आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL , 'A' BENCH, CHENNAI
श्री ए. मोहन अलंकामणी, लेखा सदस्य एवं श्री चल्ला नागेन्द्र प्रसाद, न्यायिक सदस्य के समक्ष
BEFORE SHRI A.MOHAN ALANKAMONY ACCOUNTANT MEMBER
AND SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आयकर अपील सं./I.T.A.Nos.**2200 & 2201/Mds/2013**
(निर्धारण वर्ष / Assessment Years: 2007-08 & 2008-09)

Avalon Technologies P.Ltd., TPI Block, B-7, First Main Road, MEPZ-SEZ Tambaram, Chennai-600 045.	Vs	Assistant Commissioner of Income Tax, Company Circle-I(1), Chennai.
PAN: AACCA4147K		
(अपीलार्थी /Appellant)		(प्रत्यर्थी/Respondent)

&

आयकर अपील सं./I.T.A.Nos. **& 2267 to 2270/Mds/2013**
(निर्धारण वर्ष / Assessment Years: 2005-06 & 2008-09)

Deputy Commissioner of Income Tax, Company Circle-I(1), Chennai-34	Vs	Avalon Technologies P. Ltd., TPI Block, B-7, First Main Road, MEPZ-SEZ Tambaram, Chennai-600 045.
		PAN: AACCA4147K
(अपीलार्थी /Appellant)		(प्रत्यर्थी/Respondent)

Assessee by	:	Mr. D.Anand, Advocate
Revenue by	:	Mr. Guru Bhashyam, JCIT

सुनवाई की तारीख/ Date of hearing	:	25th September, 2014
घोषणा की तारीख /Date of Pronouncement	:	31st October, 2014

आदेश / O R D E R

Per Bench:

All these appeals are filed by the assesse and the Revenue against the common order of the Commissioner of Income Tax (Appeals)-II, Chennai dated 30.9.2013 for the assessment years 2005-06 to 2008-09 . Since all these appeals are arising out of common order of the

Commissioner of Income Tax (Appeals), they are heard together and disposed off by this common order for the sake of convenience.

ITA Nos.2267 to 2270/Mds/2013: (Revenue Appeals):

2. These appeals are filed by the Revenue for the assessment years 2005-06 to 2008-09. The only issue in all these appeals of the Revenue is that Commissioner of Income Tax (Appeals) erred in directing the Assessing Officer to recomputed deduction under section 10A by excluding freight expenses from export turnover and total turnover for computation of deduction under section 10A of the Act. The Assessing Officer while completing assessments excluded freight charges from export turnover. The Assessing Officer held that freight charges incurred in foreign currency attributable to delivery of computer software outside India has to be excluded from export turnover. The assessee contended the said freight charges should also be excluded from total turnover. On appeal, the Commissioner of Income Tax (Appeals) following the decision of Special Bench of this Tribunal in the case of CIT Vs. Sak Soft Ltd. [313 ITR

353(AT)] and the decision of Hon'ble Bombay High Court in the case of CIT Vs.Gem Plus Jewellery India Ltd. (330 ITR 175) held that freight charges should also be excluded from total turnover for computation of deduction under section 10A of the Act. Against the decision of the Commissioner of Income Tax (Appeals), the Revenue is in appeal before us.

3. Departmental Representative places reliance on the order of the Assessing Officer in excluding freight charges only from export turnover and not from total turnover.

4. Counsel for the assessee supports the order of the Commissioner of Income Tax (Appeals) and places reliance on the decision of the Special Bench of this Tribunal in the case of Sak Soft Ltd.(supra) and the decision of Hon'ble Bombay High Court in the case of CIT Vs. Gem Plus Jewellery India Ltd. (supra).

5. Heard both sides. Perused orders of lower authorities and the decisions relied on. The issue in all these Revenue

appeals is squarely covered by the decision of Special Bench of this Tribunal in the case of Sak Soft Ltd. (supra), wherein the Tribunal held that freight and telecommunication charges which are required to be excluded from export turnover as defined under Explanation 2(iii) of section 10B of the Act should also be excluded from total turnover for the purpose of computing relief allowable under section 10Bof the Act. Respectfully following the same, we uphold the order of the Commissioner of Income Tax (Appeals) in all these four years on this issue and reject the grounds of appeal raised by the Revenue.

ITA No.2220/Mds/2013 (A.Y.2007-08):

6. The only issue in the appeal of the assessee is that Commissioner of Income Tax (Appeals) erred in sustaining the order of the Assessing Officer in treating subsidy received by the assessee as income. The Assessing Officer in the course of assessment proceedings noticed that assessee received subsidy to the tune of ₹ 22,35,000/- and this amount was not credited to profit and loss account but was directly credited to reserve account and shown as liability.

