

Expenses excluded in computing “export turnover” have also to be excluded from “total turnover” in computing the deduction under section 10A

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In brief

In a recent decision,¹ the Supreme Court (SC) has held that expenses if any, excluded from “export turnover” have to be excluded from “total turnover,” while computing the deduction under section 10A of the Income-tax Act, 1961 (the Act) as export turnover (being the numerator) is a component of total turnover (being the denominator) in the formula provided for computing the deduction under section 10A of the Act. Further, the SC observed that the definition of “total turnover” given under the Explanation to sections 80HHC and 80HHE of the Act, is applicable only for the purpose of those sections and cannot be adopted for the purpose of section 10A of the Act.

In detail

Facts

- The taxpayer was engaged in business of development and export of computer software, and rendering of technical services.
- The taxpayer claimed deduction under section 10A of the Act and its export turnover was equal to its total turnover.
- The tax officer (TO) estimated that certain percentage of the software development charges claimed by the taxpayer was attributable to expenses incurred in foreign exchange for providing technical services outside

India.

- Accordingly, the TO reduced such expenses from the export turnover while calculating deduction under section 10A of the Act, without allowing any corresponding reduction from the total turnover.
- On appeal, the Commissioner of Income-tax (Appeals) upheld the TO's action which was subsequently reversed by the Income-tax Appellate Tribunal (Tribunal) and the same was upheld by the High Court.

Issue before the Supreme Court

Whether software

development charges excluded from export turnover have to be excluded from total turnover while calculating the deduction admissible under section 10A of the Act?

Taxpayer's contentions

- The taxpayer contended that in the absence of any definition of “total turnover” in the Act, the definition provided in other sections (sections 80HHC and 80 HHE) of the Act should be adopted for the purpose of section 10A.
- When the numerator (i.e., export turnover) does not include certain amounts, they should also be excluded from the

¹ Civil Appeal Nos. – 8489-8490 of 2013

denominator (i.e., total turnover) otherwise the formula for computing deduction under section 10A of the Act, would render undesirable results.

Revenue's contentions

- Total turnover is not defined under section 10A of the Act. The technical meaning of total turnover does not envisage the reduction of any expense from the total turnover for computing deduction under section 10A of the Act.
- In the absence of specific definition/ provision in section 10A of the Act, the argument that expenses which were excluded from export turnover had to be excluded from total turnover was not sustainable in the eyes of law.

Supreme Court's decision

- The SC noted that the term "export turnover" is defined in section 10A of the Act, while there is no definition of "total turnover" in the same section.

- The definition of total turnover given under Explanations to sections 80HHC and 80HHE of the Act, specifically use the expression "for the purposes of this section." Hence, such definitions are applicable only for the said sections and cannot be adopted for the purpose of section 10A of the Act.
- Placing reliance on the thumb rule of harmonious construction, the SC noted that interpretation by courts should be done in such a way which avoids inconsistency and repugnancy between various sections/ parts of the statute and the intention of the legislature should prevail such that there is no injustice to the parties.
- Referring to the formula for computation of deduction under section 10A of the Act the SC observed that "export turnover" (which is the numerator in the formula) is one of the components of

"total turnover" (the denominator in the formula).

- If any deduction of expenses were allowed only from the export turnover and not from the total turnover, it would give rise to an inadvertent, unlawful, meaningless and illogical result which would cause injustice to the taxpayer which was never the intention of the legislature.
- Therefore, the SC held that the expenses excluded from "export turnover" should have also been excluded from "total turnover."

The takeaways

This is a welcomed decision of the SC as it puts to rest a long-standing issue faced by various taxpayers claiming deduction under section 10A of the Act.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

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