IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'I-2' : NEW DELHI)

(THROUGH VIDEO CONFERENCE)

BEFORE SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No.6665Del./2017
(Assessment Year : 2013-14)

Optum Global Solutions (India) Pvt. Ltd. (As successor of United Health Group InformationServices Pvt. Ltd.) 5th, 6th and 7th Office Level, Hitech City, Madhapur, Hyderabad- 500 081, Telangana	Vs.	ACIT Special Range-9 New Delhi

(PAN : AAACQ2188G)

(APPELLANT) (RESPONDENT)

ASSESSEE BY : Shri Nageshwar Rao, Adv.

REVENUE BY : Shri Anupham Kant Garg, CIT-DR

Date of Hearing : 27.08.2020

Date of Order : 29 .09.2020

O R D E R

PER KULDIP SINGH, JUDICIAL MEMBER

Appellant, M/s. Optum Global Solutions (India) Pvt. Ltd. (hereinafter referred to as 'taxpayer') by filing the present appeal sought to set aside the impugned order dated 30.08.2017 passed by the Assessing Officer (AO) in consonance with the

orders passed by the ld. DRP/TPO under section 254/143 (3) read with section 144C of the Income-tax Act, 1961 (for short 'the Act') qua the assessment year 2013-14 on the grounds inter alia that :-

1. ***That on the facts of the case and in law, the final assessment order passed by the Additional Commissioner of Income Tax, Special Range 9, New Delhi ('learned AO') under Section 143(3) read with Section 144C of the Income Tax Act ('Act') and the order passed by Hon'ble Dispute Resolution Panel - II ('Hon'ble DRP') under Section 144C of the Act, is bad in law and void ab initio having been passed in the name of an entity UnitedHealth Group Information Services Pvt. Ltd. that was no longer in existence at the time of passing of such impugned orders.***

2. ***That, without prejudice, the learned AO has grossly erred in making a transfer pricing addition of INR 5,43,68,348/- and a corporate tax addition of INR 55,73,134/- while computing the income of the Appellant. The addition made to the returned income is highly unjustified.***

Part I - Transfer Pricing ("TP") Grounds

3. ***That on the facts of the case and in law, the Deputy Commissioner of Income Tax, Transfer Pricing Officer- 3(3)(1), New Delhi ('learned TPO')/ AO has erred in making TP adjustment of INR 5,43,68,348/- instead of INR 94,36,839 as computed vide rectification order passed by the learned TPO under section 92CA(5) read with section 154 of the Act.***

4. ***That on the facts of the case and in law, the learned TPO/ Hon'ble DRP has erred in making TP adjustment on account of notional interest on receivables from AE without application of any method as prescribed under section 92C of the Act.***

5. ***That on the facts of the case and in law, the learned TPO/ Hon'ble DRP has erred in re-characterizing the inter-company receivables as a separate international transaction of an unsecured loan and imputing interest on such transaction.***

6. ***That on the facts of the case and in law, the learned TPO/ Hon'ble DRP has erred in making a TP adjustment for inter-company receivables realization without appreciating the fact that Appellant follows a uniform policy of not charging any interest for delayed realizations from AE as well as Non- AEs.***

7. ***That on the facts of the case and in law, the learned TPO/ Hon'ble DRP has erred in making a TP adjustment for inter-company receivables realization despite the fact that the***

Appellant is a debt free company and no separate interest cost is paid by the Appellant to its creditors or suppliers on delayed payments (if any).

8. ***That on the facts of the case and in law, the learned TPO/ Hon'ble DRP has erred in making a TP adjustment for inter-company receivables realization without appreciating the fact that the inter-company receivable days of 51 days and 48 days in relation to provision of IT and IT enabled services to AE respectively for FY 2012-13 was less than the receivable days of comparable companies selected by the Appellant as well as learned TPO for determining the arm's length price of provision of IT and IT enabled services to AE.***

9. ***That on the facts of the case and in law, the learned TPO/ Hon'ble DRP has erred in not appreciating that inter-company receivables arising out of provision of services by the Appellant to its AE is closely linked to such transaction and if such services transaction is determined at an arm's length price after considering working capital adjusted margins of comparable companies, no separate adjustment can be made for such inter-company receivables.***

10. ***That on the facts of the case and in law, the learned Hon'ble DRP has erred in determining the arm's length interest rate for inter-company receivables at LIBOR plus 400 basis points by erroneously considering credit rating of the AE using FICO Scores, country risk factors, currency risk and placing reliance on master circular of Reserve Bank of India.***

11. ***That on the facts of the case and in law, the Hon'ble DRP has erred in upholding the TP adjustment made by the learned TPO without appreciating that inter-company receivable days for provision of IT and IT enabled services was 51 days and 48 days respectively which is less than the period of 90 days as prescribed under Section 92CE of the Act read with Rule 10CB of the Income Tax Rules, 1962 ('the Rules').***

Part II - Corporate Tax Grounds

12. ***That on the facts of the case and in law, the learned AO/ Hon'ble DRP has erred in disallowing deduction under section 10AA of the Act on the interest income of INR 642,164 earned on Fixed Deposits placed with banks as per the mandate of statutory authorities, and miscellaneous income of INR 4,930,970.***

12.1 That on the facts of the case and in law, the learned AO/ Hon'ble DRP failed to follow the order passed by the Hon'ble Jurisdictional ITAT in Appellant's own case for AY 2010-11 wherein the aforesaid issues of deduction u/s 10AA of the Act on Interest and Miscellaneous Incomes have been decided in favour

of the Appellant.

All the above grounds are without prejudice to each other. Appellant craves leave to add, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal.
The Appellant prays that appropriate relief be granted based on the above grounds of appeal and the facts and circumstances of the case."

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : (M/s. OPTUM GLOBAL SOLUTIONS (INDIA) PVT. LTD.) Taxpayer is into providing IT enabled health care services and IT services primarily to its group companies. During FY 2012-13, the Company has expanded its operations by setting up two new sites at Hyderabad and Noida. Accordingly, UHG Indian Currently provides services through the following four units in India :

A unit located in Gurgaon and registered under the STPI scheme of the Government of India;
A unit set-up under SEZ in Noida in FY 2012-13 and eligible for tax holiday benefit under section 10AA of the Act;
and two units set-up under SEZ in Hyderabad in FY 2009-10 and FY 2012-13 respectively and eligible for tax holiday benefit under section 10AA of the Act."

3. During the year under assessment taxpayer entered into International Transaction with its AE's as under :-

S.No.	***Name of AE***	***Nature of International Transaction***	***Method***	***Amount(In Rs.)***
1.	***United***	***Provision of IT***	***TNMM***	***4,83,14,81,686***

	Healthcare Services Inc.	***services***		
2.	***United Healthcare Services Inc.***	***Provision of IT enabled services***	***TNMM***	***4,15,93,92,895***
3.	***United Healthcare Services Inc. United***	***Reimbursement of expenses from AEs***	***TNMM***	***11,53,86,874***
	United Health Group Inc.			
	UHC International Services Inc.			
4.	***United Healthcare Services Inc.***	***Reimbursement of expenses by AEs***	***--***	***15,78,28,321***
	United Health Group Inc.			
	United Health Group Global Services Inc.			
Specified domestic transaction				
1	***Mr. Partha Sarathi Mishra***	***Managerial Remuneration***	***TNMM***	***11,59,76,089***
	Mr. Vekatakrishnan Ramaswamy Lyer			

3. In order to the benchmark its international transaction, ld. TPO accepted the economic analysis made by the taxpayer qua its international transactions pertaining to provision of information technology and IT enabled services. However, ld. TPO called upon the taxpayer to explain as to why the delay in receivables should not be charged with then appropriate rate of interest. Declining the contentions raised by the taxpayer that arm's length price (ALP) of the international transaction qua receivable is nil, proceeded to

compute the interest by applying 6 months LIBOR plus 400 basis points by applying CUP the most appropriate method. Ld. TPO also determined a mark up of 100 basis points towards the currency rates arising from fluctuations in the foreign exchange rate borne by the taxpayer. TPO determined the benchmarking rate of interest at 4.45690% and made the cumulative adjustment as under :-

"The AE wise details of interest on receivables is as follows

AE	***INTEREST***
United Health Care Services, Inc.	***5,43,68,348***

The cumulative adjustment made in this case is tabulated below

S. No.	***Nature of international transaction***	***ALP determined by taxpayer (INR)***	***ALP determined by the TPO (INR)***	***Adjustment u/s 92CA (INR)***
1.	***Receivables***	***Nil***	***5,43,68,348***	***5,43,68,348***
Total				***5,43,68,348***

Subsequently, Ld. TPO vide order dated 24.01.2017 passed u/s 154 of the Act made recitification and computed revised adjustment at Rs. 9,43,68,39/-.

4. Assessee carried the matter before the Ld. DRP by way of filing objections who has confirmed the addition by dismissing the objection. Feeling aggrieved the taxpayer has come up before the tribunal by filing the present appeal.

5. We have heard the ld. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and

orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

Ground No. 1 and 2

6. Ground no. 1 and 2 are general in nature, hence, need no specific findings.

Ground no. 3 to 11

7. When we examine audited profit and loss account available at page 294 of the paper book it shows that taxpayer is a debt free entity. It is settled principle of law that when taxpayer is debt free company there is no question of receiving any interest on the receivables. Reliance in this regard is placed on decision rendered by Hon'ble High Court of Delhi ***ITA No. 379/2016, Pr. Commissioner of Income Tax-2 vs. M/s. Bechtel India Pvt. Ltd.***

8. Perusal of TP study of the taxpayer available at page 404 of the paper book working capital adjustment has been granted to the taxpayer in the year under assessment as well as in the earlier years. Furthermore when undisputedly impact of working capital of tested party vis-à-vis its comparables has been factored in the profitability of the taxpayer while benchmarking international transaction qua IT and ITES segments have been held to be at arm's length, then there is no need to impute the interest on outstanding receivables from associated enterprises (AE).

9. Coordinate bench of tribunal in case ***ITA No. 4132/Del/2017, M/s. Target Sourcing Services India Pvt. Ltd. vs. ACIT*** by following the decision rendered by ***Hon'ble Delhi High Court in case of Pr. CIT vs. Kusum Health Care Pvt. Ltd. in ITA no. 765/2016 order dated 25.04.2017*** held that re-characterization of outstanding receivables as loan by the TPO and thereby imputing the interest on such outstanding receivables is not sustainable in the eyes of law by returning following findings :-

> ***" In view of what has been discussed above and following the aforesaid decision rendered by the Hon'ble Delhi High Court, we are of the considered view that when the taxpayer has already taken into account the impact of outstanding receivables on profitability while making working capital adjustments of the taxpayer vis-a-vis its comparables which is less than the working capital adjusted margin of the comparables any further adjustment on account of delayed payment of outstanding receivables from AE would distort the entire picture of re-characterization the transactions. In other words, transactions as to outstanding receivables cannot be re-characterized as loan deemed to be advanced by the taxpayer to its AE. We are of the considered view that AO/DRP have erred in making addition of Rs.19,79,520/- on account of interest on outstanding receivables from AE, hence ordered to be deleted. Ground No.1 is determined in favour of the taxpayer."***

10. So in view of what has been discussed above, we are of the considered view that addition made by TPO/DRP on account of interest on outstanding receivable from AE is not sustainable, hence, order to be deleted.

Ground no. 12

11. Assessing Officer has disallowed the deductions claimed by the taxpayer u/s 10AA on account of interest income of Rs. 7,57,24,178/- and miscellaneous income of Rs. 2, 90,63,825/-. On the ground that the said income cannot be set to have any direct nexus with the assessee business because the assessee is not into the business of finance and investment.

12. However, the ld. AR for the assessee contended that this issue has already been decided in favour of the taxpayer in its own case in AY 2010-11 and 2011-12 by the tribunal. However, Ld. AO/DRP declined to follow the order passed by the tribunal by recording reasons :-

> ***"1. Though the assessee has relied on the order of the Hon'ble ITAT in its own case however it is respectively submitted that order of the Hon'ble ITAT has still not attained finality."***

13. The Ld. AR for the taxpayer contended that this issue is already covered by the order passed by co-ordinate bench of tribunal in AY 2009-10, 2010-11 and 2011-12. Coordinate Bench of tribunal in assessee's own case in A.Y. 2009-10, vide ***ITA No. 825/Del/2014 and ITA No. 419/Del/2014*** decided by the identical issue in favour of the assessee by returning following findings :-

"66. The AO in the draft order, available at pages 140 to 147, denied the deduction of Rs.125,71,932/- and Rs.22,85,957/- claimed u/s 10A of the Act being the interest on FDR and misc. income respectively on the ground that the same is not related to exports. Ld. DRP also upheld the findings of the AO by observing that the interest income cannot be termed as profit derived from an undertaking and has also not followed the decision rendered by the coordinate Bench in AY 2008-09 on identical issue.
67. Undisputedly, identical issue has come up before the Tribunal in taxpayer's own case for AY 2010-11 and has been decided in favour of the taxpayer by relying upon the decision rendered by the Hon'ble Delhi High Court in Riviera Home Furnishing vs. Additional CIT- 65 taxmann.com 287 (Delhi). Operative part of the finding returned by Hon'ble Delhi High Court in Riviera Home Furnishing (supra) is reproduced for ready perusal as under :-

"9. The question as to what can constitute as profits and gains derived by a 100% EOU from the export of articles and computer software came for consideration before the Karnataka High Court in CIT v. Motorola India Electronics (P.) Ltd. [2014] 46 taxmann.com 167/225 Taxman 11 (Mag.). The said appeal before the Karnataka High Court was by the Revenue challenging an order passed by the ITAT which held that the interest payable on FDRs was part of the profits of the business of the undertaking and therefore includible in the income eligible for deduction Sections 10A and 10B of the Act. There the Assessee had earned interest on the deposits lying in the EEFC account as well as interest earned on inter-corporate loans given to sister concerns out of the funds of the undertaking. There was a restriction on the Assessee in that case from making pre-payment of its external commercial borrowings ('ECB'). It could repay only to the extent of 10% of the outstanding loan in a year. This made the Assessee temporarily park the balance funds as deposits or with various sister concerns as inter corporate deposits until the date of repayment. The Assessee contended that the interest derived from the business of the industrial undertaking was eligible for exemption within the meaning of Section 10B and applied the formula under Section 10B(4) of the Act for determining the profits from exports. The Assessee's contention that the expression "profits of the business of the undertaking" in Section 10B(4) was wider than the expression "profits and gains derived by" the Assessee from a 100% EOU occurring in Section 10B(1) was accepted by the ITAT. The ITAT noticed that unlike Section 80HHC, where there was an express exclusion of the interest earned from the 'profits of business of undertaking', there was no similar provision as far as Sections 10A and 10B were concerned.

10. In Motorola India Electronics (P.) Ltd. (supra) reference was made to the decision of the Supreme Court in Pandian Chemicals Ltd. v. CIT [2003] 262 ITR 278/129 Taxman 539 which dealt with Section 80HH and Liberty India v. CIT [2009] 317 ITR 218/183 Taxman 349 (SC), which interpreted Section 801B of the Act. Reference was also made to the decision of CIT v. Sterling Foods [1999] 237 ITR 579/104 Taxman 204 (SC), which interpreted Section 80HH and the decision of the Madras High Court in CIT v. Menon Impex (P.) Ltd. [2003] 259 ITR 403/128 Taxman 11 which interpreted Section 10A of the Act. The Karnataka High Court in Motorola India Electronics (P.) Ltd. (supra), after noticing the above decisions, held that "it is clear that, what is exempted is not merely the profits and gains from the export of articles but also the income from the business of the undertaking". Specific to the question of interest earned by the EOU on the FDRs placed by it and interest earned from the loans given to sister concerns, it was held that although it did not partake the character of profit and gains from the sale of an ITA No.419/Del/2014 article "it is income which is derived from the consideration realized by export of articles."

11. The decision of the Karnataka High Court in Motorola India Electronics (P.) Ltd. (supra) was followed by this Court in its decision in CIT v. Hritnik Exports (P.) Ltd. (decision dated 13th November 2014 in ITA Nos. 219 and 239 of 2014). This Court also referred to its earlier decision dated 1st September 2014 in ITA No. 438 of 2014 (CIT v. XLNC Fashions). While declining to frame a question of law in the Revenue's appeal, this Court inHritnik Exports (P.) Ltd. (supra) quoted with approval the observations of the Special Bench of the ITAT in Maral Overseas Ltd. v. Addl. CIT [2012] 136 ITD 177/20 taxmann.com 346 (Indore) on the interpretation of Section 10B(4) of the Act as under:

'79. Thus, sub-section (4) of section 10B stipulated that deduction under that section shall be computed by apportioning the profits of the business of the undertaking in the ratio of turnover to the total turnover. Thus, not- withstanding the fact that sub-section (1) of section 10B refers the profits and gains as are derived by a 100% EOU, yet the manner of determining such eligible profits has been statutorily defined in sub-section (4) of section 10B of the Act. As per the formula stated above, the entire profits of the business are to be taken which are multiplied by the ratio of the export turnover to the total turnover of the business. Sub-section (4) does not require an assessee to establish a direct nexus with the business of the undertaking and once an income forms part of the business of the undertaking, the same would be included in the profits of the business of the undertaking. Thus, once an income forms part of the business of the eligible undertaking, there is no further mandate in the

provisions of section 10B to exclude the same from the eligible profits. The mode of determining the eligible deduction u/s 10B is similar to the provisions of section 80HHC inasmuch as both the sections mandates determination of eligible profits as per the formula contained therein. The only difference is that section 80HHC contains a further mandate in terms of Explanation (baa) for exclusion of certain income from the "profits of the business" which is, however, conspicuous by its absence in section 10B. On the basis of the aforesaid distinction, sub-section (4) of section 10A/10B of the Act is a complete code providing the mechanism for computing the "profits of the business" eligible for deduction u/s 10B of the Act. Once an income forms part of the business of the income of the eligible undertaking of the assessee, the same cannot be excluded from the eligible profits for the purpose of computing deduction u/s 10B of the Act. As per the computation made by the Assessing Officer himself, there is no dispute that both these incomes have been treated by the Assessing Officer as business income. The CBDT Circular No. 564 dated 5th July, 1990 reported in 184 ITR (St.) 137 explained the scope and ambit of section 80HHC and the mode of determination of profits derived by an assessee from the export of goods. I.T.A.T., Special Bench in the case of International Research Park Laboratories v. ACIT, 212 ITR (AT) 1, after following the aforesaid Circular, held that straight jacket formula given in sub-section (3) has to be followed to determine the eligible deduction. The Hon'ble Supreme Court in the case ofP.R. Prabhakar; 284 ITR 584 had approved the principle laid down in the Special Bench decision in International Research Park Laboratories v.ACIT (supra). In the assessee's own case the I.T.A.T. in the preceding years, after considering the decision in the case of Liberty India held that provisions of section 10B are different from the provisions of section 80IA wherein no formula has been laid down for computing the eligible business profit.'

12. Recently, in a decision dated 6th October 2015 in ITA NO. 392 of 2015 (Principal CIT v. Universal Precision Screws), this Court had occasion to again consider whether interest earned on fixed deposits kept by an Assessee which was eligible under Section 10B of the Act, as a condition for utilization of letter of credit and bank guarantee limits, would qualify for deduction. That question was decided in favour of the Assessee and against the Revenue. The Court held as under:

'9. On the question of interest on the FDRs, the ITAT has referred to Section 10B(4) which states that for the purposes of Section 10B(1), 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.' As noted by this Court in CIT v. Hritnik Exports Pvt. Ltd. (decision dated 13th November, 2014 in ITA No. 219 & 239 of 2014), Section 10B(4) mandates the application of the formula for determining the profits derived from exports for the purposes of Section 10B(1). In other words, the formula would read thus:

Profits derived from export = Profits of the business of the undertaking 9A. In terms of the above formula, the question that would arise is whether the interest on the FDRs could form part of the 'profits of the business of the undertaking'. The attention of the Court has been drawn to the decision of the Karnataka High Court in CIT v. Motorola India Electronics Pvt. Ltd. (2014) 46 Taxmann.com 167 (Kar.) which held that there was a direct nexus between the interest received from the FDRs created by a similarly placed Assessee from the amounts borrowed by it. The High Court approved the order of the ITAT in that case which held that the entire profits of the business of the undertaking should be taken into consideration while computing the eligible deduction under Section 10B of the Act by ITA 392/2015 applying the mandatory formula.

10. In the present case, the Assessee has stated that the interest on FDRs was received on "margin kept in the bank for utilization of letter of credit and bank guarantee limits". In those circumstances, the decision of the ITAT that such interest bears the requisite characteristic of business income and has nexus to the business activities of the Assessee cannot be faulted. In other words, interest earned on the FDRs would form part of the "profits of the business of the undertaking" for the purposes of computation of the profits derived from export by applying formula under Section 10B(4) of the Act.

13. Mr. Ashok Manchanda, learned Senior standing counsel for the Revenue, urged that none of the earlier decisions of the High Courts have considered the effect of Sections 80I, 801A and 801B of the Act which occur in Chapter VIA of the Act. He referred in particular to Section 80A(4) of the Act, which reads as under:

'4) Notwithstanding anything to the contrary contained in section 10A or section 10AA or section 10B or section 10BA or in any provisions of this Chapter under the heading "C--Deductions in respect of certain incomes", where, in the case of an assessee, any amount of profits and gains of an undertaking or unit or enterprise or eligible business is claimed and allowed as a deduction under any of those provisions for any assessment year, deduction in respect of, and to the extent of, such profits and gains shall not be allowed under any other provisions of this Act

for such assessment year and shall in no case exceed the profits and gains of such undertaking or unit or enterprise or eligible business, as the case may be.'

14. Mr. Manchanda's attempt was to show that Section 80A(4), which inter alia stated that any deduction allowable under Section 10B cannot in any case "exceed the profits and gains of such undertaking or unit or enterprise or eligible business, as the case may be" made it clear that a unit seeking deduction under Section 10B would be eligible to do so only insofar as such income was directly attributable to the business of export. Any income that might be merely incidental to the business of the undertaking, not directly related to the activity of export, would not be eligible for such deduction. He also took the Court again through the decision of the Supreme Court in Liberty India (supra) and submitted that the earlier decisions of this Court in Hritnik Exports (P.) Ltd. (supra) and Universal Precision Screws ITA No.419/Del/2014 (supra) might require to be reconsidered. When a question was posed to him as to whether the Revenue had challenge the aforementioned decisions of this Court, and of the ITAT in the present case to the extent it has allowed the plea of the Assessee as regards 'deemed export drawback', Mr. Manchanda stated that the Revenue ought to have challenged the above decisions as well as the impugned order of the ITAT in the present case and perhaps he would advise it to do so hereafter. He has also handed over a written note of submissions, reiterating the above submissions.

15. In the considered view of the Court, the submissions made on behalf of the Revenue proceed on the basic misconception regarding the true purport of the provisions of Chapter VIA of the Act and on an incorrect understanding of Section 80A(4) of the Act. The opening words of Section 80A(4) read "Notwithstanding anything to the contrary contained in section 10A or section 10AA or section 10B or section 10BA or in any provisions of this Chapter . . . . . ". What is sought to be underscored, therefore, is that Section 80A, and the other provisions in Chapter VIA, are independent of Sections 10A and 10B of the Act. It appears that the object of Section 80A(4) was to ensure that a unit which has availed of the benefit under Section 10B will not be allowed to further claim relief under Section 80IA or 80IB read with Section 80A(4). The intention does not appear to be to deny relief under Section 10B(1) read with Section 10B(4) or to whittle down the ambit of those provisions as is sought to be suggested by Mr. Manchanda. Also, he is not right in contending that the decisions of the High Courts referred to above have not noticed the decision of the Supreme Court in Liberty India. The Karnataka High Court in Motorola India Electronics (P.) Ltd. (supra) makes a reference to the said decision. That decision of the Karnataka High Court has

been cited with approval by this Court in Hritnik Exports (P.) Ltd. (supra) and Universal Precision Screws (supra). In Hritnik Exports (P.) Ltd. (supra) the Court quoted with approval the observations of the Special Bench of the ITAT in Maral Overseas Ltd. (supra) that "Section 10A/10B of the Act is a complete code providing the mechanism for computing the 'profits of the business' eligible for deduction u/s 10B of the Act. Once an income forms part of the business of the income of the eligible undertaking of the assessee, the same cannot be excluded from the eligible profits for the purpose of computing deduction u/s 10B of the Act."

16. This then brings us to the questions framed for consideration in the present case and the decision of the ITAT in not accepting the Assessee's plea in regard to 'customer claims' 'freight subsidy' and 'interest on fixed deposit receipts' even while accepted the Assessee's case as regards 'deemed export drawback'.

17. The contention of the Assessee as regards customer claims was that it had received the claim of Rs. 28,27,224 from a customer for cancelling the export order. Later on the cancelled order was completed and goods were exported to another customer. The sum received as claim from the customer was nonseverable from the income of the business of the undertaking. The Court fails to appreciate as to how the ITAT could have held that this transaction did not arise from the business of the export of goods. Even as regards freight subsidy, the Assessee's contention was that it had received the subsidy in respect of the business carried on and the said subsidy was part of the profit of the business of the undertaking. If the ITAT was prepared to consider the deemed export draw back as eligible for deduction then there was no justification for excluding the freight subsidy. Even as regards the interest on FDR, the Court has been shown a note of the balance sheet of the Assessee [which was placed before the AO] which clearly states that "fixed deposit receipts (including accrued interest) valuing Rs. 15,05,875 are under lien with Bank of India for facilitating the letter of credit and bank guarantee facilities." In terms of the ratio of the decisions of this Court both in Hritnik Exports (P.) Ltd. (supra) and Universal Precision Screws (supra), the interest earned on such FDR ought to qualify for deduction under Section 10B of the Act."

68. So, following the findings returned by the coordinate Bench of the Tribunal in taxpayer's own case for AY 2010-11 based on the decision of Hon'ble High Court in Riviera Home Furnishing (supra), we are of the considered view that the taxpayer is entitled for deduction u/s 10A on the interest earned on fixed deposit receipts to the tune of Rs.125,71,932/- and Rs.22,85,957/-.

69. Similar view as to allowing the deduction u/s 10A of the Act on excess provision returned back amounting to Rs.7,42,769/- has been expressed by the coordinate Bench of the Tribunal in Birlasoft (India) Ltd. vs. DCIT 44 SOT 664 (Delhi). Following the decision rendered by the coordinate Bench of the Tribunal, we are of the considered view that notice pay recoveries from the employees is also part of the business profit of the taxpayer on which the taxpayer is also eligible for deduction u/s 10A of the Act. Consequently, grounds no.11 & 11.1 are also determined in favour of the taxpayer."

14. So, following the order passed by co-ordinate bench of tribunal (supra) on the identical issue, we are of the considered view that the taxpayer is entitled for deduction u/s 10A on the interest earned on the fixed income of Rs. 7,57,24,178/- and miscellaneous income of Rs. 2,90,63,825/- as Section 10A is a complete code providing the mechanism for computing profit of the business eligible for deduction and as such taxpayer is held to be entitled for deduction u/s 10AA. Approach adopted by AO/DRP is legally and factually misconceived that order of Tribunal has not yet attained finality, more particularly when order passed by Tribunal has not been stayed by the higher forum. Accordingly ground no. 13 is decided in favour of the taxpayer.

15. In view of what has been discussed above, present appeal filed by the taxpayer is allowed.

Order pronounced in open court on 29th September, 2020

Sd/-	Sd/-
(N.K.BILLAIYA)	**(KULDIP SINGH)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: the 29th September, 2020

Binita

Copy forwarded to:
1.Appellant
2.Respondent
3.CIT
4.CIT(A)
5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.

Date of dictation	04 .09.2020
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	