When the Assessing Officer called for explanation, the assessee appears to have agreed to add back the said subsidy to the income. The Assessing Officer computed the income of the assessee by adding subsidy to the income returned. However, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals) against this addition. The Commissioner of Income Tax (Appeals) sustained the addition holding that assessee himself has agreed for addition in the course of assessment proceedings and therefore assessee cannot be allowed to agitate the same in the appeal proceedings.

7. Counsel for the assessee submits that these subsidies are in the nature of general subsidy for electronics and women workmen and they were not given against any specific assets and therefore they were not offered for tax.

8. Departmental Representative submits that since the assessee himself has agreed for the addition in the course of assessment proceedings, he cannot agitate the issue in

appeal. Departmental Representative places reliance on the following decisions in support of his contentions:-

1. Mahesh P.Shah Vs. ACIT 103 Taxmann 91 (Ker) (238 ITR 130)
2. Rameshchandra & Co. Vs. CIT (168 ITR 375 [Bom])
3. Ramanlal Kamdar Vs. CIT (108 ITR 73[Mad])
4. Sterling Machines Tools Vs. CIT (123 ITR 181 [All])

9. Coming to the merits of the case, Departmental Representative supporting the order of the lower authorities submits that general subsidy received by the assessee is not capital in nature. Since these subsidies are not received for any setting up of industry and therefore subsidy received by the assessee for electronics and workmen are in the nature of revenue. He further submits that in view of the decision of the Hon'ble Supreme Court in the case of Sahney Steel & Press Works Ltd. (228 ITR 253) , subsidy received by the assessee is not capital in nature, therefore the said subsidy was rightly brought to tax as revenue.

10. Heard both sides. Perused orders of lower authorities and the decisions relied on. The assessee in the course of

assessment proceedings appears to have agreed for the addition in respect of subsidy received by it. However, in the course of appeal proceedings, assessee agitated that subsidy cannot be brought to tax. The assessee never denied that he has not agreed for the addition. Even on merits, the assessee could not establish as to why the subsidy received by it is to be treated as capital receipt and not exigible to tax. The assessee has simply stated that the subsidy is received towards electronics and women workmen subsidy and it is a general subsidy. The assessee himself states that it is not received in respect of any particular asset. In such circumstances, in our view, subsidy received by the assessee cannot be treated as capital receipt. Thus, we sustain the order of the Commissioner of Income Tax (Appeals) on the issue of bringing to tax the subsidy received by the assessee and reject the grounds of appeal raised by the assessee.

ITA No.2201/Mds/2013: (A.Y. 2008-09):

11. The first issue in this appeal of the assessee is that Commissioner of Income Tax (Appeals) is not justified in

denying deduction under section 10A of the Act on the sale proceeds in foreign exchange not brought into India within six months from the end of the financial year.

12. Counsel for the assessee submits that sale proceeds in foreign exchange were brought to India beyond six months should also be considered as export turnover under section 10A of the Act as there is no time limit within which export proceeds have to be brought to India for undertakings situated in SEZ under the Foreign Exchange Management Act, 1999. Counsel places reliance on the grounds of appeal.

13. Departmental Representative vehemently supports the order of lower authorities in rejecting the deduction under section 10A of the Act on sale proceeds in foreign exchange not brought into India within six months from the end of the financial year. In support of his contentions, the Departmental Representative places reliance on the decision of this Tribunal in the case of ACIT Vs. Aftek Infosys Ltd.

[(2011) TIOL 399-ITAT-Mum], a copy of which is placed on record.

14. Heard both sides. Perused orders of lower authorities and the decisions relied on. Admittedly assessee received sale proceeds to the extent of ₹ 48.28 lakhs after a period of six months from the end of the financial year in which the exports took place. Sub-clause (3) of section 10A of the Act stipulates that sale proceeds of article or thing or computer software exported out of India should be brought in convertible foreign exchange within a period of six months from the end of the previous year or within such further period as the competent authority may allow. In this case, the competent authority is Reserve Bank of India. The assessee has not produced any evidence to show that the competent authority has granted extension for receiving sale proceeds beyond six months from the end of the previous year. In such circumstances, the claim of the assessee under section 10A of the Act is rightly disallowed by the lower authorities. Therefore, we sustain the impugned order of the

Commissioner of Income Tax (Appeals) and reject the grounds of appeal raised by the assessee on this issue.

15. The next issue in the appeal of the assessee is that Commissioner of Income Tax (Appeals) is not justified in sustaining the action of the Assessing Officer in not considering interest on debtors and creditors no longer payable written back as income from business allowable for deduction under section 10A of the Act. The Assessing Officer while completing the assessment and computing the deduction allowable under section 10A of the Act did not consider interest on debtors and creditors no longer payable written back amounting to ₹ 84.87 lakhs and ₹1,23,048/- respectively as income from business. On appeal, the Commissioner of Income Tax (Appeals) sustained the computation made by the Assessing Officer in excluding interest received on delayed payments from debtors and creditors no longer payable written back holding that these receipts are not part of business income directly attributable to exports of goods outside India relying on the decision of

the Hon'ble Madras High Court in the case of India Comnet International Vs. ITO (185 Taxman 51).

16. Counsel for the assessee reiterating the submissions made before the lower authorities submits that the interest was collected from the debtors for delayed payment of sale proceeds and therefore such interest will partake the character of sale proceeds forming part of business income . He places reliance on the following decisions in support of his contentions:-

i) CIT Vs. Prakash Oils Ltd. (2011) 58 DTR (MP) 279

ii) CIT Vs. Madras Motors Ltd. (257 ITR 60 (Mad)

Placing reliance on the above decisions, counsel submits that interest on debtors is part of business income and therefore should be considered for the purpose of computing relief under section 10A of the Act.

17. Departmental Representative vehemently supports the orders of the lower authorities in not considering the interest on debtors and creditors no longer payable written back as income for computing relief under section 10A of the Act. He

also places reliance on the decision of Hon'ble Madhya Pradesh High Court in the case of CIT Vs. Alpine Solvex Ltd. (276 ITR 92) and Ahmedabad Special Bench decision in the case of Nirma Industries Ltd. Vs. ACIT (95 ITD 199) in support of his contentions.

18. Heard both sides. Perused orders of lower authorities and decisions relied on. On going through all these decisions, we find that the jurisdictional High Court in the case of CIT Vs. Madras Motors Ltd. (supra) held that interest earned by the assessee on belated payments by its customers was directly relatable to its business. While holding so, the Hon'ble High Court observed as under:-

> *"3.2 Let us now consider the interest earned by the assessee on the belated payments. There can be no doubt that this interest would however be directly relatable to the business of the assessee of forgings. If the purchasers of the forgings did not make the payments of the forgings and then agree to pay the interest on the delayed payments, the said interest would have its direct nexsus with the business of forgings. The true test would be whether such interest would be available to the assessee otherwise also. The answer to the question would be certainly in negative. The interest being directly relatable only to the amounts receivable by the ase during the course of its business on account of the sale of forgings this interest would have to be included as the profits and gains derived from the business of the*

> *assessee. We hold that this part of the interest would be entitled to be covered by section 80HH of the Act."*

19. The decision relied on by the Commissioner of Income Tax (Appeals) in the case of India Comnet International Vs. ITO (supra) is on the issue of whether interest received by the assessee on Foreign Currency Deposit Account is income of the Industrial Undertaking or not. In the case on hand, the issue is whether the interest received on delayed payment of sale proceeds is income from business or not. Thus, the decision relied on by the Commissioner of Income Tax (Appeals) has no relevance to the issue. Therefore, respectfully following the decision in the case of Madras Motors Ltd. (supra) which is directly on the issue, we direct the Assessing Officer to consider interest on debtors as business income for the purpose of computing relief under section 10A of the Act.

20. Coming to the amount of creditors no longer payable written back, it was the submission of the assessee that this amount has been written back as creditors no longer payable which relates to purchase/expenses payable of earlier years.

Since they were not required to pay back they were written back therefore forms part of business income. We are unable to agree with the contentions of the assessee that this amount is forming part of business income. Therefore, we sustain the order of the lower authorities in excluding the said amount while computing relief under section 10A of the Act.

21. In the result, all the four appeals of the Revenue in ITA Nos. 2267 to 2270/Mds/2013 are dismissed and the appeal of the assessee in ITA No.2200/Mds/2013 is dismissed and that of the assessee in ITA No.2201/Mds/2013 is partly allowed.

Order pronounced in the open court on Friday, the 31st day of October, 2014 at Chennai.

Sd/-	Sd/-
(ए. मोहन अलंकामणी)	(चल्ला नागेन्द्र प्रसाद)
(A.Mohan Alankamony)	(Challa Nagendra Prasad)
लेखा सदस्य / Accountant Member	न्यायिक सदस्य / Judicial Member

चेन्नई/Chennai,

दिनांक/Dated 31st October, 2014

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आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Assessee 2. Assessing Officer
3. आयकर आयुक्त (अपील)/CIT(A) 4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF.