

आयकर अपील यअधिकरण “जी” न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “G”, MUMBAI**

**श्री आर. सी. शर्मा, लेखा सदस्य एवं श्री विवेक वर्मा, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI R.C. SHARMA, ACCOUNTANT MEMBER
AND SHRI VIVEK VARMA, JUDICIAL MEMBER**

ITA No. : 6416/Mum/2010

(Assessment year: 2002-03)

M/s GTL Limited, Global Vision, ES-II, MIDC TTC Industrial Area, Mahape Village, Navi Mumbai -400 710 स्थयी लेखा सं.:PAN: AAACG 3742 L	Vs	Asst. Commissioner of Income Tax (OSD)-2(1), Aayakar Bhavan, Mumbai
अपीलार्थी (Appellant)		प्रत्यर्थी (Respondent)

ITA No. : 6971/Mum/2010

(Assessment year: 2002-03)

Asst. Commissioner of Income Tax Central Circle -9, Room No. 806, 8 th Floor, Old CGO Annexe Bldg., Mumbai -400 020	Vs	M/s -GTL Limited, Global Vision, ES-II, Navi Mumbai -400 710 स्थयी लेखा सं.:PAN: AAACG 3742 L
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ITA No. : 1246/Mum/2012

(Assessment year: 2003-04)

Asst. Commissioner of Income Tax Central Circle -9, Room No. 806, 8 th Floor, Old CGO Annexe Bldg., Mumbai -400 020	Vs	M/s -GTL Limited, Global Vision, ES-II, Navi Mumbai -400 710 स्थयी लेखा सं.:PAN: AAACG 3742 L
अपीलार्थी (Appellant)		प्रत्यर्थी (Respondent)
Appellant-assessee by	:	Dr. K. Shivaram & Ms Neelam C Jadhav
Respondent-revenue by	:	Shri R N D'Souza

सुनवाई की तारीख /Date of Hearing : 18-11-2014

घोषणा की तारीख /Date of Pronouncement : 02-01-2015

**आ दे श
O R D E R**

श्री विवेक वर्मा, न्या स:

PER VIVEK VARMA, JM:

The following appeals have been filed and submitted for our consideration:

Asst. Year	Appeal by	CIT(A)	Dt. Of CIT(A) Order
2002-03	Assessee	4, Mumbai	06.07.2011
2002-03	Department	4, Mumbai	06.07.2011
2003-04	Department	4, Mumbai	16.12.2011

2. Assessment year 2002-03 is subjected to Cross Appeals by the assessee and the department, and since GOA for assessment year 2003-04 have identical issues as in assessment year 2002-03, all the three appeals are taken up for disposal through this common and consolidated order for the sake of convenience and brevity.

ITA No. 6416/Mum/2010 : Assessee Appeal :

3. The following grounds have been taken:

“On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming the learned Assessing Officer’s stand in reopening the assessment u/s 147 of the Income Tax Act. The appellant prays that the reopening of assessment u/s 147 of the Income Tax Act may be declared bad in law and reassessment order may please be cancelled.

The appellant craves leave to add, amend, alter or omit any grounds of appeal before or during the hearing of the appeal”.

ITA No. 6971/Mum/2010 : Department Appeal :

4. The following grounds have been taken:

“On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in allowing relief to the assessee to the extent impugned in the grounds enumerated below:

1. *The order of the CIT(A) is opposed to law and facts of the case.*
2. *On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in holding that no expense out of the ‘corporate expense’ was incurred in relation to STP units claiming deduction u/s 10B of the I.T. Act.*
3. *On the facts and in the circumstance of the case and in law, the Ld CIT(A) erred in not appreciating the fact that the ‘corporate expenses’ consisting of connectivity Personal Cost, administrative, selling and marketing expense, depreciation etc, were incurred in relation to corporate office of the assessee company managing and administering overall business of the assessee company managing and administering overall business of the assessee company including business of STP units requiring the allocation of such expenses between STP and non STP units.*
4. *For these and other grounds that may be urged at the time of hearing, the decision of the CIT(A) may be set aside and that of the AO restored”*

5. In the department appeal the sole issue pertains to computation of exemption u/s 10B based on apportionment of expenses between eligible and non eligible units.

6. The AO in the assessment order had reduced the qualifying amount from Rs. 85,52,55,883/- to Rs. 80,34,34,780/-, allocating Rs. 5,18,21,103/- for Export Oriented Unit (EOU).

