IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B", MUMBAI

BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER
AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

ITA No. 6604/Mum/2012
(Assessment Year: 2009-10)

ITA Nos. 3063 to 3067/Mum/2012
(Assessment Year's: 2004-05 to 2008-09)

Asst. Commissioner of Income-Tax 11(3),
Mumbai .... Appellant

Vs.

M/s. Majmudar & Co.,
601/604, Naman Centre,
A wing, G-31, G Block,
Bandra Kurla Complex,
Bandra, Mumbai - 400028. ....
Respondent

Appellant by : Shri N.P. Singh, DR
Respondent b: Shri Arvind Sonde, AR

Date of hearing : 25/05/2016
Date of pronouncement : 19/08/2016

ORDER

PER MAHAVIR SINGH, JUDICIAL MEMBER:

These six appeals by revenue are arising out of different orders of CIT (A) in appeal No.CIT (A)-2/IT/376 to 379/2010-11 for the assessment years 2004-05 to 2005-06 and 2008-09 vide order of common date 07-02-2012, in appeal No.CIT (A)-2/IT/382/2009-10 dated 07-02-2012 and in appeal No.CIT (A)-2/IT/210/2011-12 order dated 23-08-2012. Assessments were framed by the ACIT-11 (3), Mumbai for the assessment years 2004-05 to 2009-10 vide his orders of different dates

www.taxguru.in

u/s 143 (3) read with section 147 of the Income Tax Act, 1961 (hereinafter "the Act").

2. The only common issue in these appeals is in regard to the order of the CIT (A) deleting the addition made by the AO by disallowing deduction u/s 10(B) of the Act by holding that the assessee, a firm of Advocate & Solicitors engaged in production and export of customized electronic data or legal database is not eligible for deduction. For this, the Revenue has raised identically worded grounds in all the years and grounds raised in ITA No.3066/Mum/2012 for the assessment year 2007-08 read as under:-

> *1. "On the facts and the circumstances of the case and in law, the ld. CIT(A) erred in holding that the assessee, a firm of Advocates and Solicitors, was engaged in the production and export of customized electronic data or legal database and was hence eligible for deduction under section 10 B of the Income Tax Act.*
>
> *2. Ld. CIT(A) failed to appreciate that the assessee was merely rendering client specific legal services to foreign clients in the normal course of profession, using an existing legal database and hence could not be said to be engaged in the production and export of customized electronic data or legal database.*
>
> *3. Ld. CIT(A) erred in holding that the mere transmission of model agreements, extracts of relevant laws, notifications and forms and such other standard legal documents by electronic means, made the assessee eligible for deduction under section 10B, when the deduction is allowable only where there is production of customized data or legal database.*
>
> *4. Ld. CIT(A) failed to appreciate that the assessee had always been rendering the same services to its foreign clients, in the same manner and with the same resources, and hence the alleged export oriented undertaking was formed by a mere splitting up and reconstruction of the existing activity and consequently no deduction under section 10 B was allowable.*
>
> *5. Without prejudice to the foregoing grounds, the Ld. CIT(A) erred in allowing deduction under section 10*

www.taxguru.in

> *B on the entire profits for the present A.Y. 2007-08, when such deduction is allowable only to a hundred per cent export oriented undertaking as defined in clause (iv) of item 2 of the Explanation to the section, and the requisite approval in this regard by the Board of Approval appointed by the Central Government has not been brought on record, and the undertaking was recognized as an EOU by the Development Commissioner only with effect from 22.11.2006."*

The facts and circumstances and issue raised by Revenue in all these years are identical and hence, we will take up the lead year i.e. assessment year 2007-08 and will decide the issue.

3. Brief facts leading to the above issue are that the AO during the course of assessment proceedings noticed that the assessee firm had claimed deduction u/s 10B of the Act amounting to Rs. 3,41,08,341/- in its return of income on account of rendering of legal service to overseas clients and the money brought in convertible foreign exchange in India. During the scrutiny assessment, the AO took a view that the assessee firm has wrongly claimed deduction u/s. 10B of the Act and after examining this issue in detail, the AO has disallowed the claim of the assessee firm regarding deduction claimed u/s. 10B of the Act. During the course of assessment proceedings, it was claimed before the AO that the assessee firm was engaged in the export of Legal Services to its overseas clients by transfer of customized electronic data and it has used its legal database for furnishing the desired information to its clients. The unit of the firm was recognized as a 100% EOU by the Development Commissioner SEZ, SEEPZ and its entire sale proceeds from export of such legal services was brought in India in convertible foreign exchange. Since, the assessee firm has transferred the customized electronic data to its client therefore it forms part of computer software as per explanation 2 to section 10B of the Act. Further, the grant of registration from the Development Commissioner of EOU for Legal Services and the inclusion of Legal Database is an eligible product and services for the

www.taxguru.in

purpose of grant of deduction under section 10B of the Act in view of CBDT's Notification 10 SO 890(E) dated September 26, 2000 wherein the legal database has already been notified by the CBDT for the purpose of computer software and admissibility under section 10B of the Act. On the other hand, the claim of the assessee firm u/s. 10B of the Act was rejected by the AO on the following grounds:

> *"a) The assessee firm itself has claimed that it was engaged in providing legal services to its overseas client. The certificated issued by the Development Commissioner, SEEPZ Form 56G and the Tax Audit report also confirms this fact. Thus, the assessee was engaged in providing legal services to its foreign clients and not engaged in exporting legal database which was one of the items notified by the CBDT for the purpose of "Computer Software" on which deduction u/s. 10B was admissible.*
>
> *b) Rendering of legal services by the assessee firm to the foreign clients cannot be termed as export of legal database from India.*
>
> *c) The EOU unit of the assessee firm did not employ any staff whatsoever or any software personnel either directly or indirectly for creating legal database as notified by the CBDT for the purpose of allowing deduction u/s. 10B.*
>
> *d) The assessee had not furnished any report of the auditors as required u/s. 92E of the I.T. Act.*
>
> *e) Legal database was general in nature whereas legal services rendered by the assessee firm were personalized and client based specific services rendered by the assessee firm based on the request of its foreign clients. Legal database is for the purpose of general use, whereas legal services are made for specific clients for specific use. Legal database can be used and retrieved by any person having access to the same whereas legal services are made strictly for a particular client on the confidential basis. Therefore, since the assessee had not created any legal database in its firm, therefore the legal services rendered by the firm to its foreign clients through Internet, E-mails etc did not fulfil the condition prescribed u/s. 10B of the I.T. Act and therefore its claim for deduction u/s. 10B was rejected by the Assessing Officer.*
>
> *f) The assessee firm was given registration for 100% EOU for its office located in the Ismail Building, Fort, Mumbai but it is noted from Form 56G that the firm is located in Free Press House, Nariman Point. Therefore, address does*

www.taxguru.in

not tally. Further, the application for change of office by the assessee firm from Ismail Building, Fort to Free Press House, Nariman Point was only accepted by the Development Commissioner, SPEEZ vide their letter dated July 28, 2006. Mere intimation by the assessee that it wants to change its office from Fort to Nariman Point without the approval of the prescribed authority cannot make it eligible to claim deduction u/s. 10B.

g) During the course of assessment proceedings a letter was received by the AO from Development Commissioner, SEEPZ dated October 12, 2010 wherein it has been stated that one of the important terms and conditions required by any unit to be recognized as 100% EOU was the date of "commencement of production" (i.e. "custom bonding" of the premises), which was fulfilled by the assessee firm on November 22, 2006. Since, the assessee firm had not compiled with the condition based on which it was granted the status of 100% EOU by the prescribed authority. Therefore, the assessee firm is not eligible to claim deduction under section 10B of the Income Tax Act.

Based on the above reasoning, the Assessing Officer has disallowed the claim of the assessee firm regarding deduction claimed u/s. 10B of the I.T. Act for the detailed reasons given in the assessment Order for the A.Y. 2007-08".

4. Aggrieved against the findings of the AO, the assessee preferred appeal before the CIT (A), who allowed the claim of the assessee of deduction u/s 10(B) of the Act by observing as under:-

"*2.7 After carefully examining the facts and circumstances of the case, I find that the Assessing Officer has not considered the following facts properly in this case, that the prescribed authority i.e. Development Commissioner SEEPZ has already granted the assessee firm registration as 100% EOU under the provision of EXIM Policy 2002-2007 for the item Legal Services. Further, the CBDT Notification No. S.O. 890 (E) dated 26th September 2000 has permitted both products and services of legal database as eligible information technology enabled products or services for grant of deduction u/s. 10B of the Income Tax Act. The services provided by the assessee firm are "Customized electronic data transmission" and are user/client specific. Further the legal services provided by the assessee firm were rendered by use of legal database created by the assessee firm over a period of more than 60 years of its professional experience. The legal services were rendered by the assessee firm to its foreign clients by use of electronic mode of communication i.e. by*

www.taxguru.in

exchange of legal information and documents via emails and internet services. In addition, the assessee firm has compiled with the other conditions of section 10B, i.e. relating to submission of audit report in form 56G, realization of service charges within the permitted time, exporting legal services to its client outside India and receiving the service charges for the same in the foreign currency in India. Further, I find that Hon'ble ITAT Mumbai Bench "E" in the case of DCIT, Range 9(3), Mumbai Vs. Tecnimont ICB (P) Ltd., (2009) 119 ITD 151 (MUM) has clarified that the services provided by an assessee by use of emails and FTP sites are eligible as computer programme as defined under section 10B read with section 10BB. Therefore, the claim of the assessee firm is fully justified. Coming to the issue of custom bonding as raised by the Assessing Officer, I rely on the decision of the Hon'ble ITAT Delhi 'A' Bench in the case of DCIT vs. Arts Beauty Exports (ITA Nos. 2955 and 2956/Del/10) decided on June 3, 2011, wherein the facts and circumstances are similar to that of the assessee firm and the Hon'ble ITAT has taken a view that custom bonding is necessary only in cases if the exporter intends to import capital goods or raw materials without payment of duty. Whereas, in the present case, the assessee firm has not imported any capital goods or raw material without payment of duty. Therefore, custom bonding procedure by itself cannot be a basis for denying deduction u/s. 10B of the Income Tax Act to the assessee firm. Finally, I am inclined to agree with the views of the authorized representative of the assessee firm that any transmission of "customized electronic data" fails within the expression of "computer software" as per explanation 2(i)(b) to the section 10B of the I.T. Act. Therefore, the assessee firm is entitled to claim deduction u/s. 10B of the I.T. Act in respect of its 100% EOU unit and the Assessing Officer is directed to allow the same in respect of this unit only whereas local unit of the firm would be liable for taxation as per the normal provisions of Income Tax Act. Since the words "customized electronic data" have been used in the definition of computer software is separated by the word "or" and qualifies for deduction u/s. 10B by itself as a general provision of the section, therefore, I do not wish to go in to the alternate argument taken by the assessee firm that legal service rendered by use of legal database were also eligible for deduction u/s. 10B in view of the notification issued by the CBDT vide No. S.O. 890(E) dated September 26, 2000. Consequently, this ground of appeal is decided in the favour of the assessee firm.

Aggrieved against the order of the CIT (A), Revenue is in second appeal before the Tribunal.

www.taxguru.in

5. Before us, the learned Counsel for the Assessee Shri Arvind Sonde argued that assessee firm is engaged in providing legal services through legal database held by it, to various banks, companies and financial institutions both in India and abroad. It has two offices – the first office premises is situated at 381, Ismail building, Fort, Mumbai and the second office which is EOU is located at 96, Free Press House, Nariman Point, Mumbai. The assessee has maintained two separate sets of books of accounts for these two units/offices. The assessee firm is rendering legal services to overseas clients on customized basis therefore it had applied to the Development Commissioner SEEPZ, Special Economic Zone for grant for EOU Status vide it application dated 14th January 2003 for the item "Legal Services" which was covered under item 1A (a) of Appendix 36 of EXIM Policy 2002-2007. On the basis of this application, the Asst. Development Commissioner, vide his letter no. SEEPZ/28/EOU/129/2002-03/67 dated April 16, 2003, granted the approval for EOU status to the assessee firm in-principle. Subsequently, vide their letter no. PER: 121/(2003)/SEEPZ/21/03-04/1664 dated August 18, 2003, the Development Commissioner, SEEPZ granted the approval of EOU status to the assessee firm, subject to fulfilment of certain conditions, which broadly included- to have operational website and email address, earning of positive net foreign exchange, entering into legal agreement with DC SEEPZ SEZ in prescribed form (Appendix 14-IF), etc. Accordingly, the assessee firm entered into an agreement with the DC SEEPZ SEZ on August 23, 2003. Based on this agreement, the Assistant Development Commissioner, SEEPZ-SEZ, vide his letter no. SEEPZ/EOU/IAII/121/2002-03/6235 dated December 03, 2003 granted the assessee registration as EOU and issued of GREEN CARD No. 0001191 dated 24.10.2003 which was valid up to 31.03.2006. After obtaining the registration as 100% EOU, the assessee firm approached Shri Vijay H. Patil, Advocate – Supreme Court, for his opinion on

www.taxguru.in

various queries for availing benefits under section 10B of the Act by the assessee firm. Shri Vijay H. Patil vide his opinion letter no. OP06-04 dated January 27, 2004 advised for exemption u/s. 10B of the Act to the assessee firm as under:-

> *"Under the provision legal services has been notified for the purpose of any customized electronic data or any product or service of similar nature as may be notified by the Board. As such legal services rendered by way of customized electronic data, would fall within the scope of S.10B. As such, any services rendered to a particular client through electronic data would be customized electronic data and, as such, it would be a software for claiming deduction u/s. 10B and, therefore, in my opinion, the Querist's case would squarely fall under the definition of "Computer Software" which is entitled to deduction under the provisions of section 10B of the Act. Under the provisions of section 10B, hundred percent deduction is available in respect of income arising out of export-oriented undertaking."*

According to Ld. Counsel, based on the above advice, the deduction u/s. 10B of the Act was claimed by the assessee firm. According to him, whether export of legal services by 100% EOU qualifies for deduction under section 10B of the Act or not, and whether it is covered under the expression "computer software" as defined under explanation 2 to section 10B of the Act? He referred to definition of the *"Computer Software"* which means as under:-

> *a) any computer programme recorded on any disc, tape, perforated media or other information storage device; or*
>
> *b) any customized electronic data or any product or service of similar nature as may be notified 34 by the Board.*

6. The learned Counsel for the assessee argued that from the above definition it is clear that assessee's client as per the requirement of their client transmits data in the electronic form, they are covered under computer software and hence eligible for deduction u/s. 10B of the Act. He also argued that our client's export customize electronic data they have also been registered under the EOU Scheme and hence, in view of the term *"any product or service of similar nature as may be notified by*

www.taxguru.in

the Board their business of electronically transfer of customized electronic data" would also be covered. He explained that the phrase *"computer software"* has been expressly defined under the Act. He also referred to the decision of the Hon'ble Supreme Court in the case of Hariprasad Shivshanker Sukla vs. A.D. Divelkar 1957 SCR 121) , wherein it is observed that *"there is no doubt that when the Act itself provides a dictionary for the words---------------------------- ---------------- -------------------- interpretation of the words used un the statute. We are not concerned with any presumed intention of the legislature; our task is to get at the intention as expressed in the statute"*. (Emphasis added)

7. The learned Counsel explained the meaning of the words *'customised', 'electronic'* and *'data'* and explained that as is apparent from the above definition, customized electronic data is clearly computer software. The words customized electronic and data are not themselves individually defined in the Act. Therefore reference can be had to other sources to understand their meaning. In this regard, reference may be had to the leading dictionaries, which define the words as under:-

> ***Customized****: In the Websters Dictionary the closest definition of the word is "custom-built" which is defined as "made to orders" (Websters Dictionary, 1988 edition, page 237)*
>
> ***Electronic****: The Oxford Advanced learners dictionary defines the word to mean "concerned with electronic apparatus (e.g. Computers): this dictionary is available in electronic form" (Oxford Advanced Learners Dictionary, 4th edition, page 389)*
>
> ***Data****: As per Websters, the word means "a known fact". The Oxford Advanced learners dictionary defines the word to be "information prepared for or stored by a computer" (Oxford Advanced Learners Dictionary, 4th edition, page 302)*

The learned Counsel referred to the provision of the Information Technology Act, 2000 ('the IT Act').

> *Under the Act, the term 'data' has been defined under Clause (o) to section 2 as under:-*

www.taxguru.in

Section 2 (o): "Data" means a representation of information, knowledge, facts concepts or instructions which are being prepared or have been prepared in a formalized manner, and it intended to be processed, is being processed or has been processed in a computer system or computer network and may be in any form (including computer printouts magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer.

The term "information" has been defined under clause (v) of Section 2 of the IT Act as under:-

Section 2 (v): "information" includes data, text, images, sound, voice, codes, computer programmes, software and database or micro film or computer generated micro fiche."

"Electronic Form" has been defined under clause (R) of Section 2 of the IT Act as under:

Section 2 (r): "electronic form" with reference to information means any information generated, sent, received or stored in media, magnetic, optical, computer memory, micro film, computer generated micro fiche or similar device;

In light of the above definitions, the term "Customized Electronic Data" which is a part of computer software as per explanation 2 .... the Income Tax Act can be analyzed as under:

***Customization** – means making tailor products and services to individual needs.*

***Electronic** - means of or relating to computer/electronics, concerned with or using devices that operate on principles governing the behaviour of electrons;*

***Data** – means information, which includes text or images.*

8. In view of the above definitions the learned Counsel explained the facts that the assessee is exporting legal services based on legal database which is transmission of customized electronic data and therefore eligible for deduction u/s. 10B of the Act. According to him, the assessee is also rendering legal services, which have been notified by the board as an eligible service by use of legal database and accordingly the firm qualifies for claiming deduction u/s. 10B of the Act. He explained that the assessee firm is engaged in providing legal services to its overseas

www.taxguru.in

clients based on use of legal database. The assessee firm had not employed any software personnel and hence it could not create any legal database. It was stated that the database of the assessee has been compiled over the years and upgraded by its personnel. The firm has two partners and five advocates who help in this work. Further, it was stated that software staff are not required for creating such a legal database which is a technical and legal work. The assessee firm has engaged legal personnel to prepare *"legal database"* in the electronic form readable, editable and retrievable by means of computer system and such legal database is used for providing legal services to its international clients. These legal personnel have been paid professional fees which are reflected under the head professional fees in the profit and loss account of the assessee. Additionally, all of this was supervised, organized, controlled and managed by partners of the assessee, who are the key creators of the database. He further explained that the AO was wrong in holding that the assessee firm did not furnish any report of the auditors as required u/s. 92E of the Act. In this connection, learned Counsel stated that the assessee firm has no office or associates in foreign countries and consequently the provision of Sec. 92E of the Act was not applicable to it. Hence, if a particular requirement for furnishing of report of the auditors' u/s. 92E of the Act is not applicable, the same is not liable to be filed and cannot be a reason of disallowance of claim under any other section of the Act. According to him, the AO has taken a view that legal database was general in nature whereas legal services rendered by the assessee were individual, personalized and/or client based specific services. According to him, legal database can be used and retrieved by any person having access to that whereas legal services as rendered by the assessee were strictly for a specific client for specific use on confidential basis. He therefore concluded that the assessee did not create any legal database and the legal services rendered by it to its foreign clients through internet, email, etc. did not fulfil the condition prescribed

www.taxguru.in

u/s. 10B of the Act. The basis of this objection has not been explained by the AO in the Assessment Order. In any case, it appears that while raising this objection, he completely overlooked Explanation 2 (i) (b) to section 10B of the Act, which provides that computer software means any "*customized electronic data or any product or services of similar nature".* Further in response to the objections raised by the AO, it was explained that the assessee, vide its application dated January 14, 2003 applied to the Development Commissioner SEEPZ, Special Economic Zone for granting the firm EOU Status for item description "Legal Services" covered under item 1 A. (a) of Appendix 36 of EXIM Policy 2002-2007. Based on this application, the Assistant Development Commissioner, vide his letter no. SEEPZ/EOU/129/2002-03/67 dated April 16, 2003, granted the in-principle approval for EOU status to the assessee, subject to obtaining and submitting 5 years lease dead. In response vide its letter dated July 24, 2003, the assessee submitted lease deed for the Free Press House with the Development Commissioner. Later, vide his letter no. PER: 121/(2003)/SEEPZ- /EOU/21/03-04/1664 dated August 18, 2003, the Development Commissioner, SEEPZ granted the approval of EOU status to the firm, subject to certain conditions.

> *(i) The unit shall export its entire production, excluding rejects and sales in the Domestic Tariff Area as per the provision of EOU, for a period of 5 years from the date of commencement of the production. For this purpose, the unit shall furnish the requisite legal undertaking as prescribed in EOU Scheme to the Development Commissioner SEEPZ-SEZ. Before signing the LUT it should have its own operational website and permanent email address.*
>
> *(ii) ....*
>
> *(iii) The unit would require to achieve positive Net Foreign Exchange (NEF) as prescribed in the EOU Scheme for a period of 5 years from the commencement of production, failing which it would be liable to penal action.*
>
> *(iv) ......*
>
> *(v) ......*
>
> *(vi) The letter of permission is valid for 3 years from the date of issue within which you should implement the project and commence production and would automatically lapse if an*

www.taxguru.in

application for the extension is not made before the end of the said period. Date of commencement of production shall be intimated to the Development Commissioner, SEEPZ-SEZ.
(vii) The approval is based on the details furnished by you in your project applicable.
(viii) You shall require to entre into a legal Agreement in the Prescribed Form (Appendix 14-IF) with DC SEEPZ-SEZ for fulfilling the terms and conditions mentioned in the Lop.
(ix) ....

9. In response to the above approval letter and the requirements given by the Development Commissioner, the assessee firm submitted the relevant documents and proof vide letter dated August 20, 2003. Also in Para no. 2 of the referred letter, the assessee intimated shift of unit of Free Press House to the Development Commissioner, SEEPZ and requested him to update the records. On November 19, 2003, the assessee submitted signed Legal Agreements in the prescribed form, as required under the Scheme of EOU. Finally, based on this submission the Development Commissioner vide his letter No. SEEPZ/EOU/IAII/121/2002-03/6235 dated December 03, 2003, confirmed the grant of EOU status to the unit and issued Green Card No. 0001191 effective from October 24, 2003 and valid up to March 31, 2006. We may highlight here that the said letter of confirmation of EOU status was issued by the Development Commissioner, SEEPZ to the assessee at its new office address of Free Press House. Later, vide its' letter dated February 28, 2006, as per the procedure of EOU Scheme, the assessee submitted the Green Card and LOP Agreement with the Development Commissioner, SEEPZ for renewal. The Development Commissioner, SEEPZ vide his letter no. SEEPZ-SEZ/EOU/IA-II/121/2002-03/6710 dated September 06, 2006 extended the validity of LOP for one year up to August 31, 2007 and vide letter no. SEEPZ-SEZ/EOU/IA-II/121/2002-03/6783 dated September 11, 2006 extended the validity of Green Card No. 01723 dated July 28, 2006 up to August 31, 2007. During this period the assessee was carrying out the process of

www.taxguru.in

Custom Bonding, which was completed only on November 22, 2006. This furthers the intention of the authorities to not curtail the benefits of EOU to the unit.

