

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'E' BENCH
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No.286/Mum/2021
(Assessment Year :2003-04)**

&

**ITA No.287/Mum/2021
(Assessment Year :2004-05)**

DCIT, Circle 8(2)(1), Room No. 624, 6 th Floor, Aayakar Bhawan, M.K.Road, Mumbai-400 020	Vs.	M/s. Siemens Technology and Services Pvt. Ltd. (Formerly known as Siemens Information Systems Ltd.) Plot No.2, Sector 2, Kharghar Node, Kharghar, Navi Mumbai-410210
PAN/GIR No.AAACS9788E		
(Appellant)	..	(Respondent)

Assessee by	Shri Pooja Bhattacharjee
Revenue by	Shri Manoj Kumar / Ms. Rajni Rani Roy
Date of Hearing	02/11/2022
Date of Pronouncement	02/11/2022

आदेश / O R D E R

PER BENCH:

These appeals in ITA No. 286/Mum/2021 & 287/Mum/2021 for A.Y.2003-04 & 2004-05 arises out of the order by the Id. Commissioner of Income Tax (Appeals)- 15 Mumbai in appeal No.CIT(A)15/10829/2019-20, CIT(A)15/10034/2019-20, dated 31/07/2020 & 17/02/2020 respectively (Id. CIT(A) in short) against the

order of assessment passed u/s.143(3) r.w.s 147 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 03/04/2012 by the Id. Asst. Commissioner of Income Tax, Circle 7(2), Mumbai (hereinafter referred to as Id. AO).

Identical issues are involved in both these appeals, hence, they are taken up together and disposed of by this common order for the sake of convenience.

2. The grounds raised by the Revenue for A.Y.2003-04 are as under:-

1. *Whether on the facts and circumstances of the case and in law the Ld. CIT(A) is justified in deleting the disallowance made by the AO towards deduction of Rs.64,57,27,477/- claimed by the assessee u/s 10A of the Act without properly appreciating the factual and legal matrix of the case.*
2. *The Ld.CIT(A)'s order is contrary in law and on facts and deserves to be set aside.*
3. *The appellant prays that the order of the CIT (Appeals) on the above grounds be set aside and that of the AO be restored. The appellant craves leave to amend or alter any ground or add a new ground that may be necessary at the time of hearing.*

2.1. The grounds raised by the Revenue for A.Y.2004-05 are as under:-

1. *Whether on the facts and circumstances of the case and in law the Ld. CIT(A) is justified in deleting the disallowance made by the AO towards deduction of Rs.23,93,12,934/- claimed by the assessee u/s 10A of the Act without properly appreciating the factual and legal matrix of the case.*
2. *The Ld.CIT(A)'s order is contrary in law and on facts and deserves to be set aside.*
3. *The appellant prays that the order of the CIT (Appeals) on the above grounds be set aside and that of the AO be restored. The appellant craves leave to amend or alter any ground or add a new ground that may be necessary at the time of hearing.*

3. We have heard rival submissions and perused the materials available on record. We find that the present appeals for A.Yrs.2003-04 and 2004-05 were reopened pursuant to the finding recorded by the Id. AO for A.Yrs. 2005-06 and 2006-07 wherein the claim of deduction u/s.10A of the Act was denied to the assessee in respect of certain units. We find that the appeals for A.Yrs.2005-06 and 2006-07 have already been disposed of by this Tribunal in ITA Nos.3032,3247 & 2947/Mum/2018 for A.Yrs. 2005-06 and 2006-07 vide order dated 12/10/2022 in favour of the assessee on the very same issue. Hence, we deem it fit to reproduce the entire order passed by this Tribunal for A.Yrs.2005-06 and 2006-07 in view of identical facts except with variance in figures.

2. *The fact in brief is that return of income declaring total income of Rs.81.4 crores was filed on 28.11.2006. The case was subject to scrutiny assessment and noticed u/s 143(2) of the Act was issued on 19.11.2007. During the course of assessment the A.O noticed that assessee has filed compilation of individual profit and loss account of various units claiming exemption/deduction u/s 10A in its submission. The A.O stated that assessee was informed that it had shown unreasonably higher profit in the units eligible for deduction u/s 10A as compared to the remaining units where no deduction was claimed or the period for claiming deduction was expired. The A.O further noticed that the sale and service income in the case of unit claiming deduction u/s 10A was 47% of total sales and service receipt of Rs.687,14,61,000/-. The A.O further stated that the ratio of net profit to total receipt was 24% for units claiming deduction u/s 10A while it was only 14% for the remaining units. The AO also observed that in respect of total depreciation amount of Rs.22,86,20,634/- only 20% was debited to the units claiming deduction u/s 10A and the remaining 72% of claim of depreciation was debited to the non 10A deduction claiming units. Therefore, assessee was show caused to explain why uniform profit rate should not be applied and why no prorata profit should be worked out for computing deduction u/s 10A since all the units were engaged in the same line of business. In response the assessee vide letter dated 22.11.2009 explained that all the transaction yield same profit and the allocations of expenditure and computation of profit has been shown on scientific basis. The assessee also explained along with unit wise receipt that gross receipt from unit claiming deduction u/s 10A*

was about 48% and the direct cost of sale and service pertaining to such unit was also 47% of total direct costs. It was also explained that the indirect expenses was lower in respect of 10A unit except rent donation and provision of doubtful debt which were more or less in the nature of direct expenses. Thereafter the A.O stated that the assessee submitted on 23.11.2009 that the claim of depreciation in respect of unit claiming deduction u/s 10A was wrong and it had surrendered its 10A claim to the extent of Rs.305,35,719/-. The A.O also stated that assessee submitted that depreciation pertaining to 10A unit was claimed less in return/tax audit report by Rs.305,35,719/-.

Thereafter the A.O mentioned that on 28.10.2009 the assessee filed consolidated working of deduction u/s 10A and claimed depreciation as per I.T. Act at Rs.942,50,815/-. Since it was more than the figure as per tax audit report of Rs.629,87,877/-, therefore assessee on 19.11.2009 was asked to provide unit wise working of 10A deduction. The unit wise claim of depreciation made by the assessee is as under:-

	As per submission dated 23.11.2009 page 642			As per Tax Audit Report According to submission dated 23.11.2009 page 642		
Depreciation	10A	Non 10A	Total	10A	Non 10A	Total
Regular	94250815	134369548	228620363	63715096	164905267	228620363
SVA	1206868	998642	2205510	1206868	998642	2205510
Total	95457683	135368190	230825873	94250815	134369548	228620363

	As per Tax Audit Report According to submission dated 23.11.2009 page 642			As per Tax Audit Report according to compilation from TAR certified by assessee in submission dated 28.10.2009 page 144 (Placed as Annexure E)		
	10A	Non 10A	Total	10A	Non 10A	Total
Depreciation	63715096	164905267	228620363	62987877	165632486	228620363
Regular	1206868	998642	2205510	1206868	998642	2205510
SVA	94250815	134369548	228620363	64194745	166631128	230825873
Total	63715096	164905267	228620363	62987877	165632486	228620363

After referring the aforesaid submission the A.O stated that the assessee had increased the depreciation as per I.T. Act in respect of 10A unit to Rs.942,50,815/- from Rs.637,15,096/- originally claimed. The A.O also pointed out that all the units were engaged in similar business and many non 10A units were earlier eligible for 10A deduction, therefore, there was no reason for such a large variation in profit. Therefore, the A.O stated that assessee is not eligible for claiming 10A deduction for following reasons:

- “1. Units are not independent units and constitute one integrated unit.
2. No independent accounts of units are maintained.
3. There is complete overlapping of work and use of resources amongst

units through leased lines.

4. The Tax Audit report and audit report u/s 10A is not correct or assessee is claiming expenses/depreciation of 10A units in non 10A units.

5. Several non 10A activities are being carried on from 10A units which is evident from service tax returns.

6. The assessee has declined to file a reconciliation of Service Tax /VAT returns with IT return. It claims in letter dated 04/09/09 that Revenue recognition is different and reconciliation cannot be made. Again it says in letter dated 12/11/09 that, any attempt to reconcile will lead to misleading results and says that it will take time of eight weeks i.e. beyond the limitation date. Interestingly more than 8 weeks had passed by that time since the submission letter dated 04/09/09. Since both these taxes are location wise, the reconciliation would have shown the overlapping of receipts/expenses.”

3. Aggrieved, the assessee filed the appeal before the Id. CIT(A). The Id. CIT(A) has allowed the appeal of the assessee. The relevant part of the decision of CIT(A) is as under:

“I have considered the submission made by the appellant, the reasons recorded by the AO, the remand reports submitted by the AO and rejoinders to the remand report filed by the appellant. So far as the issue of admission of the additional evidence filed by the appellant is concerned, the same is required to be admitted because adequate opportunity of being heard was not provided to the appellant by the AO. It is seen from the records that various details for finalisation of assessment proceedings were called from the appellant vide letter dated 23/11/2009 and the assessment order was passed by the AO on 30/11/2009. As explained by the appellant, the appellant had effectively two days for collection and submission of the details due to vacations in the intervening period. Moreover, the details were to be collected from various units located all over the India and thus, the submission of details was not humanly possible. Further, the additional evidence submitted by the appellant is also required to be looked into for deciding the issues in appeal, therefore, additional evidence filed by the appellant is being admitted for deciding this appeal.

As can be seen from the remand reports quoted above, despite adequate opportunity being provided, for reasons best known to him, the AO has refused to examine the additional evidence submitted by the appellant on merits. Therefore, the issues are being decided after considering the findings in the assessment order, the submission made by the appellant and the documentary evidences submitted by the appellant.

From the submission of the appellant and the documentary evidences submitted following facts are evident.

1. All 10A eligible units have a separate and unique STPI approval as new undertaking.

2. In case of some units, the appellant has undertaken expansions and in the case of such units, the STPI approval clearly says that it is an approval for an expansion. The appellant has not treated expansion as new undertaking and has not claimed deduction for full period of 10 years in respect of such expansion.

3. Each 10 A eligible unit has a separate line of business

Unit	Line of Work
Bangalore Unit 3	Business of Healthcare – Medical Software
Bangalore Unit 4	R & D Centre – Engaged in software requirements for new products whereas the other units are mainly concentrated on Product Life Cycle Management
Chennai Unit 1	Software Development – Graphical Product
Chennai Unit 2	GPD Utilities Segment (Global Product Development Utilities)
Delhi Unit 2	Telecommunication Segment
Delhi Unit 3	Software Development – Power generation business
Kolkata	Software Development – Telecom and others
Pune Unit	Software Development – Scientific Applications & Building Technology
Kharghar	Application Support services

Whereas domestic non STP units were engaged in business of carrying implementation/consultancy/training for domestic customers.

4. Each 10A eligible unit is housed in a distinct separate premises, even if two units are located in the same city

5. Each 10A eligible unit has a separate set of employees and the examination of date of joining of these employees shows that most of the employees have joined the appellant company after the unit has started and only very few employees were on the roll of the company before the start of the unit. Thus, it cannot be said that it is a case of reconstruction of the existing business. Moreover, nature of work is being done in each unit is quite different and most of the units have a distinct different set of customers.

6. Assets used in STPI units are distinct and all units are Custom bonded premises. Since custom duty is not payable on these assets, they cannot be removed from the STPI premises.

7. Separate accounts are maintained for each of the 10A eligible units. Expenses directly related to the unit are debited on actual basis

whereas corporate expenses and shared services expenses which are common to all units are allocated either in the ratio of the turnover or in the ratio of headcount of each unit, depending on the nature of expenditure.

8. Nature of work of non-10 A eligible units and 10 A eligible units is also entirely

different and there is no possibility of billing of output of one unit to another because customer base as well as nature of work is different.

9. In case of 10A eligible units, the billings are mostly on work hours basis whereas in non-10A units the billing is on lump-sum basis for the entire work being done.

10. Number of employees in domestic units is high as compared to 10A eligible units. Since domestic units are older, employees in general are also working for the company for a longer period of time.

As regards various other observations of the AO in the assessment order, the appellant has clarified that it is not required to maintain separate books of accounts for each eligible unit for claiming deduction u/s 10 A of the IT Act, as per various case laws as well as as per CBDT Circular No. 1/2013. It is sufficient to maintain separate set of accounts for each unit. The appellant has also submitted that since each 10A eligible unit has its own customer base and there is no overlapping of work in units, mere use of common facilities does not disentitle the appellant from claiming deduction u/s 10 A.

The appellant has also pointed out that requirement of Service tax Act are different and service tax registration has been granted by Service Tax Authorities location wise and not unit wise. Therefore service tax returns are filed city wise and not unit wise. Moreover, basis of chargeability of service tax, VAT and income tax is different and therefore reconciliation of returns filed under service tax/VAT/income tax is not feasible. When no such details were required to be maintained by the appellant, no adverse view cannot be taken for not maintenance of the same;

So far as mistake in Tax audit report is concerned, the appellant has clarified that by the mistake of the Auditor higher depreciation was booked for non 10 A units in the Tax audit report. When the mistake came to the notice of the appellant, the correct amount of depreciation was claimed in the return of income by the appellant on its own. While issuing audit report under section 10 A, in Form 56F, the Auditor had considered the correct depreciation for the purpose of computing section 10A deduction. The appellant has also submitted a reconciliation of various figures.

Considering the facts mentioned above, I'm of the opinion that the AO has not brought anything on record to suggest that the appellant is not fulfilling any condition mentioned in sub section (2) of section 10 A of the IT Act. The units in respect of which deduction under section 10 A is being claimed by the appellant are not formed by splitting up or to the construction of a business which was already in existence, they are not formed by a transfer of machinery or plant previously used for any purpose and they have begun manufacture/production of computer software in the software technology Park after first April 1994. In view of these facts, I'm of the opinion that the AO was not justified in denying the deduction u/s 10 A to the appellant in respect of the 9 units to for which it was claimed by the appellant. The AO is directed to allow the deduction under section 10 A to the appellant in respect of all the STPI units in respect of which the appellant has claimed the same.

It will not be cut of place to mention that the issue is covered in favour of the appellant by the decision of jurisdictional High Court dated 26/07/2016, for A.Y. 2005 06, in Income Tax Appeal No 63 of 2016, in the case of Pr.CIT Vs Hinduja Ventures Ltd. where honourable High Court has allowed the deduction u/s 10 A to the appellant even though the STPI approval was for extension of existing unit whereas the appellant is holding STPI approval of new facility in respect of each unit. The decision of honourable High Court is reproduced hereunder: -

"2. The assessee claims that it has four units engaged in the business of IT and IT enabled services. The assessee claimed deduction under Section 104 of the Income Tax Act (hereinafter referred to as the Act) in respect of Unit II and Unit III. The Assessing Officer did not allow deduction under Section 104 In appeal the Commissioner (Appeals) called for the remand report. The Assessing Officer submitted the remand report. The remand report favoured the assessee. However, the Commissioner (Appeals) dismissed the appeal. The assessee filed an appeal before the Tribunal The Tribunal allowed the appeal and held that Unit II and Unit III are entitled for the benefit under Section 104 of the Act Aggrieved thereby, the present appeal by the department.

3. The Revenue has filed the appeal on following grounds:

Whether on the facts and in the circumstances of the case and in law the Hon'ble ITAT erred in concluding that the benefits of Section 104 of the Act in respect of Unit II and Unit III are allowable by treating such units as distinct undertaking by ignoring the fact that assessee in has application to the STPI Authorities has stated that these units are expansion and not distinct undertakings?

Whether on the facts and in the circumstances and in law, the perversity has crept into the order of the Hon'ble ITAT by ignoring and not appreciating the evidence in the form of assessee's own declaration and admission in application to STPI to the effect that works under reference constituted expansion of existing units and not a new and distinct undertaking or unit?

- 4. Mr. Pinto, the learned counsel for the appellant, strenuously contends that the assessee itself had represented vide its letter to the STPI that Unit II and Unit III are in the nature of expansion of business. As such the assessee cannot now turn around and contend otherwise. According to the learned counsel, even permission was granted by the STPI presumably on the ground that Unit II and Unit III are expansion units of the assessee. This fact has been considered by the Assessing Officer and the Commissioner (Appeals) However, the Tribunal without considering the finding of the Commissioner (Appeals) has set aside the said finding. The learned counsel relied on the judgment of the Delhi High Court in the case of HCL Technologies vs. Assistant Commissioner of Income Tax decided on 15th April 2015. According to the learned counsel, the said judgment would squarely apply in the present case and even the judgment of the Apex Court in Textile Machinery Corporation Ltd vs. CIT reported in 107 ITR 195 was referred thereto. He further submits that there was no independent registration of Unit II and Unit III with STPI which would demonstrate that it was not independent new undertaking. This fact has been lost sight of by the Tribunal if the said business*

was not merely an expansion but a new undertaking then certainly a fresh permission would have been required. The same is not forthcoming In view of that, it was not appropriate for the Tribunal to reverse finding of fact arrived at by the Commissioner (Appeals) and the Assessing Officer The learned counsel submits that the Tribunal has failed to consider provision of Section 104(2) in its correct perspective and thereby has arrived at erroneous conclusion.

5. According to the learned counsel, the provisions of Section 101(2) would apply only if the undertaking is not formed by splitting up or reconstruction of the business already in existence. In the present matter, as it was not a new undertaking the assessee would not be entitled for the benefit of sub-section (2) of Section 104 of the Act.
6. The learned counsel for the respondent supports the order and submits that the Commissioner (Appeals) had called for the remand report from the Assessing Officer. The said remand report clearly shows that Unit II and Unit III of the assessee were independent and a new business According to the learned counsel various factors on record could clearly demonstrate the independent nature of business of Unit II and Unit III The same has been spelt out by the Tribunal in its judgment. The learned counsel, to substantiate his contention, relies on the judgment of the Apex Court in case of Textile Machinery Corporation Ltd vs. CIT reported in 107 ITR 195. The learned counsel submits that the Tribunal has relied on the judgment in Patni Computer Systems Ltd vs Deputy Commissioner of Income Tax, Circle 4. In the said case also permission was granted for expansion of the business and the same was held to be an independent business The said finding is upheld by this court in appeal filed by the Revenue against the judgment of the Tribunal in Patni Computer Systems Ltd vs Deputy Commissioner of Income Tax, Circle 4 The learned counsel also relies on the judgment of this court in the case of The Commissioner of Income Tax-IV vs Symantec Software India (P) Ltd bearing Income Tax Appeal No 1534 of the 2012, decided on 12 December 2014.
7. The learned counsel submits that provisions of Section 10A will have to be liberally construed with regard to the object in view. The benefit is to be given to the now undertaking by way of incentive under Section 104 of the Act. The restriction imposed therein will have to be liberally construed. The learned counsel relies on the judgment of Bharat General Insurance Commissioner of Income Tax reported in 188 ITR Vol 195 page 188.
8. We have considered the submissions canvassed by the learned counsel for the respective parties. 9 It is not a matter of debate that vide letter dated 19th July 2000 the assessee sought permission to start Unit II at Bangalore for carrying out business of processing insurance claims and vide letter dated 26th July 2000 the STPI authorities at Bangalore granted the said permission to start a BPO for claim processing On or about 12th September 2001, permission was granted to Unit III to do the business of international call center. It was observed by the Tribunal that on 28th October 2003, the assessee has taken a separate registration with STPI, Mumbai for BPO call processing activity at Bangalore for the purpose of back end data backup.
10. The Assessing Officer in his remand report has held that both Unit II and Unit III duly fulfill all the conditions laid down in Section 104(7) of the Act The remand report of the assessee spells out following facts:-

1. Both units were set up with fresh investments the assessee purchased new plant and machinery for these units and it was not the case that these units were formed by splitting or reconstructing existing business As such this condition is fully satisfied.
2. Separate books of accounts have been maintained by each units.
3. The employees employed in each of the units were fresh set of employees and were not transferred from existing business.
4. The nature of activity of both the units is totally different not only vis-a-vis each other but also vis-a-vis the activity carried on by the first unit.
5. The customers of each unit are completely different/ unrelated and both units have new and independent sources of income.
6. While Unit-1 is engaged in the business of software development, Unit-2 is engaged in non- voice BPO business (Insurance claim processing and Unit 3 engaged in voice BPO (Call Center).
7. While Unit- I earn revenue predominantly from within India Units 2 and 3 earn revenues wholly from exports outside India.

11. The Assessing Officer in his remand report has specifically observed that both units were set up with fresh Investments.

The assessee purchased plant and machinery for there units and it was not the case that there units were formed by splitting or reconstructing existing business It was also contended that separate books of accounts were maintained. The employees of each of the units were fresh set of employees and were not tranferred from existing business The nature of activity of both units is totally different, not only vis-a-vis each other, but also vis-a-vis the activity carried on by the first unit It was also observed by the Assessing Officer in its remand report that customers of each unit are completely different and unrelated and both the units have new and independent sources of income While Unit I is engaged in the business of software development. Unit II a engaged in non-voice BPO business (Insurance claim processing) and Unit III is engaged in voice BPO (Call center). While Unit I earns revenue predominantly from within India, Unit 11 and Unit III earn revenue wholly from exports outside India. 12 In light of aforesaid facts, it would be clear that the Unit II and Unit III cannot be said to be formed by reconstruction nor can be said to be an expansion of earlier same business. Though the permission was sought by way of an expansion the facts on record categorically and succinctly establish that the business of Unit II and Unit III were independent distinct and separate and are not related with each other or even with Unit I. 13 The Tribunal also considered the letter from Director, STPI, issued to the Assessing Officer dated 10th December 2005, the letter of the Director STPI, intonating formation of Unit II so alto another letter to Director STPI seeking permission for bonding facility for Unit II and approval from Director, STPI for Unit II, the letter to the Director, STPI, intimating formation of Unit III letter to Director, STPI seeking permission for banding facility for Unit III and approval from Director, STPI for Unit III. After considering all the documentary evidence and the remand report of the Assessing Officer, the Tribunal agreed with the remand report of the Assessing Officer and held that the assessee would be entitled for benefit of Section 104 of the Act. 14 The assessee has relied on the Judgment of Patni

Computer Systems Ltd referred to supra which has been upheld by this court In the said Judgment also, the Tribunal had held that permission was sought by Patni Computers Systems Lid for expansion and benefit under Section 104 was accorded. The said order is upheld by that court in appeal.

15. *In case of Textile Machinery Corporation Ltd referred to supra the Apex Court was considering the provisions of Section 13(C) of the Act as it stood then, dealing with similar provisions The Apex Court in the said case observed that the true test is not whether the new industrial undertaking connotes expansion of the existing business of the assessee but whether it is all the same a new and identifiable undertaking separate and distinct from the existing business. No particular decision in one case can lay down an inexorable test to determine whether a given case comes under Section 15C or not.*

16. *Considering the aforesaid conspectus, the Tribunal has not committed any error while passing the impugned order.*

17. *The plausible finding of fact has been arrived at after appreciating the documents on record and remand report of the Assessing Officer*

18. *In light of above, no substantial question of law arise. The appeal is dismissed No costs."*

So far as working of deduction allowable under section 10 A of the IT Act is concerned. I'm not in agreement with the reasons given by the AO for estimation of gross profit at the rate of 19.15% of gross receipts and denying adjustments on account of depreciation as per IT Act, adjustments under section 43B and interest income as mentioned in paras 28 and 28.1 of the assessment order. The appellant has properly explained the discrepancies pointed out by the AO Therefore, no such adjustment is called for. Accordingly, the AO is directed to stick to the working as per the accounts maintained by the appellant.

So far as issue of denial of deduction in respect of unbilled sales is concerned, I am in agreement with the submission of the appellant that for proper determination of profits, unbilled income is required to be taken into account. However, the subsection (3) to section 10 A requires that sale proceeds should be brought into India by the assessee 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 behalf. Considering the facts, the AO is directed to allow deduction in respect of unbilled income to the extent the provisions of subsection (3) to section 10A are satisfied in respect of such income. Balance amount of disallowance is confirmed.

Reliance in this regard is placed on the decision of honourable ITAT, Hyderabad in the case of DCIT Vs Sankhya Infotech Ltd [2011] 12 taxmann.com 169 (Hyderabad)

So far as disallowance of deduction u/s 10 A of the IT Act in respect of unrealised export proceeds amounting to Rs.10,73,862 is concerned, the same is here by upheld.

So far as disallowance of deduction u/s 10 A of the IT Act in respect of interest on employee loan is concerned, the issue has been decided against the appellant by the ITAT, Mumbai in the appellant's own case for AY 2003-04 in ITA No

2563/Mum/2007 Respectfully following the same, the order of the AO on this issue is upheld.

Accordingly, these grounds of appeal are partly allowed."

4. During the course of appellate proceedings before us, the ld. D.R supported the order of A.O and referred para 4 & para 18 of the assessment order.

On the other hand, the ld. Counsel referred various pages of the CIT(A) order and submitted that during the course of appellate proceedings before the ld. CIT(A) assessee has filed additional evidence on which the A.O had submitted the remand report. The ld. Counsel also submitted that A.O submitted second remand report vide which A.O has rejected the assessee's claim for deduction u/s 10A without considering the detailed documentary evidences filed before the ld.CIT(A). Further, the ld. A.R submitted that assessee was having total 20 units out of which 12 units were STP units and 8 units were Non-STP (Domestic). Out of the 19 STP units the assessee had claimed deduction for 9 units except 1 unit all the other units were set up in the previous year. He also referred page 78-79 of the paper book, page 78 is the report in Form No. 56F given by the auditor after certifying the claim of deduction made u/s 10A of the Act. The ld. Counsel further submitted that assessee had not reduced the claim of depreciation which was wrongly mentioned in the assessment order. The ld. Counsel also submitted that all the units were independent separate units. He also referred the various pages of paper book showing the various detail submitted before the A.O pertaining to the claim of deduction u/s 10A made in respect of various units. He also mentioned that expenditure pertaining to different units were allocated on scientific basis. He also referred the analysis of expenditure pertaining to the different units placed in the paper book.

5. Heard both the sides and perused the material on record. Without reiterating the facts as elaborated above during the course of assessment the A.O observed that the assessee had made certain corrections to the depreciation worked out in the tax audit report to the extent of Rs.305,35,719/- and offered a higher amount of taxable profit and consequently claimed lower benefit u/s 10A. Thereafter the A.O formed opinion that the units in respect of which deduction u/s 10A claimed were not independent units. No independent accounts of units were maintained. There was complete overlapping of work and use of resources amongst units through leased lines. The tax audit report and audit report u/s 10A was not correct or assessee was claiming expenses /depreciation of 10A units in non 10A units. Several non 10A units activities were being carrying on from 10A units. The A.O also stated that assessee had failed to reconcile the service tax/VAT returns with Income tax returns. The A.O further stated that the claim of deduction u/s 10A will be allowed only with reference to first STP units at a particular station and the subsequent STP units at that station will be treated as reconstruction of business already in existence.

6. During the course of appellate proceedings before the ld.CIT(A) The remand report were called from the A.O in respect of various submission made by the assessee. However, the ld. CIT(A) reported in his finding that A.O has rejected the assessee's claim for deduction u/s 10A in the remand report without considering the detailed documentary evidences filed by the assessee.

During the course of assessment the assessee had categorically explained with supporting document that each of the units were located physically at separate registered premises. Each of the units was set up with the approvals from the STPI authorities demonstrated from the copies of STPI approvals placed in the paper book. The assessee also explained that there was no requirement u/s 10A of the Act to maintain separate books of accounts as evident from the CBDT Circular 1/2013 dated 17.01.2013 wherein the board has clarified that there is no requirement to maintain separate books of accounts. The assessee has also explained that no change was made in the amount of depreciation claimed during the course of assessment proceedings. The assessee has clarified that depreciation was inadvertently booked higher for non 10A units while finalizing the tax audit report and same was rectified in the return of income itself and not during the course of assessment as incorrectly observed by the A.O. The assessee had also given detail of unit wise profit and loss account along with tax audit report. The assessee had also explained that the service tax authorities had granted registration to the assessee in respect of each units, therefore, the service tax returns were filed by the assessee city wise and not unit wise. It was also explained with relevant detail that each unit claiming deduction u/s 10A was having a separate line of business, separate set of employees and nature of work done in each units was different. Before the A.O the assessee has also explained with relevant detail that common expenditure in the form of corporate expenses have been apportioned in the ratio of turnover of respective units and indirect expenses have been apportioned to the respective units on the basis of total man-months for the year of the respective units. During the course of assessment the assessee had categorically explained that it had total 19 units out of which 9 units were eligible for claiming deduction u/s 10A, 3 units were expired unit u/s 10A and the other 7 units were non 10A units (DTA units) for which no deduction was claimed. During the course of assessment the A.O count not controvert the relevant material furnished by the assessee in support of its claim of deduction u/s 10A and A.O also could not establish that units in respect of which deduction were claimed u/s 10A were not fulfilling any condition mentioned in sub- section (2) of Sec. 10A of the Act. In the light of the above facts and finding of ld. CIT(A) elaborated supra, we don't find any infirmity in the decision of ld. CIT(A), therefore, this ground of appeal of revenue has dismissed."

3.1. Respectfully following the same, the grounds raised by the Revenue are dismissed.

4. In the result, both the appeals of the Revenue are dismissed.

Order pronounced in open Court on 02/11/2022.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 02/11/2022
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary / Asstt. Registrar)
ITAT, Mumbai