7. Before the CIT(A) the assessee made detailed submission by giving the location wise units of the assessee and pointed out that it had distinguished its eligible EOU and non eligible EOU, which are as follows:

Location of EOU Units

Mahape

Electronic Sadan No. II (3 floor) & Electronic Sadan No. IV, MIDC TTC Industrial Area, Mahape, Navi Mumbai 400 710

The Non-EOU Units are located all over India, with several branches as under:

Location wise details of Non-EOU Units

1. Kolkatta
2. Jamshedpur
3. Bhubneshwar
4. Delhi
5. Jaipur
6. Lucknow
7. Gurgaon
8. Chandigarh
9. Himachal
10. Punjab
11. Chattisgarh
12. Bangalore
13. Hyderabad
14. Pondicherry
15. Cochin
16. Ahemedahad
17. Bhopal
18. Goa
19. Indore
20. Nagpur
21. Pune, Prabhat Road
22. Ballard Estate, Masjid, Mumbai
23. Mahape ES II (other than STP)

It is to be noted that the assessee is claiming IOB deduction only in respect of Mahape Unit as all other units are Non-EOU Units. The authorized representative further submitted that the

nomenclature Corporate expenses is only for the sake of convenience to bring the expenses incurred by the company on various occasions under one head. As mentioned above, the company is having branch offices across India. The expenses of Rs. 20,76,32,766/-, inclusive of depreciation, were booked under various heads in various locations all over India. These common expenses were reflected as corporate office expenses in the Profit and Loss Account presented to the Ld AO. There was absolutely no need to allocate these corporate office expenses over EOU units, since the expenses were incurred at various locations across India which do not have any connection with EOU units of the company which are located at Mahape (ES II & IV), Navi Mumbai office only. Location-wise details of the said corporate expenses of Rs. 20,76,32,766/- are as under:

Location	Connectivity	Personnel Costs	Selling Marketing Exp	Admin & Other Exps	Depreciatio	Total (Rs)
Kolkatta	578,000	309,116	98,402	484,246	1,015,952	2,485,716
Jamshedpur	1,013	32,000	1,520	7,480	15,693	57,706
Delhi	1,257,000	1,164,669	370,753	1,824,512	3,827,842	8,444,776
Jaipur	-	19,526	6,216	30,589	64,175	120,506
Lucknow	-	15,872	5,053	24,864	52,165	97,953
Bangalore	8,585	40,469	12,882	63,396	133,005	258,338
Chennai	68,213	321,545	102,358	503,716	1,056,800	2,052,631
Hyderabad	36,206	170,670	54,330	267,363	560,929	1,089,498
Pondechery	2,802	13,208	4,205	20,691	43,410	84,315
Ahmedabad	40,693	191,824	61,064	300,501	630,454	1,224,536
Baroda	2,941	35,700	4,412	21,714	45,557	110,324
Nagpur	2,904	13,689	4,358	21,444	44,989	87,383
Pune-other than STP	223,552	1,803,795	367,422	1,650,822	3,463,439	7,509,030
Mahape ESII	2,897,000	11,828,766	3,497,282	19,739,471	41,413,575	79,376,094
Taloja	629,239	2,966,148	944,223	4,646,618	9,748,643	18,934,871
Taloja Infra	13,506	63,665	20,267	99,734	209,243	406,415
Ballard Estate Mumbai (Masjid, Wadala)	2,974,360	15,076,202	5,281,197	23,617,616	49,549,956	96,499,331
Total	6,900,000	32,525,680	10,354,000	50,953,086	106,900,000	207,632,766

From the aforesaid break-up of expenses, it is abundantly clear that expenses of Rs. 20,76,32,766/-, which are incurred at various branches of the company all over India, have no connection with the EOU Units located at Mahape, Navi Mumbai. Therefore, it was wrong on the part of the AO to re-locate a part of these expenses to the EOU Units of the company on the basis of percentage of the turnover of the company vis-à-vis the turnover of STP Units.

It is further submitted that the expenses of Rs. 20,76,32,766/- also include depreciation amounting to Rs. 10,69,00,000/-. The depreciation costs was for the assets lying in common divisions at various above mentioned locations. The said depreciation can be apportioned over non EOU units and not on the EOU units as these assets did not form part of the fixed assets of the EOU Units. The action of the AO in apportioning even the depreciation cost over the EOU Units is therefore absolutely unwarranted.

In the light of the above, it is apparent that apportioning the

corporate office expenses on 100% EOU units was not at all required, since the appellant was running all the units separately with separate personnel costs and with separate books of account. The deduction u/s. IOB claimed by the company was based on the certificate issued by the auditors of the company...”

8. The CIT(A), after considering the submissions of the assessee, observed,

“I have considered the submissions of the appellant carefully. I have also gone through the contentions of the A.O. The EOU units of the appellant are located at Mahape, Navi Mumbai. Non EOU units are located all over the country. Obviously, the expenses of Rs.20,76,32,766/- which have been incurred at various branches of the company all over India have no connection with EOU units which are located at Mahape, Navi Mumbai. The A.O. has drawn incorrect conclusion and wrongly allocated part of the expenses to the EOU units on the basis of the percentage turnover. The similar issue also came up for adjudication before me in the appellant's own case for A.Y. 2005-06 where the expenses were re-allocated between Non-EOU and EOU units. After due verification of facts, the re-allocation of expenses were deleted by my appellate order No.CIT(A)-4/Addl. CIT Range 2(1)/I.T.-400/08-09 dated 23.04.2010. Following my order for AY 2005-06, the disallowance made by the AO is therefore held as unjustified and hence deleted. The appellant is therefore eligible for full claim u/s.10B of I. T. Act amounting to Rs. 85,52,55,884/-. The AO is directed to allow deduction of Rs. 85,52,55,884/-”.

9. The CIT(A), thus allowed full allowance of deduction, u/s 10B of the Income Tax Act, 1961, for the unit claimed by the assessee.

10. Against this order, the department is in appeal before the ITAT.

11. Before us the AR submitted that the order on merits is correct on facts and therefore order of the CIT(A) should be sustained on merits, whereas, the DR relied on the orders of the AO.

12. After hearing the arguments of the contesting parties, and also placing reliance on the order of the ITAT in assessee own case in ITA No. 5245/Mum/2010 for assessment year 2005-06,

we do not find any reason to deviate or disturb the decisions based on facts, duly examined by the revenue authorities. We, therefore, reject the GOA as filed by the department and as a consequence, we dismiss the appeal as filed by the department.

13. On the other hand, the assessee has taken a solitary ground on legality of the reassessment proceedings that have reached the ITAT.

14. The assessee has challenged the reassessment proceedings, initiated after the six year of close of the assessment year.

The facts are:

<i>Return filed</i>	<i>31.10.2002</i>
<i>143(1)</i>	<i>03.03.2003</i>
<i>148 Notice</i>	<i>03.11.2005</i>
<i>Return in response to 148</i>	<i>14.10.2005</i>
<i>Assessment u/s 143(3)/ 148</i>	<i>29.12.2006</i>
<i>CIT(A) order on the impugned issue</i>	<i>13.12.2007</i>
<i>Order giving effect to CIT(A) order</i>	<i>25.02.2008</i>
<i>Notice u/s 148</i>	<i>31.03.2009</i>
<i>Return in response to 148</i>	<i>24.04.2009</i>
<i>Asst. u/s 143(3)/148</i>	<i>22.12.2009</i>

15. The assessee has raised twin objections, i.e. notice issued after six years of the assessment year under consideration and initiation of reopening of reassessment proceedings on change of opinion.

16. The DR argued that the Act has not inserted any embargo on issue of Notice u/s 148 and argued that the department is at liberty to initiate proceedings from as many times.

17. On the other hand, the AR submitted that the initiation of proceedings u/s 148 could be done for as many times, but the Act has certainly laid certain guidelines on which the department can initiate reassessment proceedings, first amongst which is *Time limit for notice, i.e. section 149(1)*

- “(a) if four years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b) or clause (c);
(b) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year;

18. The AR pointed out that the Act is very clear to say and use the expression, *relevant assessment year ... for that year*.

19. Thus according to the AR, the AO erred in initiating the current reassessment proceedings on 31.03.2009, which is beyond six years from the end of the relevant assessment year, which is assessment year 2002-03.

20. Besides this, the AR also submitted that AO resorted to reopening twice on the same issue, i.e. computation of exemption u/s 10B, which clearly falls within the purview of change of opinion and in any case any initiation that has to be legal must have the foundation of tangible material, if the reopening is after the four years period.

21. The AR, placed reliance on

<i>Dynacraft Air Conlist u/s Sneha Joshi</i>	<i>355 ITR 102 (Bom)</i>
<i>OHM Stock Brokers (P) Ltd vs CIT</i>	<i>351 ITR 443 (Bom)</i>
<i>Allanasons Ltd. vs DCIT</i>	<i>107 DTR 62 (Bom)</i>
<i>Titanor Components Ltd vs ACIT</i>	<i>60 DTR 273 (Bom)</i>

22. The AR, therefore, submitted that the current initiation of reassessment proceedings is bad in law.

23. We have heard the rival arguments and have considered the date chart and the various decisions of the Hon'ble Bombay High Court and the facts, which singularly point towards one issue, i.e. computation of eligibility of exemption u/s 10B. We certainly cannot accept the argument of the CIT(A) that initial initiation of reassessment proceedings was to examine the

acceptability of claim of exemption u/s 10B and the current one is to restrict the exemption. This is because, the AO had the occasion to examine the details filed by the assessee, which were considered not only by the AO but also by the CIT(A), who in the initial proceedings directed the AO to allow the deduction as per law.

22. In the current proceedings also, the revenue authorities examined those vary details to come to a different conclusion. This, in our view, the case would clearly fall within the ratio laid down Hon'ble Delhi High Court in the case of CIT vs Kelvinator of India, reported in 256 ITR 1 (Del-FB), approved by the Hon'ble Supreme Court in as reported in 320 ITR 561 (SC).

23. The Hon'ble Supreme Court has emphasized that it is essential to have, *reason to believe* to reopen the proceedings, this fact, we do not find anywhere in the order or notice. This has since been followed by the Hon'ble Bombay High Court in the case of Sitara Diamond (P) Ltd vs DCIT reported in 262 CTR 299 (Bom).

24. Another major discrepancy noticed during the course of arguments is that there is no mention of authorization of a higher authority to initiate the current reassessment proceedings. Hon'ble Bombay High Court in the case of DSJ Communications vs DCIT, reported in 222 Taxman 129 (Bom), held that approval of CIT is mandatory. Since there is no mention of the approval sought from the CIT on the reasons, as recorded by the AO to initiate reassessment proceedings, the entire initiation has been vitiated and become bad in law.

25. Considering the facts along with the decisions of the Hon'ble Bombay High Court and the Hon'ble Supreme Court in the case of Kelvinator of India Ltd (*supra*), we are of the opinion

that the initiation of reassessment proceedings was bad in law, which we strike it down as *null* and *void* and therefore all consequential proceedings are annulled.

26. In the result, Appeal as filed by the assessee is allowed.

As a result,

ITA No. 6971/Mum/2010: by the department is dismissed

ITA No. 6416/Mum/2010 by the assessee is allowed

ITA No. 1246/Mum/2012 : Department appeal :

28. In the instant appeal, grounds are identical to the ground as disposed off by us in ITA No. 6971/Mum/2010, wherein, following earlier order of the ITAT in ITA No. 5245/Mum/2010 for assessment year 2005-06 we have rejected the GOA and dismissed the appeal filed by the department.

29. Following the same, we reject the GOA in the current year as well and dismiss the appeal as filed.

30. In the result,

ITA No. 6971/Mum/2010: by the department is dismissed

ITA No. 6416/Mum/2010 by the assessee is allowed

ITA No. 1246/Mum/2012 department appeal is dismissed.

Order pronounced in the open Court on 2nd January, 2015.

Sd/-
(आर. सी. शर्मा)
लेखा सदस्य
(R C SHARMA)
ACCOUNTANT MEMBER

Sd/-
(विवेक वर्मा)
न्याईक सदस्य
(VIVEK VARMA)
JUDICIAL MEMBER

Mumbai, Date: 2nd January, 2015

प्रति/Copy to:-

- 1) अपीलार्थी /The Appellant.
- 2) प्रत्यर्थी /The Respondent.
- 3) The CIT(A)-4, Mumbai.
- 4) The CIT- II, Mumbai.
- 5) विभागीय प्रतिनिधि "जी", आयकर अपीलीय अधिकरण, मुंबई/
The D.R. "G" Bench, Mumbai.
- 6) गार्ड फाईल
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आयकर अपीलीय अधिकरण, मुंबई
Dy./Asstt. Registrar
I.T.A.T., Mumbai

*चव्हाण व.नि.स

*Chavan, Sr.PS