10. We have heard rival contentions and gone through facts and circumstances of the case. We find from the facts of the case that the services provided by the assessee i.e. legal services are recognized by the Government of India for the various benefits under the scheme of EOU as per EXIM Policy 2002-2007. Section 10B of the Act is introduced to give benefit to such EOU under the Income Tax Act, reflecting the intention of law to provide encouragement to the genuine exporters of services to enhance their capacity for provision of services and in turn earn valuable foreign exchange for our country. The assessee has, by use of the legal database compiled by it over a period of more than 60 years (firm is in practice of law since 1943), earned reasonable amount of valuable foreign exchange for our country, thereby fulfilling the most core intention of the law for introduction of EOU Scheme under EXIM Policy and Section 10B of the Act. The assessee has also fulfilled the specific requirements of Section 10B of the Act, by providing Legal Services using Legal database. Legal database being recognized by the Board vide its notification No. S.O.890(E) dated September 26, 2000 as one of the eligible information technology enabled services.

Explanation 2(i) (b) defines computer software to include inter alia a "Customized Electronic Service as notified by the Board". As legal database is notified by the Board for this purpose and the assessee has provided services by using such legal database via electronic media i.e. via emails and internet facilities, the claim of the assessee for deduction under section 10B of the Act in the light of Explanation 2(i) (b) is fully justified.

www.taxguru.in

11. We have gone through the provision of section 10B of the Act, which allows 100% tax exemption on income derived from exports of articles or things or computer software. The benefits are available to any undertaking (i.e., company, partnership firm, etc.) and the provision does not discriminate undertakings on the basis of type of business or services exported. Explanation 2(i)(b) of the IT Act defines computer software to mean any customized electronic data or any product or service of similar nature as may be specified by the CBDT which is transmitted or exported from India to any place outside India by any means. Over and above, CBDT in its Notification no. 890 dated September 26, 2000 notified "the products or services of Legal Database" as an eligible information technology enabled product or service. Hence, the notification applies to both, legal database products and services rendered through the use of Legal Database. We have also gone through the explanation of Ld. Counsel wherein he has explained the definition and meanings of the term not defined under the Act. These includes ***"Customized", "Electronic", "Electronic Form", "Data", "Computer Database", "Computer System", "Information"***. We find that the CIT(A)'s order hold that any transmission of "customized electronic data" falls within the expression of "computer software" as per the Explanation 2 to section 10B of the IT Act. The CIT (A) observed as under:-

> *"Therefore, the assessee firm is entitled to claim a deduction under section 10B of the IT Act. Since any "customized electronic data" used in the definition of computer software is separated by the word* ***"or"*** *and qualifies for deduction under section 10B by itself as a general provision, therefore, I do not wish to go in to the alternate argument taken by the assessee firm that legal service rendered by use of legal database were also eligible for deduction in view of the notification issued by the CBDT."*

12. Further, we are of the view that legal services are recognized by the Indian government for the various benefits under the scheme of EOU as per EXIM Policy 2002-2007. Section 10B of the Act has been

www.taxguru.in

introduced to give benefit to such EOU under the Act, reflecting the intention of law to provide encouragement to the genuine exporters of service and in turn to earn valuable foreign exchange for our country. We find from the case records that the assessee has attached list of database used as a precedent and which are made on the basis of the relevant applicable laws, Rules, Regulations, Notifications, Contracts and various applicable rulings. This has been submitted to the Assessing Officer and the CIT (A) for all the years under consideration. We find that assessee is a partnership firm carrying on the profession as advocates, solicitors and notary. Its main practice areas – Corporate and business laws, International joint ventures, M&A, Corporate Finance, Competition, Trademark, Copyright, Insurance, Securities, Tax Real Property, etc. Assessee intended to start rendering services to overseas clients and, therefore, leased new premises and made an application to the SEEPZ, SEZ Development Commissioner ("DC") for grant of EOU status on January 14, 2003 for providing "legal services" which is covered under item IA (a) of Appendix 36 of EXIM Policy 2002-2007. In- principle approval was granted for EOU status on April 16, 2003. Subsequently, approval of EOU status was granted on August 18, 2003. Green card was issued by the DC on October 24, 2003 which was valid up to March 31, 2006. The letter of confirmation was issued by the DC to assessee at its new office address at Free Press House. Accordingly, with the DC's approval, assessee claimed deduction under section 10B of the IT Act.

13. We have gone through the case laws relied on by the assessee in the case of Diljeet Titus v. Alfred A. Adebare, 130 (DLT 330(2006), the Delhi High Court has considered the definition of *"computer database"* and defined it as *"a collection of information stored on computer media."* The information may be a list of clients and their addresses or it may be the full text of various documents or it may be a set of co-ordinates relating to a three-dimensional building structure. The range of

www.taxguru.in

things which may be included in a computer database is enormous. Based on the above, and the case cited below the requirement of the provision is that there should be customized electronic data and such data should be exported outside India. The data which a customer may require may be gathered either by manual effort or by electronic means. By whatever means the data is collected, once it is stored in an electronic form it becomes a customized electronic data, which cab be exported to qualify for deduction. The process information technology enabled. Further, case law relied on by the assessee on identical facts in the case of Kiran Kapoor v. ITO, 150 ITD 237 (2014) (Delhi ITAT) which was also approved by Delhi High Court, 372 ITR 321, (2015) (Delhi), it was held that the nature of activity done in the EOU was that of producing designs, drawings, layouts and scanning for the projects of foreign clients on the basis of specifications. The activity was done by taking into consideration the data collected by the assessee itself or from clients. Thus, *"ready to print books"* exported by the assessee in the form of CDs or e-mails are customized electronic data eligible for claiming deduction under section 10B of the Act.

14. We have also considered the case law of the Mumbai Bench of this Tribunal in the case of DCIT v. Tecnimont ICB (P) Ltd, 19 ITD 151 (2009) (Mumbai), wherein it was held that services provided by an assessee by use of emails and FTP sites are eligible for deduction as computer programs as defined under Section 10A of the Act. Similarly, Chennai ITAT in the case of ITO v. Accurum India (P) Limited, 34 DTR 301, held that the requirement of the provision is that there should be customized electronic data and such data should be exported outside India to qualify for deduction. What all is required is that the data collected should be in an electronic form. And, further Mumbai Tribunal in the case of Cybertech Systems & Software Limited v. CIT 149 TTJ 17 (Mum), held that the main activity of the company is to train engineers

www.taxguru.in

and other professionals in administration of computer software, especially SAP and export them out of India as per the requirements of the client. The definition of computer programme and software as contemplated under section 10BB of the Act, included processing or management of electronic data and to hold that the assessee is not producing any new product, is not justified and against the scheme of the incentive provisions under section 10B of the Act.

15. We have also gone through the case law of the Hon'ble Bombay High Court in the case of CIT v. Malhar Information Services (2013) 351 ITR 119 (Bom), wherein it is held that the company had undertaken the activities of transmission of customized data through the internet to its client abroad and that of data entry processing and claimed deduction under section 80HHE of the IT Act. The Court held that "data entry" was covered by the CBDT notification dated September 26, 2000 as being computer software service and, hence, allowed the deduction. Similarly, Delhi Tribunal in the case of M.L. Outsourcing Services Pvt. Ltd. 104 TTJ 59 (Del) has held that the assessee was engaged in hiring overseas IT consultants (sourcing, screening and interviewing employees) for its US client. The Delhi Tribunal held that once the data is collected and stored in an electronic form, it becomes a customized electronic data, which can be exported to qualify for deduction.

16. We find that Chennai ITAT in the case of ACIT v. Nicronn Engg. Pvt. Ltd (ITA Nos. 1439/Mad/1995 and 1992 & 1993/Mad/1998 held that the term "manufacture" will include any processing or assembling or recording of programs on disc, tape, perforated media or other information storage device and, hence, entitled to investment allowance.

17. We find from the facts of the case that the assessee maintained two separates books of account for these two offices. There was also

www.taxguru.in

substantial increase in the export turnover from the financial year 2004-05 to 2009-10.

Assessment year	Exports turnover (in Rs. Crore)
2004-05	2.37
2005-06	2.67
2006-07	4.52
2007-08	3.41
2008-09	10.8
2009-10	15.98

But, it is a fact that no assets of the business carried out at Ismail Building were transferred substantially to the Free Press House unit. The Ismail Building Unit and the Free Press House Unit were separate and independent units in the sense that the services rendered could be carried on separately by each unit as is evident from the separate books of accounts that is maintained by assessee. The Free Press House Unit had a separate EOU approval and a Green Card issued by the STPI authorities.

18. On this proposition, assessee relied on the decision of the Hon'ble Himachal Pradesh High Court in the case of CIT v. Yash International Inc (HP) in Appeal No 4002/2013, dated 2-10-2014, wherein it is held that the tax officer ignored the quantum of fresh capital, investment in plant and machinery, new building, new registration number, PAN number. The new unit cannot be presumed as reconstruction of the old existing business, much less the formation of the undertaking. The shifting of the employees would not affect the construction of the new firm to avail the benefit under Section 80IC of the IT Act. The ratio of the judgment rendered by SC in the case of Textile case (1977) 107 ITR 195 (SC) not followed. Supreme Court in the case of Textile Machinery Corp. Ltd. v. CIT (1977) 107 ITR 195 (SC) held that the principal object is to encourage setting up of new industrial undertakings by offering a tax incentive within a stipulated period. There is no formation of any

www.taxguru.in

industrial undertaking out of the existing business since that can take place only when the asset of the old business are transferred substantially to the new undertaking. There is so such transfer of assets. Once the new industrial undertakings are separate and independent production units in the sense that the commodities produced or the results achieved are commercially tangible products and the undertakings can be carried on separately without losing their identity in the old business, they are not to be treated as being formed by reconstruction of the old business. About splitting of business and consequently disallowance of deduction, Hon'ble Delhi High Court in the case of CIT v. Gedore Tools India Pvt. Ltd. (1980) 126 ITR 673 (Del), held that applying the principles of the Supreme Court in the Textile Machinery case, to the present case, it is clear that the new unit has not been formed by the splitting up or reconstruction of the existing business. The second unit has not derived anything from the old unit either by way of equipment or by way of factory buildings. No assets of the old unit have been transferred to the new unit nor has the identity of the first unit been impaired in any way. The mere fact that the second unit manufactures some of the items which were manufactured by the first unit does not make it an integral part of the first unit. It would survive independently of the first unit.

19. In view of the above proposition, the facts of the present case are that on February 28, 2006, as per the EOU procedure, the assessee submitted the green card and the LOP agreement with the DC for renewal. At this stage, the DC by a letter dated March 10, 2006 informed the assessee to submit the Customs certified date of commencement of production. The assessee in response stated that as the EOU did not import any capital goods or seek any sales tax/VAT benefits, it was not require getting it registered with the customs authority. The DC shared a clarification letter dated June 7, 2006 from the Ministry of Commerce that the customs bonding was necessary for the exporters even if they do

www.taxguru.in

not import capital good or raw materials. The Ministry of Commerce issued this letter against a query asked by the DC by its letter dated February 28, 2006. The DC also instructed the assessee to reverse all benefits enjoyed as an exporter under the Customs Act and direct tax laws. It was explained by the assessee before us that in any event, customs bonding is not at all required and for this he relied on the decision of the Delhi ITAT in the case of DCIT v. Arts Beauty Exports (ITA No. 2955 and 2956/Del/10 and held that customs bonding is necessary only in cases if the exporter intends to import any capital goods or raw materials without payment of duty. Further, it is to be noted that the above Delhi Tribunal order has been affirmed by the Delhi High Court (CIT v. Arts Beauty Exports, 357 ITR 276 (2013) (Delhi) for the assessment years 2006-2007 and 2007-2008, wherein it is held that

> *"We do not see any purpose being served by insisting on the custom-bonding of the EOU. A reasonable way of constructing the condition imposed by the Development Commissioner would be to understand the same as necessary only when imports are contemplated. We, therefore, do not see much merit in the objection."*

In view of the above, we are of the view that customs bonding which was never mentioned by the authorities as a condition for grant of registration can never be made a pre-condition for registration after 3 years.

20. Before us, no contrary decision was pointed out by the Revenue and respectfully following the decision of the Hon'ble Delhi Court in the case of Kiran Kapoor (Supra), we confirm the order of the CIT (A) by holding that the expression "Computer Software" is wide enough to embrace diverse activities and to eliminate any doubt the reference can be made to "Customized Electronic Data" as mentioned in Second Explanation to Section 10B (2) of the Act. Further, CBDT issued notification and the notification relied on in the present case uses the expressions *"(iii) content development or animation (iv) data processing .... (vii) human resources services" and (ix) legal data-bases".* In the

www.taxguru.in

present case also the assessee's facts are similar to the facts before the Hon'ble Delhi High Court and the work of the assessee i.e. compiling, editing, data processing and legal data-base is transmitted or exported from India to outside India by any means and lieu earned foreign exchange, which is eligible for deduction u/s 10B of the Act, the CIT (A) rightly allowed the claim of the assessee and we confirm the same. The appeal of the Revenue is dismissed.

21. The facts of the case and the issue involved therein with regard to the other appeals of the Revenue are similar and identical as in the case of Revenue's appeal in ITA No.3066/Mum/2012 for assessment year 2007-08. In view of this all the other appeals of the Revenue are dismissed.

22. In the result, all the appeals of the Revenue are dismissed.

Order pronounced in the open court on August 19th, 2016.

Sd/-	Sd/-
(RAJESH KUMAR)	(MAHAVIR SINGH)
ACCOUNTNAT MEMBER	JUDICIAL MEMBER

Mumbai, Dated: 19/08/2016

PS. Pooja K./
Lakshmikanta Deka/Sr. PS

Copy of the Order forwarded to :

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

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai

www.taxguru.in

	Details	Date	Initials	Designation
1	Draft dictated on (direct on PC)	10/06/2016		Sr.PS/PS
2	Draft Placed before author	11/06/2016 17/08/2016		Sr.PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS/PS
7.	File sent to the Bench Clerk			Sr.PS/PS
8	Date on which the file goes to the Head clerk			
9	Date of Dispatch of order			

www.taxguru.in