IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "A", BANGALORE

Before Shri George George K, JM & Shri B.R.Baskaran, AM

ITA No.814/Bang/2013 : Asst.Year 2008-2009

M/s.OnMobile Global Limited Tower #1 94/1C and 94/2, Veerasandra Village, Attibele Hobli Anekal Taluk, Electronic City Phase-I Bangalore – 560 100. **PAN : AAACO3900E.**	v.	The Commissioner of Income-tax, Bangalore III Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.K.R.Vasudevan, Advocate
Respondent by : Sri.Rajendrakumar Mishra, CIT-DR

Date of Hearing : 26.08.2021		**Date of Pronouncement : 01.09.2021**

O R D E R

Per George George K, JM

This appeal was restored to the I.T.A.T. by the Hon'ble High Court in ITA No.338/2014 (judgment dated 18.01.2021).

2. The brief facts of the case are as follow:

The assessee is a company. It had filed its return of income declaring fringe benefit tax (FBT) at concessional rate of 5% on expenditure on conveyance, hotel and boarding facilities. According to the assessee, it is claiming concessional rate of 5% as against the normal rate of 20% since it is a ITES company. The Assessing Officer passed order dated 30.11.2010 u/s 115WE(3) of the I.T.Act accepting FBT return filed by the assessee. Subsequently, the CIT passed an order 30.03.2013 u/s 263 of the I.T.Act setting aside the assessment order on the ground that the issue

whether the activities of the assessee constitute ITES has not attained finality and the Department had filed appeal before the ITAT in the Income-tax case. The assessee filed appeal to the Tribunal against the order passed u/s 263 of the I.T.Act (the present appeal). The Tribunal vide its order dated 14.03.2014 set aside the order of the CIT passed u/s 263 of the I.T.Act, after noting the Tribunal in the Income-tax case, had held that the assessee is engaged in manufacture and export of computer software, and therefore, it was eligible for deduction u/s 10A of the I.T.Act. The Revenue carried the matter in appeal before the Hon'ble High Court u/s 260A of the I.T.Act. The Hon'ble High Court vide judgment dated 18.01.2021, set aside the order of the Tribunal in view of the Hon'ble High Court judgment in ITA No.340/2014 (judgment dated 14.03.2014). Subsequent to the remand by the Hon'ble High Court to the ITAT, the case was heard on 26.08.2021.

3. The learned AR submitted that the issue of eligibility of deduction u/s 10A of the I.T.Act has been finally held in favour of the assessee by the Hon'ble High Court by answering question No.3 in favour of the assessee in ITA No.340/2014 (In income tax cases, the question of law No.3 was answered in favour of the assessee by holding that assessee is entitled to deduction u/s 10A of the I.T.Act). Therefore, it was submitted that the concessional rate of tax at 5% claimed by the assessee stating that it is an ITES has attained finality.

4. The learned Departmental Representative was duly heard.

5. We have heard rival submissions and perused the material on record. The present proceedings is out of fringe benefit tax. The assessee had claimed concessional rate of tax at 5% on certain expenditure stating its activities constitute ITES as specified in CBDT Notification. The assessee had claimed deduction u/s 10A of the I.T.Act on the ground that the activities of the assessee constitute ITES, and hence, it is a ITES undertaking, eligible for deduction u/s 10A of the I.T.Act. The Assessing Officer disallowed the claim of deduction u/s 10A of the I.T.Act on the ground that the activities of the assessee does not constitute ITES. On appeal, the CIT(A) held the activities of the assessee constitute ITES and assessee was eligible for deduction u/s 10A of the I.T.Act. The view taken by the CIT(A) was affirmed by the ITAT in its order dated 21.02.2014 in ITA No.1163/Bang/2012 and 1175/Bang/2012. Aggrieved by the order of the Tribunal dated 21.02.2014, the Revenue preferred an appeal to the Hon'ble High Court. The Hon'ble High Court vide its judgment dated 18.02.2020 in ITA No.340/2014, confirmed the decision of the Tribunal on this issue. The relevant finding of the Hon'ble High Court in this regard reads as follow:-

> *"11. So far as claim for deduction of the assessee under Section 10A of the Act is concerned, before proceeding further, it is apposite to take note of relevant extract of Section 10A(1) of the Act which reads as under:-*
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> > "10A(1) Subject to the provisions of this section, a deduction of such profits and gains as are derived by an undertaking from the export of articles or things or computer software for a period of ten consecutive assessment years beginning with the Assessment Year relevant to the previous year in which the undertaking begins to manufacture or produce such articles or

> things or computer software, as the case may be, shall be allowed from the total income of the assessee."

Thus, from perusal of the relevant extract of Section 10A(1), it is evident that the deduction under Section 10A of the Act is available to an undertaking if sale proceeds of articles of things of computer software exported out of India or received in or brought into in India in convertible foreign exchange, within a period of six months from the end of previous year or within such further period that the competent authority may allow in this behalf. The Tribunal, in paragraph 7.4.4 has taken note of the activities of the assessee and has held that the assessee is engaged in the business of mobile added value services, which involve content development in its STP unit. It has further been held that the assessee has a dedicated studio in this STP unit where music related content is developed. The assessee procures music and other contents on the third parties. The assessee also uses its studios for content development. It has further been held that assessee is engaged in the activity of developing content and conversion of procured content into mobile readable format and the same would qualify to be classified as content development or data processing and the same would be covered under the notification dated 26.09.2000 issued by the Central Board of Direct Taxes. The High Court of Delhi in ML Outsourcing P. Ltd. supra and Mckinsey, supra has interpreted the notification and has held that intention of the legislature is not to constrain or restrict but to enable the Board to include several services of products of similar nature in the ambit of Section 10A of the Act. It has further been held that the notification covers within its ambit even the services which cannot be sent abroad. Thus, the Tribunal has rightly held that the assessee is entitled to benefit of deduction under Section 10A of the Act. Thus, the third substantial question of law is also answered against the revenue and in favour of the assessee."

5.1 Since the Hon'ble High Court had held that the activities of the assessee are in the nature of ITES and is eligible for deduction u/s 10A of the I.T.Act, the issue whether the activities of the assessee constitute ITES has attained finality. Accordingly, the concessional rate of FBT at 5% claimed by the assessee also stands upheld. It is ordered accordingly.

6. In the result, the appeal filed by the assessee is allowed.

Order pronounced on this 01st day of September, 2021.

Sd/-	**Sd/-**
(B.R.Baskaran)	**(George George K)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Bangalore; Dated : 01st September, 2021.
Devadas G*

Copy to :
1. The Appellant.
2. The Respondent.
3. The CIT(A)-III, Bangalore
4. The CIT, Bangalore.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore