

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" BENCH, MUMBAI**

**SHRI S RIFAUZ RAHMAN, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 2740/MUM/2023  
(Assessment Year: 2018-19)**

**Deputy Commissioner of Income Tax,  
Circle-4(1)(1), Mumbai,  
Room No. 678, 6<sup>th</sup> Floor,  
Aaykar Bhavan  
M.K.Road, Churchgate  
Maharashtra- 400020**

..... **Appellant**

**M/s. ByteScale Technologies Pvt.Ltd.**  
Unit No.13, Hi-Life Mall  
P.M. Road, Santacruz(W)  
Maharashtra - 400054  
[PAN: AAACJ2042G]

Vs

..... **Respondent**

**Appearance**

For the Appellant/Department : Shri Ashok Kumar Ambastha  
For the Respondent/Assessee : Shri Rajesh Shah

**Date**

Conclusion of hearing : 21.03.2024  
Pronouncement of order : 03.04.2024

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**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. By way of the present appeal the Revenue has challenged the order, dated 06/06/2023, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2018-19, whereby the Ld. CIT(A) had partly allowed the appeal of the Assessee against the Assessment Order, dated 10/02/2021, passed under Section 143(3) read with Sections 143(3A) and

143(3B) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The Revenue has raised following grounds of appeal which are taken up herein after in seriatim:

- "1. On the facts and in the circumstances of the case and in law the Ld. CIT (A) is justified in holding that the assessee is eligible for deduction u/s 10AA of the LT Act, 1961.*
- 2. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) is justified in allowing the claim of deduction u/s 10AA of the LT Act, 1961 made by the assessee in respect of the profit arising out of the trading activity.*
- 3. On the facts and in circumstance of the case and in law, the Ld. CIT(A) is justified in allowing foreign tax credit u/s. 90 of the Act, ignoring the fact that the assessee has failed to produce separate books of accounts as maintained for its branch office in Singapore and head office in India and also that the tax payment containing the period for which the taxes paid by the assessee.*
- 4. The appellant craves leave to add, amend, alter and/or vary any of the grounds of appeal before or at the time of hearing."*

Ground No. 1 & 2

3. The relevant facts in brief are that the Assessee is a private limited company engaged, inter alia, in the business of trading of the computer hardware, related maintenance services, renting of goods etc. The Assessee filed the return of income for the Assessment Year 2017-2018 on 28/10/2017 declaring the total taxable income of INR 4,87,82,620/- after claiming exemption of INR 2,32,19,514/- under Section 10AA of the Act. The case of the Assessee was selected for the scrutiny. During the assessment proceedings, the Assessing Officer noted that Assessee had a trading and service unit in sector specified Special Economic Zone (SEZ) and Free Trade and

Warehousing Zone (FTWZ) at Sai Village Taluka Panvel, District Raigad [hereinafter referred to as '**the Unit**']. The Assessee was allowed to carry out trading and service activity in authorized operation at the Unit as per the letter issued by office of Development Commissioner, SEEPZ Special Economic Zone, Mumbai. It was noted by the Assessing Officer that the Assessee had carried out re-export of imported goods through the Unit and had claimed deduction under Section 10AA of the Act in respect of the profits derived from such export. The Assessing Officer was of the view that the benefit of Section 10AA of the Act was not available in respect of trading activity since as per Section 10AA of the Act the same was available to units manufacturing or producing specified articles/ things; or providing 'any services'. The fact that the expression 'any services' was not defined in the Act would not lead to a conclusion that the definition of 'service' was all encompassing including in its ambit even trading activity. The provisions contained in Section 2(z)(1) of the Special Economic Zone Act, 2005 [in short '**SEZ Act**'] read with Rule 76 of the Special Economic Zone Rules, 2006 [in short '**SEZ Rules**'] dealing with the definition of term 'service' could not override the provisions of the Act. Therefore, the Assessing Officer denied deduction of INR 2,32,19,514/- claimed by the Assessee under Section 10AA of the Act in respect of profits derived by the Unit from re-export of goods imported vide assessment order, dated 10/02/2021.

