other columns. Thus, as rightly held by the Tribunal, if from the yearly data ending 31.12.2008, the results of the quarter ending 31.03.2008 are excluded and if the results for the quarter ending 31.03.2009 are included, it is possible to obtain the data for the financial year 01.04.2008 to 31.03.2009.

30. This view is not contrary to Rule 10(B)(4) which reads as under:-

> "10B(4) The data to be used in analysing the comparability of an uncontrolled transaction with an international transaction shall be the data relating to the financial year in which the international transaction has been entered into".

31. The Rule does not exclude from consideration the data of an entity merely because its financial year is different from the financial year of the assessee. What the Rule requires is that the data to be used in analyzing the financial results of an uncontrolled transaction with an international transaction shall be the data relating to the financial year in which the international transaction has been entered into. Thus so long as the data

relating to the financial year is available, it matters not, if the financial year followed is different. In the case before us the data relating to the relevant financial year of R.Systems International Limited is available.

32. We are, therefore, entirely in agreement with the decision of the Tribunal that if the data relating to the financial year in which the international transaction has been entered into is directly available from the annual accounts of that comparable, then it cannot be held as not passing the test of sub-rule(4) of rule 10B.

Re: Coral Hub Ltd.

33. Coral Hub Ltd. was earlier known as Vishal Information Technology Limited and was so referred to in the order of the Tribunal. We will, therefore, continue to refer to the name-Coral Hub Limited.

34. Coral Hub Limited was included by the assessee in the list of the comparables. The TPO required it to furnish the data of Coral Hub Limited for the then current year alone. The assessee thereafter requested the TPO to exclude the case from the list of comparables. The TPO refused to do so. The Tribunal, however, rightly excluded the Coral Hub Limited from the list of comparables.

35. Mr. Joshi firstly contended that once an assessee seeks the inclusion of a case in the list of comparables, it cannot subsequently insist the same on being excluded.

36. There is nothing to support this view either in law or in principle. The aim is to determine the ALP. The exercise requires the assessment of the relevant data. If the data furnished is not relevant or comparable it cannot possibly be considered merely because the assessee has relied upon it. If the TPO finds the data to be irrelevant he is not only

entitled but bound to exclude it from consideration. There is no reason then why the TPO cannot do so on the application of the assessee. Indeed if the case is comparable the TPO is not bound to reject it merely because the assessee applies to have it excluded. Whether or not to exclude the case from the list of comparables depends upon the relevance of the case and not the desire of the parties.

37. The next question is whether Coral Hub Limited ought to be included in the list of comparables. The ground on which the assessee contends that Coral Hub Limited ought to be excluded from the list of comparables is also well founded. Coral Hub Limited outsources a significant portion of its work. The finding is that the outsourcing charges constitute 90% of the total operating costs. It is admitted by the department that the assessee on the other hand conducts its activities itself without outsourcing any part of it. There can be no comparison between an enterprise that conducts its business activities itself with one that outsources its activities although the activities pertain to the same field. The entire administrative set up of such enterprises would be different. An entity that outsources most of its work is not required to maintain a large establishment. For instance, it would be necessary for such an enterprise to have large premises and a large number of employees. Even the material it uses and the equipment that it installs from minor items such as stationery and telephones to electrical fittings and even machinery are bound to be far less than the material and equipment that an enterprise which conducts its activities itself would of necessity be required to maintain.

38. This in turn would also have consequences upon the legal requirements to be fulfilled by the two enterprises. There are several enactments that bring within its ambit, establishments or undertakings that

employ a certain number of persons. There are enactments that also bring within their ambit enterprises that use power. This in turn would require an enterprise carrying on its own activities to maintain staff alongwith attendant facilities to ensure compliance with such legislation. The financial difference between such enterprises is bound to be enormous.

39. We are in respectful agreement with the following observations of the Division Bench of Delhi High Court in *Rampgreen Solutions Pvt. Ltd. v. Commissioner of Income Tax (2015) 377 ITR 533*:-

> **"39.** In our view, even Vishal could not be considered as a comparable, as admittedly, its business model was completely different. Admittedly, Vishal's expenditure on employment cost during the relevant period was a small fraction of the proportionate cost incurred by the Assessee, apparently, for the reason that most of its work was outsourced to other vendors/service providers. The DRP and the Tribunal erred in brushing aside this vital difference by observing that outsourcing was common in ITeS industry and the same would not have a bearing on profitability. Plainly, a business model where services are rendered by employing own employees and using one's own infrastructure would have a different cost structure as compared to a business model where services are outsourced. There was no material for the Tribunal to conclude that the outsourcing of services by Vishal would have no bearing on the profitability of the said entity."

40. The Tribunal's decision not to consider this case is, therefore, correct.

Re: Question No. (ii)

41. The issue pertains to the reduction in the amount of deductions sought by the assessee under section 10AA of the Act. The issue had two

components. We are not concerned with the first, namely, the denial of a deduction on interest income of about ₹ 8.84 lacs. This appeal is only in respect of the other component, namely, reduction of communication expenses incurred in foreign currency for the purposes of computing the export turnover.

42. As recorded in the order of the Tribunal, on behalf of the assessee the action of the Assessing Officer in reducing the amount of telecommunication charges from the export turn over was not challenged. However, it was contended that the amount ought to be reduced from the total turnover as well. The submission was accepted in view of the judgment of a Division Bench of Delhi High Court (wrongly referred to in the order of Tribunal as the jurisdictional High Court) in the case of *Commissioner of Income Tax v. Genpact India 2011(203) Taxman 632 (Delhi).* The Delhi High Court followed the judgment of the Bombay High Court in *CIT v. Gem Plus Jewellery India Ltd. (2011) 330 ITR 175* and of the Karnataka High Court in the case of *CIT v. Tata Elxsi Ltd. (2012) 349 ITR 98 (Karnataka)* which had also followed the judgment of Bombay High Court. As the Delhi and the Karnataka High Courts followed the judgment of Bombay High Court in the case of *CIT v. Gem Plus Jewellery India Ltd. (supra)* we will refer to the judgment of Bombay High Court. The Bombay High Court held as under:-

> "7. The export turnover, in the numerator must have the same meaning as the export turnover which is a constituent element of the total turnover in the denominator. The legislature has provided a definition of the expression "export turnover" in Explanation (2) to Section 10A by which the expression is defined to mean the consideration in respect of export by the undertaking of articles, things or computer software received in or brought into India by the assessee in convertible foreign exchange but so as not to include inter alia freight, telecommunication charges or insurance attributable to the delivery of the articles, things or software outside India. Therefore in computing the export

> turnover the legislature has made a specific exclusion of freight and insurance charges.
>
> 8. The submission which has been urged on behalf of the Revenue is that while freight and insurance charges are liable to be excluded in computing export turnover, a similar exclusion has not been provided in regard to total turnover. The submission of the Revenue, however, misses the point that the expression "total turnover" has not been defined at all by Parliament for the purposes of Section 10A. However, the expression "export turnover" has been defined. The definition of "export turnover" excludes freight and insurance. Since export turnover has been defined by Parliament and there is a specific exclusion of freight and insurance, the expression "export turnover" cannot have a different meaning when it forms a constituent part of the total turnover for the purposes of the application of the formula.Undoubtedly, it was open to Parliament to make a provision to the contrary. However, no such provision having been made, the principle which has been enunciated earlier must prevail as a matter of correct statutory interpretation. Any other interpretation would lead to an absurdity. If the contention of the Revenue were to be accepted, the same expression viz. 'export turnover' would have a different connotation in the application of the same formula. The submission of the Revenue would lead to a situation where freight and insurance, though it has been specifically excluded from "export turnover" for the purposes of the numerator would be brought in as part of the "export turnover" when it forms an element of the total turnover as a denominator in the formula. A construction of a statutory provision which would lead to an absurdity must be avoided."

43. We are in respectful agreement with the judgment of Bombay High Court. Although the judgment is under section 10A of the Act, the ratio applies equally to the issue under consideration under section 10AA of the Act.

(A) Section 10A(1) and (4) and Explanation 2(iv) read as under:-

> **"Special provision in respect of newly established undertakings in free trade zone, etc.**
>
> **10A.** (1) Subject to the provisions of this section, a deduction of such profits and gains as are derived by an undertaking from the export of articles or things or computer software for a period of ten consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce such

articles or things or computer software, as the case may be, shall be allowed from the total income of the assessee:

(4) For the purposes of sub-sections (1) and (1A), the profits derived from export of articles or things or computer software shall be the amount which bears to the profits of the business of the undertaking, the same proportion as the export turnover in respect of such articles or things or computer software bears to the total turnover of the business carried on by the undertaking.

Explanation 2.—For the purposes of this section,—

(i) to (iii) xx xx xx

(*iv*) "export turnover" means the consideration in respect of export by the undertaking of articles or things or computer software received in, or brought into, India by the assessee in convertible foreign exchange in accordance with sub-section (3), but does not include freight, telecommunication charges or insurance attributable to the delivery of the articles or things or computer software outside India or expenses, if any, incurred in foreign exchange in providing the technical services outside India;

....emphasis supplied."

(B) Section 10AA which falls for consideration before us, in so far as it is relevant, reads as under:-

"Special provisions in respect of newly established Units in Special Economic Zones.

10AA. (1) Subject to the provisions of this section, in computing the total income of an assessee, being an entrepreneur as referred to in clause (*j*) of section 2 of the Special Economic Zones Act, 2005, from his Unit, who begins to manufacture or produce articles or things or provide any services during the previous year relevant to any assessment year commencing on or after the 1st day of **[***April, 2006, a deduction of***]**—.....

(7) For the purposes of sub-section (1), the profits derived from the export of articles or things or services (including computer software) shall be the amount which bears to the

profits of the business of the undertaking, being the Unit, the same proportion as the export turnover in respect of such articles or things or services bears to the total turnover of the business carried on by the undertaking:

Explanation 1.—For the purposes of this section,—

(*i*) "export turnover" means the consideration in respect of export by the undertaking, being the Unit of articles or things or services received in, or brought into, India by the assessee but does not include freight, telecommunication charges or insurance attributable to the delivery of the articles or things outside India or expenses, if any, incurred in foreign exchange in rendering of services (including computer software) outside India;"

44. For all practical purposes relevant to the case before us the definition of export turn over in sections 10A and 10AA are similar. The formula for computation under section 10AA(7) is also the same, namely:-

$$\text{"Profits derived from export of articles or things or computer software"} = \frac{\text{Profits of the business of the undertaking} \times \text{Export turnover in respect of the articles or things or computer software.}}{\text{Total turnover of the business carried on by the undertaking."}}$$

As in the case of section 10A, so also in the case of section 10AA of the Act, the expression total turnover has not been defined. The export turnover is a part of the total turnover. There is nothing in the section or any other provision of the Act that warrants the exclusion of export turnover from the numerator but not from the denominator i.e. from the total turnover. The plain language certainly militates against such a construction.

45. In the circumstances, both the questions are answered in favour of the assessee i.e. question No.1 is answered in the affirmative and question No.2 is answered in the negative.

46. The appeal is accordingly dismissed.

(S.J.VAZIFDAR)
CHIEF JUSTICE

(DEEPAK SIBAL)
JUDGE

24th August, 2016
'ravinder'

Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No