

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

**BEFORE SHRI. B. R. BASKARAN, ACCOUNTANT MEMBER
AND**

SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No.2070/BANG/2018
Assessment Year : 2010 - 11

M/s Steer Engineering Pvt. Ltd., No.290, 4 th Main, 4 th Phase, Peenya Industrial Area, Nagwara, Bengaluru-560 058.	Vs.	The Addl. Commissioner of Income-tax, Range-12, Bengaluru.
PAN - AABCS 8840 E		
APPELLANT		RESPONDENT

Appellant by	:	Shri Narendra Jain, Advocate
Respondent by	:	Shri Priyadarshi Mishra, Addl. CIT

Date of Hearing	:	05-07-2021
Date of Pronouncement	:	22-07-2021

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal has been placed before us for adjudicating following grounds:

“3. The learned CIT(A), has erred in confirming the action of the Assessing Officer (AO)

In :

ii) Concluding that foreign exchange gain earned from EOU unit is not part of profit of the undertaking and thereby reducing deduction u/s 10B.

(iii) Not appreciating that under similar facts and circumstances of the case, the Honorable Karnataka High Court has held that foreign exchange gain should form part of profit of the business, export turnover and total turnover.

4. The learned CIT(A), has erred in confirming the action of the Assessing Officer (AO) in :

(ii) Disallowing professional and consultancy charges of Rs. 1,20,820/- incurred towards acquisition of business on the ground that it is capital expenditure. On the fact and circumstances of the case the addition is bad in law and liable to be quashed.”

2. It has been submitted by the Ld.AR that the above referred grounds were inadvertently not adjudicated while passing the order dated 23/10/2019. Assessee filed miscellaneous petition pointing out this inadvertent mistake. This *Tribunal* vide order dated 14/09/2020 refixed the appeal for hearing for limited issue to adjudicate Ground No.3 (ii) - (iii) and Ground 4 (ii) reproduced hereinabove.

Ground No. 3(ii)-(iii)

3. The Ld.AR submitted that, authorities below erred in adopting incorrect figures of profit of business of undertaking for purpose of computing deduction under section 10B of the Act. He submitted that, authorities below held that foreign exchange gain earned from export oriented unit is not part of profit of undertaking thereby reducing the said amount while computing deduction under section 10B of the Act. The Ld.AR in support of his arguments placed reliance on decision of *Hon'ble Karnataka High Court* in case of *CIT vs Infosys Technologies Ltd.*, reported in (2012) 18 *Taxmann.com* 169 and decision of *Hon'ble Madras High Court* in case of *CIT vs. Pentasoft Technologies Ltd.*, reported in (2013) 33 *Taxmann.com* 570.

3.1 The Ld.AR submitted that, foreign exchange has a direct nexus from export sales made and therefore needs to be considered as a part of profits of business, export turnover and total turnover.

4. On the contrary the Ld.Sr.DR could not controvert the above submissions of Ld.AR.

5. We have perused submissions advanced by both sides in the light of records placed before us. The decision relied by the Ld.AR of *Hon'ble Karnataka High Court* in case of *CIT vs Infosys Technologies Ltd. (supra)* has considered an identical issue. *Hon'ble Court* while deciding the issue held as under:

"8. We have heard the Ld.Counsel appearing for the parties and scrutinise the material on record. Both the first appellate authority and the appellate Tribunal answered the above said substantial question of law in favour of assessee and against the revenue. The said concurrent findings arrived at by the authorities is justified as the fluctuation in the valuation of currency which has to be converted to foreign currency has direct nexus to the export of software and can never be included as income from other sources. Wherefore, the said finding does not suffer from any error or illegality as to call for interference in this appeal."

5.1 It is not the case of the revenue that the said foreign exchange gain does not arise out of the export oriented undertaking and therefore the benefit of such gain forming part of the profits of the undertaking cannot be denied to assessee.

5.2 Respectfully following the view taken by *Hon'ble jurisdictional High Court* and *Hon'ble Madras High Court*, referred to and relied by Ld.AR hereinabove, we direct the Ld.AO to recompute the deduction under section 10A of the Act by including the foreign exchange gain as a part of profits earned from the export oriented undertaking.

Accordingly this ground raised by assessee stands allowed.

Ground No. 4 (ii)

6. The Ld.AR submitted that assessee during the year under consideration acquired business of two companies called Concord United Products Pvt.Ltd., and M/s.Aditya Precision Deposition

Moulding Pvt.Ltd. Towards this acquisition, assessee incurred Rs.1,20,820/- as professional fees, for drafting business transfer agreements and other professional fee on legal opinions. The assessee claimed it as revenue expenditure which was disallowed by the Ld.AO by holding it to be capital in nature.

6.1 The view of Ld.AO was upheld by the Ld.CIT(A) against which assessee was is in appeal before this *Tribunal*.

6.2 Before us, the Ld.AR submitted that these expenses are revenue in nature and therefore are to be allowed.

6.3 On the contrary the Ld.Sr.DR submitted that the acquisition resulted into enduring benefits to assessee.

6.4 We have perused submissions advanced by both sides in light of records placed before us. The incurring of expenditure resulted into acquisition of two companies by assessee, thereby resulting in acquisition of capital assets.

6.5 In our view ratio laid down by *Hon'ble Supreme Court* in *Alembic Chemical Works Co. Ltd., Vs. CIT* report in (1989) 177 ITR 377 is applicable. The professional and consultancy charges incurred by assessee for acquisition of the two companies can't be treated as revenue in nature.

Accordingly, grounds raised by assessee stands dismissed.

In the result appeal filed by revenue stands partly allowed.

Order pronounced in the open court on 22nd July, 2021

Sd/-

Sd/-

(B. R. BASKARAN)
Accountant Member
Bangalore,

(BEENA PILLAI)
Judicial Member

Dated, the 22nd July, 2021.
/Vms/

Copy to:

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

By order

Assistant Registrar, ITAT, Bangalore

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