4. Being aggrieved, the Assessee preferred appeal before the CIT(A). Before the CIT(A) it was contended on behalf of the Assessee that Section 10AA of the Act was inserted by way of SEZ Act with effect from 10/02/2006. On co-joint reading of Section 2(z) of the SEZ Act read with Rule 76 (along with explanation) of the SEZ Rules, it was clear that the term 'services' was defined to include trading import of

goods for the purpose of re-export. It was also contended that in view of Section 27 and 51 of the SEZ Act the provisions contained in the SEZ Act would prevail over the provisions of the Act in case of a conflict. Therefore, the broader definition of services which includes trading being import of goods for the purpose of re-export shall constitute service and profits derived from the same would be eligible for deduction under Section 10AA of the Act. Reliance in this regard was also placed on Instruction No. 4/2006, dated 24/05/2006 (F.No.5./1/2006-EPZ) issued by Ministry of Commerce and Industry, Department of Commerce (EPZ Section) and various decisions of the Tribunal. The aforesaid submissions found favour with the CIT(A) as vide order, dated 06/06/2023, the CIT(A) was pleased to accept Assessee's claim for deduction of INR 2,32,19,514/- Section 10AA of the Act in respect of profits derived by the Unit from re-export of goods imported.

5. Being aggrieved, the Revenue has preferred the present appeal before the Tribunal.
6. We have heard the rival submissions and perused the material on record. It emerges that identical issue stands decided in favour of the Assessee and against the Revenue in the case of the Assessee vide order, dated 15/06/2023, passed in ITA Nos. 943 & 944/Mum/2023 pertaining to Assessment Years 2015-16 and 2017-18. The relevant extract of the aforesaid decision of the Tribunal read as under:

*"6. We have heard the submissions made by rival sides and have examined the orders of authorities below. We have also considered the documents on which the Id. Authorized Representative of the assessee has placed reliance support of his submissions in so far as the activities carried out by the assessee at SEZ they are not in dispute The Assessing Officer has disallowed the assessee's claim of deduction u/s 10AA of the Act on the ground that the activities of*

*import of goods for re-export carried out by the assessee does not fall within the meaning of "services", the expression used in section 10AA of the Act for being eligible to claim deduction.*

*7. The expression "services" is not defined under the provisions of the Act. Section 10AA was inserted by the SEZ Act, 2005 w.e.f. 10/02/2006. Therefore, it would be appropriate to refer to the definition of services given in SEZ Act. The expression 'service' has been defined u/s. 2(z) of SEZ Act. The same is reproduced herein below:*

*Section 2(z)*

*(z) "Services" means such tradable services which-*

*(i) are covered under the General Agreement on Trade in Services annexed as IB to the Agreement establishing the World Trade Organization concluded at Marrakesh of the 5th day of April, 1994*

*(ii) may be prescribed by the Central Government for the purposes of this Act, and*

*(iii) earn foreign exchange,*

*Further Rule -76 of SEZ Rules 2006 has listed out the activities that fall within the meaning of services for the purpose of sub-clause "(2)" of section 2 of SEZ Act. Rule 76 of SEZ Rules 2006 reads as under:*

*"76. The "services" for the purposes of sub-clause (2) of section 2 shall be the following, namely: Trading, warehousing, research and development services, computer software services, including information enabled services such as back office operations, call centers, content development or animation, data processing engineering and design, graphic information system services, human resources services, insurance claim processing, legal data bases, medical transcription, payroll remote maintenance, revenue accounting, support centers and web-site services, off shore banking services, professional services (excluding legal services and accounting) rental/leasing services without operators, other business services courier services, audio-visual services, construction and related services, distribution services (excluding retail services), educational services, environmental services financial services, hospital services,*

*other human health services, tourism and travel related services, recreational, cultural and sporting services, entertainment services transport services, services auxiliary to all modes of transport, pipelines transport"*

*Thus, from the conjoint reading of the definition of 'service' and Rule 76 it is unambiguously clear that activity of **trading** falls within the meaning of services as defined under section 2(z) of SEZ Act. The letter dated 20/06/2011 from the office Development Commissioner, SEEPZ SEZ has further clarified that "In terms of explanation to Rule-76 of the SEZ Rules, 2006, the expression trading for the purpose of the Second schedule of the SEZ Act, 2005 shall mean import for the purpose of re-export".*

*8. The above clarification given by the Ministry of Commerce & Industries leaves no element of doubt that the activity of import of goods for the purpose of export falls within the meaning of services. Hence, the activities carried out by the assessee falls within the ambit of "services", the expression used in section 10AA of the Act and the profits and gains derived from such services rendered from SEZ would be eligible for deduction u/s. 10AA of the Act.*

*9. The Tribunal in the case of DCIT vs. Goenka Dimond & Jewellers Ltd. (supra) in a similar issue, wherein the assessee's claim u/s. 10AA of the Act was rejected by the Assessing Officer for the reason that the assessee was merely purchasing and thereafter selling the goods without the process of manufacturing. The contention of the assessee therein was that the assessee was in the business of trading and the expression "trading" would mean rendering of services. The Tribunal after considering the provisions of section 10AA of the Act and provisions of SEZ Act and various decisions concluded as under:*

*"2.20..... Thus the word services as mentioned in Section 10AA cannot be construed in-consistently with the definition of services given in the SEZ Act. Under the SEZ act, the trading is included in the services provided the trading is export of imported goods. We therefore, feel that the assessee is entitled to deduction u/s JBAA of the Act and therefore, the Ld CIT(A) was justified in allowing the exemption"*

*Similar view has been expressed by the Tribunal in the case of Geetanjali Exports Corporation Limited. (supra) and various other decisions considered by CIT(A).*

*10. Ergo, in facts of the case and the provisions of SEZ Act discussed above we find no infirmity in the impugned order. The same is upheld and the appeal of Revenue is dismissed being devoid of any merit."*

7. On perusal of above, we find that in identical facts and circumstances prevailing in Assessment Years 2015-16 and 2017-18, the Tribunal has accepted the reasoning given by the Assessee and allowed deduction of INR 2,32,19,514/- as claimed by the Assessee under Section 10AA of the Act in respect of profits derived by the Unit from re-export of goods imported. There is nothing on record to persuade us to take a view different from the one taken by the Tribunal in the aforesaid decision. Accordingly, respectfully following the order, dated 15/06/2023, passed by the Tribunal in ITA Nos. 943 & 944/Mum/2023 pertaining to Assessment Years 2015-16 and 2017-18, we decline to interfere with the order passed by the CIT(A). Accordingly, Ground No. 1 and 2 raised by the Revenue are dismissed.

Ground No. 3

8. In Ground No. 3 raised by the Revenue pertains to claim of foreign tax credit.
9. The facts relevant to adjudication of the ground under consideration are that the Assessee had a Branch Office at Singapore which was independently assessed and taxed in Singapore as per applicable laws. During the relevant previous year, the Assessee had earned profits of INR 2,55,39,452/- in the Branch Office on which Assessee had paid tax of INR 26,21,694/- in Singapore. In the return of income filed in India, all the revenues including revenues of the Singapore branch offices were offered to tax on consolidated basis in India. Since the profits of the Singapore Branch Office were offered

to tax in Singapore as well as in India, the Assessee had claimed in India the credit for taxes of INR 26,21,694/- paid in Singapore. However, the Assessing Officer denied the aforesaid claim of foreign tax credit.

10. Being aggrieved, the Assessee carried the issue in appeal before CIT(A). Vide order, dated 06/06/2023, the CIT(A) granted partial relief to the Assessee and issued certain directions to the Assessing Officer.
11. Now the Revenue is in appeal before us against the above partial relief granted by the CIT(A).
12. Having considered the rival submission and on perusal of record, we do not find any infirmity in the order passed by the CIT(A). The CIT(A) has, while granting partial relief to the Assessee, concluded as under:

*"16.6 Thus, it is found that the Singapore income which is already offered to tax in Singapore is included in the Total income returned in India, thus the taxes paid at Singapore needs to be given credit in the total tax payable in India. The assessee company is stated to have paid \$ 54,321/- which @ 48 per \$ (during that period) on an average computes to Rs. 26,07,408/-; against this figure the assessee company has claimed tax credit of Rs. 26,21,694/- which more or less matches the average working done above. Hence, the AO is directed to verify the factual accuracy of the tax paid and give credit for the same. With these remarks, the grounds of assessee in this regard are hereby partly allowed."*
13. On perusal of above, we find that the CIT(A) has noted that the Assessee has offered to tax in Singapore the profits of Singapore Branch Office and, at the same time, the Assessee has offered to tax in India its total income (including profits of Singapore Branch Office). The CIT(A) has, therefore, directed the Assessing Officer to verify the factual accuracy of taxes paid in Singapore and in India in



respect of Singapore Branch Office and grant credit for the same to the Assessee after due verification. There is nothing on record to controvert the findings returned by the CIT(A). In any case, the Assessing Officer has been directed to verify the factual accuracy of tax paid by the Assessee and thereafter, give credit for the same. Thus, there is no infirmity in the order passed by the CIT(A) giving directions as aforesaid. Accordingly, we do not find any reason to interfere with the order passed by the CIT(A). Ground No. 3 raised by the Revenue is, therefore, dismissed.

14. In result, the present appeal preferred by the Revenue is dismissed.

Order pronounced on 03.04.2024.

**Sd/-**  
**(S Rifaur Rahman)**  
**Accountant Member**

**Sd/-**  
**(Rahul Chaudhary)**  
**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 03.04.2023  
Alindra, PS

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

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

आदेशानुसार/ BY ORDER,

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आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai