

**F. No. 279/Misc./140/2015/ITJ
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes**

New Delhi, 14th August 2018

Subject: Computation of admissible deduction u/s 10A of the Income Tax Act, 1961 – Regarding

As per the provisions of sub-section (4) of section 10A of the Income Tax Act, 1961 (the 'Act'), the profits derived from export of articles or things or computer software shall be the amount which bears to the profits of the business of the undertaking, the same proportion as the export turnover in respect of such articles or things or computer software bears to the total turnover of the business carried on by the undertaking.

2. Further as per clause (iv) to Explanation 2 to section 10 A of the Act, "export turnover" means the consideration in respect of export by the undertaking of articles or things or computer software received in, or brought into, India by the assessee in convertible foreign exchange in accordance with sub-section (3), but does not include freight, telecommunication charges or insurance attributable to the delivery of the articles or things or computer software outside India or expenses, if any, incurred in foreign exchange in providing the technical services outside India.

3. The issue whether freight, telecommunication charges and insurance expenses are to be excluded from both "export turnover" and "total turnover" while working out deduction admissible under section 10A of the Act on the ground that they are attributable to delivery of articles or things or computer software outside India has been highly contentious. Similarly, the issue whether charges for providing technical services outside India are to be excluded both from "export turnover" and "total turnover" while computing deduction admissible under section 10A of the Act on the ground that such charges are relatable towards expenses incurred in convertible foreign exchange in providing technical services outside India has also been highly contentious.

4. The controversy has been finally settled by the Hon'ble Supreme Court vide its judgement dated 24.4.2018 in the case of Commissioner of Income Tax, Central-III Vs. M/s HCL Technologies Ltd.¹ While deciding the issue the Apex Court has held as under:

"17) The similar nature of controversy, akin to this case, arose before the Karnataka High Court in CIT vs. Tata Elxsi Ltd. (2012) 204 Taxman 321/17. The issue before the Karnataka High Court was whether the Tribunal was correct in holding that while computing relief under Section 10A of the IT Act, the amount of

¹ CA No. 8489-8490 of 2013, NJRS Citation 2018-LL-0424-40

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communication expenses should be excluded from the total turnover if the same are reduced from the export turnover? While giving the answer to the issue, the High Court, *inter-alia*, held that when a particular word is not defined by the legislature and an ordinary meaning is to be attributed to it, the said ordinary meaning is to be in conformity with the context in which it is used. Hence, what is excluded from 'export turnover' must also be excluded from 'total turnover', since one of the components of 'total turnover' is export turnover. Any other interpretation would run counter to the legislative intent and would be impermissible.

18) Accordingly, the formula for computation of the deduction under Section 10A of the Act would be as follows:

$$\text{Export Profit} = \frac{\text{total Profit of the Business} \times \text{Export turnover as defined in Explanation 2 (IV) of Section 10A of IT Act}}{\text{Export turnover as defined in Explanation 2(IV) of Section 10A of the IT Act} + \text{domestic sale proceeds}}$$

19) In the instant case, if the deductions on freight, telecommunication and insurance attributable to the delivery of computer software under Section 10A of the IT Act are allowed only in Export Turnover but not from the Total Turnover then, it would give rise to inadvertent, unlawful, meaningless and illogical result which would cause grave injustice to the Respondent which could have never been the intention of the legislature.

20) Even in common parlance, when the object of the formula is to arrive at the profit from export business, expenses excluded from export turnover have to be excluded from total turnover also. Otherwise, any other interpretation makes the formula unworkable and absurd. Hence, we are satisfied that such deduction shall be allowed from the total turnover in same proportion as well.

21) On the issue of expenses on technical services provided outside, we have to follow the same principle of interpretation as followed in the case of expenses of freight, telecommunication etc., otherwise the formula of calculation would be futile. Hence, in the same way, expenses incurred in foreign exchange for providing the technical services outside shall be allowed to exclude from the total turnover."

5. The issue has been examined by the Board and it is clarified that freight, telecommunication charges and insurance expenses are to be excluded both from "export turnover" and "total turnover", while working out deduction admissible under section 10A of the Act to the extent they are attributable to the delivery of articles or things or computer software outside India.

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6. Similarly, expenses incurred in foreign exchange for providing the technical services outside India are to be excluded from both "export turnover" and "total turnover" while computing deduction admissible under section 10A of the Act.

Thus, all charges/expenses specified in Explanation 2(iv) to section 10A of the Act, are liable to be excluded from total turnover also for the purpose of computation of deduction u/s 10A of the Act.

7. Accordingly, henceforth, appeals may not be filed by the Department on the above settled issue, and those already filed may be withdrawn/ not pressed upon.

8. The above may be brought to the notice of all concerned.

9. Hindi version of the same will follow.

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(Neetika Bansal)
Director (ITJ)
CBDT, New Delhi

Copy to:

1. The Chairperson, Members and officers of the CBDT of the rank of Under Secretary and above.
2. OSD to Revenue Secretary.
3. All Pr. Chief Commissioners of Income-Tax & All Directors General of Income-Tax with a request to bring to the attention of all officers.
4. The Comptroller and Auditor General of India.
5. The Pr. Director General of Income-Tax, NADT, Nagpur.
6. The Pr. DGIT (Systems), ARA Centre, Jhandewalan Extension, New Delhi.
7. The Pr. DGIT (Vigilance), New Delhi.
8. The ADG (PR, PP & OL) for circulation as per usual mailing list.
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10. Database Cell for uploading on irsofficeronline.gov.in
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12. Hindi section for Hindi translation of the Circular.
13. Guard File

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