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IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH 'B' KOLKATA

[Before Hon'ble Shri N.V.Vasudevan, JM & Shri Waseem Ahmed, AM]

ITA Nos.154&155/Kol/2013
Assessment Year : **2009-10**

I.T.O., Ward-2(3) Kolkata (Appellant)	-versus-	M/s.Last Peak Data Pvt. Ltd. Kolkata (PAN:AABCL0380Q) (Respondent)

For the Appellant : Shri Vasant Subramanyan,
For the Respondent : Shri Niraj Kumar, CIT(DR)

Date of Hearing : 05.10.2015.
Date of Pronouncement : 30.10.2015.

ORDER

Per Shri N.V.Vasudevan, JM :

ITA No. 154/Kol/2013 is an appeal by the Revenue against the order dated 8.10.2012 of CIT(A)-I, Kolkata, relating to AY 2009-10.

2. The grounds of appeal raised by the Revenue are many and they are with reference to several facets of eligibility of the Assessee for deduction u/s.10AA of the Income Tax Act, 1961 (Act). Besides the above, one of the issue raised by the Revenue is also on the deductibility of the amount allowable as deduction u/s.10AA of the Act while computing book profits u/s.115JB(6) of the Act. There are issues with regard to disallowance of depreciation and not allowing set off of brought forward business loss. We will first deal with the issue with regard to deduction u/s.10AA of the Act.

3. The facts and circumstances under which the issue with regard to claim of the Assessee for deduction u/s.10AA of the Act arises for consideration are as follows:

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The Assessee is a company. It was incorporated on 1.12.2004. It is engaged in the business of Data Processing, Software Development and business processing outsource. The Assessee has a unit at Salt Lake City, Kolkata which is registered with Software Technology Park, Kolkata as 100% Export Oriented Unit for computer software. The Assessee was claiming exemption u/s.10B of the Act up to AY 2008-09. Under Sec.10B of the Act, which was introduced by the Finance Act, 1988 w.e.f. 1-4-1989, a deduction of such profits and gains as are derived by a hundred per cent export-oriented undertaking from the export for 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 articles or things or computer software, as the case may be, shall be allowed from the total income of the assessee. "Hundred per cent export-oriented undertaking" for the purpose of Sec.10B means, an undertaking which has been approved as a hundred per cent export oriented undertaking by the Board appointed in this behalf by the Central Government in exercise of the powers conferred by section 14 of the Industries (Development and Regulation) Act, 1951 (65 of 1951), and the rules made under that Act. Under the provisions of s. 10A of the IT Act, a five-year tax holiday is allowed to industrial undertakings manufacturing or producing articles or things in a free trade zone subject to certain conditions. The exemption is available to industrial undertakings which have begun or begins to manufacture or produce articles or things during the previous year relevant to the assessment year commencing on or after April 1, 1981. The tax holiday is at the option of the assessee for five consecutive assessment years falling within the block of eight years beginning with the assessment year relevant to the previous year in which the industrial undertaking begins to manufacture or produce articles or things. The term "manufacture" includes processing or assembling or recording of programmes on any disc, tape, perforated media or other information storage device. The above tax holiday was not available to a hundred per cent. export-oriented undertaking. Such

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undertakings were eligible only for deduction out of their export profits under s. 80HHC of the IT Act. With a view to providing further incentive for earning foreign exchange, a new s. 10B has been inserted by the Act so as to secure that the income of a hundred per cent. export-oriented undertaking shall be exempt from tax for a period of five consecutive assessment years falling within the block of eight assessment years. The exemption provided under the new section is similar to the one provided to industrial undertakings operating in free trade zones. The exemption under the new provisions will be subject to the following conditions :—

(i) That the unit manufacturers or produces any articles or things. The term "manufacture" will include any processing or assembling or recording of programmes on disc, tape, perforated media or other information storage device;

(ii) That the unit has not been formed by the splitting up or reconstruction of an existing business;

(iii) That it has not been formed by the transfer to a new business of machinery or plant previously used for any purpose.

It is not in dispute that the Assessee was allowed deduction u/s.10B of the Act for those AYs.

4. For AY 2008-09 also the Assessee was allowed deduction u/s.10B of the Act. The dispute between the Assessee and the Department in that year was about the computation of book profits u/s.115JB of the Act. While computing book profits u/s.115JB of the Act the Assessee, the assessee had reduced the deduction claimed u/s. 10B. The AO required the assessee to show cause as to why the said claim should not be disallowed as the provisions of section 115JB, amended w.e.f. 1.4.2008, do not permit the deduction u/s. 10A. In this respect the assessee submitted that the provisions of section 115JB(6) exempted the assessee from taxability u/s. 115JB. The assessee further took the plea that the provisions of section 115JB(6) exempted all units situated in Special Economic Zones from its rigors. The claim of the assessee was that it came within the meaning of the words "entrepreneur" and "unit" as defined

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in Special Economic Zone Act, 2005. However, the AO did not agree with the assessee. Ultimately the Tribunal in ITA No.1057/Kol/2012 order dated 19.2.2014, held that the Assessee's unit which was located in a unit located in Special Economic Zone (in short SEZ) is covered by sub section (6) of section 115JB irrespective of the fact that such unit is claiming deduction u/s 10B and, therefore, the book profit of the SEZ unit could not be included while computing book profit under section 115JB for A.Y. 2008-09, despite the fact that clause (f) of Explanation 1 to section 115JB(2) has been amended to apply the provisions of MAT to units which are entitled to deduction under section 10B. In that year the Assessee claimed deduction u/s.10B of the Act which was allowed by the AO and the dispute was only in the matter of computation of book profits u/s.115JB of the Act as stated above.

5. In AY 09-10, which is the AY in this appeal, the Assessee claimed deduction of it's income from the business of Data processing, software development and business processing outsource u/s.10AA of the Act. During the previous year relevant to AY 09-10, M/S.Last Peak BPO Pvt.Ltd., got merged with the Assessee company w.e.f. 23.4.2008. All the assets and liabilities of Last Peak BOP Pvt.Ltd., vested with the Assessee pursuant to the order of the Hon'ble High Court of Calcutta accepting the amalgamation. M/S.Last Peak BPO Pvt. Ltd., had accumulated loss of Rs.31,75,212 which was taken into account in computing the total income of the Assessee for AY 09-10. There is no dispute that M/S.Last Peak BPO Pvt.Ltd., was also a company registered with the STPI and was having its production unit at Salt Lake City, Kolkata and rendering Information Technology Enabled Services (ITES). ITES are also covered under the provisions of Sec.10AA of the Act.

6. The AO examined the claim of the Assessee for deduction u/s.10AA of the Act The provisions of Sec. 10AA was inserted in the IT Act by Special Economic Zones Act, 2005 (SEZ Act) w.e.f. 10th Feb., 2006. The provisions of Sec.10AA reads thus:

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"Special provisions in respect of newly established Units in Special Economic Zones.

10AA. *(1) Subject to the provisions of this section, in computing the total income of an assessee, being an entrepreneur as referred to in clause (j) of section 2 of the Special Economic Zones Act, 2005, from his Unit, who begins to manufacture or produce articles or things or provide any services during the previous year relevant to any assessment year commencing on or after the 1st day of April, 2006, a deduction of—*

(i) hundred per cent of profits and gains derived from the export, of such articles or things or from services for a period of five consecutive assessment years beginning with the assessment year relevant to the previous year in which the Unit begins to manufacture or produce such articles or things or provide services, as the case may be, and fifty per cent of such profits and gains for further five assessment years and thereafter;

(ii) for the next five consecutive assessment years, so much of the amount not exceeding fifty per cent of the profit as is debited to the profit and loss account of the previous year in respect of which the deduction is to be allowed and credited to a reserve account (to be called the "Special Economic Zone Re-investment Reserve Account") to be created and utilized for the purposes of the business of the assessee in the manner laid down in sub-section (2).

(2) The deduction under clause (ii) of sub-section (1) shall be allowed only if the following conditions are fulfilled, namely :—

(a) the amount credited to the Special Economic Zone Re-investment Reserve Account is to be utilised—

(i) for the purposes of acquiring machinery or plant which is first put to use before the expiry of a period of three years following the previous year in which the reserve was created; and

(ii) until the acquisition of the machinery or plant as aforesaid, for the purposes of the business of the undertaking other than for distribution by way of dividends or profits or for remittance outside India as profits or for the creation of any asset outside India;

(b) the particulars, as may be specified by the Central Board of Direct Taxes in this behalf, under clause (b) of sub-section (1B) of section 10A have been furnished by the assessee in respect of machinery or plant along with the return of income[81] for the assessment year relevant to the previous year in which such plant or machinery was first put to use.

(3) Where any amount credited to the Special Economic Zone Re-investment Reserve Account under clause (ii) of sub-section (1),—

(a) has been utilised for any purpose other than those referred to in sub-section (2), the amount so utilised; or

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(b) has not been utilised before the expiry of the period specified in sub-clause (i) of clause (a) of sub-section (2), the amount not so utilised,

shall be deemed to be the profits,—

(i) in a case referred to in clause (a), in the year in which the amount was so utilised; or

(ii) in a case referred to in clause (b), in the year immediately following the period of three years specified in sub-clause (i) of clause (a) of sub-section (2),

and shall be charged to tax accordingly :

***Provided** that where in computing the total income of the Unit for any assessment year, its profits and gains had not been included by application of the provisions of sub-section (7B) of section 10A, the undertaking, being the Unit shall be entitled to deduction referred to in this sub-section only for the unexpired period of ten consecutive assessment years and thereafter it shall be eligible for deduction from income as provided in clause (ii) of sub-section (1).*

Explanation.—For the removal of doubts, it is hereby declared that an undertaking, being the Unit, which had already availed, before the commencement of the Special Economic Zones Act, 2005, the deductions referred to in section 10A for ten consecutive assessment years, such Unit shall not be eligible for deduction from income under this section :

***Provided further** that where a Unit initially located in any free trade zone or export processing zone is subsequently located in a Special Economic Zone by reason of conversion of such free trade zone or export processing zone into a Special Economic Zone, the period of ten consecutive assessment years referred to above shall be reckoned from the assessment year relevant to the previous year in which the Unit began to manufacture, or produce or process such articles or things or services in such free trade zone or export processing zone :*

***Provided also** that where a Unit initially located in any free trade zone or export processing zone is subsequently located in a Special Economic Zone by reason of conversion of such free trade zone or export processing zone into a Special Economic Zone and has completed the period of ten consecutive assessment years referred to above, it shall not be eligible for deduction from income as provided in clause (ii) of sub-section (1) with effect from the 1st day of April, 2006.*

(4) This section applies to any undertaking, being the Unit, which fulfils all the following conditions, namely:—

(i) it has begun or begins to manufacture or produce articles or things or provide services during the previous year relevant to the assessment year commencing on or after the 1st day of April, 2006 in any Special Economic Zone;

(ii) it is not formed by the splitting up, or the reconstruction, of a business already in existence:

***Provided** that this condition shall not apply in respect of any undertaking, being the Unit, which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertaking as is referred to*

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in section 33B, in the circumstances and within the period specified in that section;

(iii) it is not formed by the transfer to a new business, of machinery or plant previously used for any purpose.

Explanation.—The provisions of Explanations 1 and 2 to sub-section (3) of section 80-IA shall apply for the purposes of clause (iii) of this sub-section as they apply for the purposes of clause (ii) of that sub-section.

(5) Where any undertaking being the Unit which is entitled to the deduction under this section is transferred, before the expiry of the period specified in this section, to another undertaking, being the Unit in a scheme of amalgamation or demerger,—

(a) no deduction shall be admissible under this section to the amalgamating or the demerged Unit, being the company for the previous year in which the amalgamation or the demerger takes place; and

(b) the provisions of this section shall, as they would have applied to the amalgamating or the demerged Unit being the company as if the amalgamation or demerger had not taken place.

(6) Loss referred to in sub-section (1) of section 72 or sub-section (1) or sub-section (3) of section 74, in so far as such loss relates to the business of the undertaking, being the Unit shall be allowed to be carried forward or set off.

(7) For the purposes of sub-section (1), the profits derived from the export of articles or things or services (including computer software) shall be the amount which bears to the profits of the business of the undertaking, being the Unit, the same proportion as the export turnover in respect of such articles or things or services bears to the total turnover of the business carried on by the undertaking:

***Provided** that the provisions of this sub-section [as amended by section 6 of the Finance (No. 2) Act, 2009 (33 of 2009)] shall have effect for the assessment year beginning on the 1st day of April, 2006 and subsequent assessment years.*

(8) The provisions of sub-sections (5)[82] and (6) of section 10A shall apply to the articles or things or services referred to in sub-section (1) as if—

(a) for the figures, letters and word "1st April, 2001", the figures, letters and word "1st April, 2006" had been substituted;

(b) for the word "undertaking", the words "undertaking, being the Unit" had been substituted.

(9) The provisions of sub-section (8) and sub-section (10) of section 80-IA shall, so far as may be, apply in relation to the undertaking referred to in this section as they apply for the purposes of the undertaking referred to in section 80-IA.

[83][(10) Where a deduction under this section is claimed and allowed in respect of profits of any of the specified business, referred to in clause (c) of sub-section (8) of section 35AD, for any assessment year, no deduction shall be allowed under the

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provisions of section 35AD in relation to such specified business for the same or any other assessment year.]

Explanation 1.—For the purposes of this section,—

(i) "export turnover" means the consideration in respect of export by the undertaking, being the Unit of articles or things or services received in, or brought into, India by the assessee but does not include freight, telecommunication charges or insurance attributable to the delivery of the articles or things outside India or expenses, if any, incurred in foreign exchange in rendering of services (including computer software) outside India;

(ii) "export in relation to the Special Economic Zones" means taking goods or providing services out of India from a Special Economic Zone by land, sea, air, or by any other mode, whether physical or otherwise;

(iii) "manufacture" shall have the same meaning as assigned to it in clause (r) of section 2 of the Special Economic Zones Act, 2005;

(iv) "relevant assessment year" means any assessment year falling within a period of fifteen consecutive assessment years referred to in this section;

(v) "Special Economic Zone" and "Unit" shall have the same meanings as assigned to them under clauses (za) and (zc) of section 2 of the Special Economic Zones Act, 2005.

Explanation 2.—For the removal of doubts, it is hereby declared that the profits and gains derived from on site development of computer software (including services for development of software) outside India shall be deemed to be the profits and gains derived from the export of computer software outside India."

7. Some of the other provisions referred to Sec.10AA of the Act, relevant for a decision on the issue in the present appeal are:

"Sec.10A(5) The deduction under 310aa[this section] shall not be admissible for any assessment year beginning on or after the 1st day of April, 2001, unless the assessee furnishes in the prescribed form, along with the return of income, the report of an accountant, as defined in the Explanation below sub-section (2) of section 288, certifying that the deduction has been correctly claimed in accordance with the provisions of this section."

"Sec.10(7B) The provisions of this section shall not apply to any undertaking, being a Unit referred to in clause (zc) of section 2 of the Special Economic Zones Act, 2005, which has begun or begins to manufacture or produce articles or things or computer software during the previous year relevant to the assessment year commencing on or after the 1st day of April, 2006 in any Special Economic Zone."

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8. The AO denied the claim of the Assessee for deduction u/s.10AA of the Act on several counts. The CIT(A) however reversed the order of the AO. Aggrieved by the order of the CIT(A), the revenue is in appeal before the Tribunal.

9. We will deal with each of the objections of the AO for not allowing deduction u/s.10AA of the Act and the order of the CIT(A) on those objections and the submissions made by the parties before us. The grounds of appeal raised by the Revenue are based on the objections of the AO for not allowing deduction u/s.10AA of the Act.

10. The first objection of the AO was that the Assessee's unit was not located in a Special Economic Zone. In this regard the AO has pointed out that deduction u/s.10AA(1) of the Act is allowed in computing the total income of an assessee, being an entrepreneur as referred to in clause (j) of section 2 of the Special Economic Zones Act, 2005, from his Unit, who begins to manufacture or produce articles or things or provide any services during the previous year relevant to any assessment year commencing on or after the 1st day of April, 2006. The definition of "Unit" u/s.2(zc) of the SEZ Act, is as follows:

> "Unit" means a Unit set up by an entrepreneur **in** a Special Economic Zone and includes an existing Unit, an Offshore Banking Unit and Unit in an International Financial Services Centre, whether established before or established after the commencement of this Act;

11. According to the AO the first condition is that the Assessee's unit must be located in an SEZ. This condition, according to him, is not satisfied, as the Assessee is a unit registered under the Software Technology Parks of India, Kolkata unit, as a 100% EOU for rendering IT and ITES with development centre (unit) at Module No.535/536, SDF Building, Salt Lake, Sector-V, Kolkata-91. According to the AO, the registration of STP unit is granted as per delegated power by inter-ministerial standing committee and monitored by Software Technology Parks of India under the

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Department of IT, Ministry of Communication and Information Technology, Govt. of India. Thus the unit of the Assessee, according to AO, was neither located in a SEZ/FTZ and warehousing zone/ an existing SEZ nor the Assessee has been granted letter of approval by a Development Commissioner u/s.15(9) of the SEZ Act. Therefore the Assessee is not entitled to deduction u/s.10AA of the Act.

12. The CIT(A) however followed his own order in Assessee's own case in AY 2008-09 dated 26.4.2012 wherein he held that a unit set up in a Software Technology Park for the purpose of rendering ITES was equivalent to a EPZ/SEZ as per the policy of Government of India and therefore all the units which were enjoying export benefits including those in STP were covered by the SEZ Act as an existing unit. It was held in the aforesaid order of the CIT(A) for AY 2008-09 that physical presence of a unit in an SEZ was not a condition for claiming benefits under the SEZ Act. The above observations were made in the context of determination of book profits u/s.115JB of the Act and with reference to the question whether the eligible profits u/s.10A have to be reduced from the profits as per the profit and loss account for arriving at book profits u/s.115JB of the Act. The conclusions of the CIT(A) were confirmed by the Hon'ble ITAT in ITA No.1057/Kol/2012 for AY 2008-09 by order dated 19.2.2014. The following were the relevant observations of the Tribunal:

> *"6. Now before us, ld. DR strongly assailing the order of ld.CIT(Appeals) submitted that assessee was not a Unit established in a Special Economic Zone. Hence, according to him benefit of sub-section 6 of section 115JB will not be available to it. According to him, ld.CIT(Appeals) fell in error in considering Falta Export Processing Zone as an SEZ. It was only a Software Technology Park. Sub-section 6 of sect ion 115JB of the Act did not include units functioning from Software Technology Park. Therefore, according to him, assessee was not eligible for any exemption from Minimum Alternative Tax.*
>
> *7. Per contra, ld. AR supported the order of ld. CIT(Appeals).*
>
> *8. We have heard the rival contentions and perused the material available on record. The short question before us is whether assessee, functioning from Falta Export Processing Zone, admittedly a Software Technology Park, was eligible for claiming the benefit of sub-section 6 of section 115JB of the Act . Sub-section 6 of section 115JB is reproduced hereunder : -*

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"(6). The provisions of this section shall not apply to the income accrued or arising on or after the 1st day of April , 2005 from any business carried on, or services rendered by an entrepreneur or a Developer, in a Unit or Special Economic Zones, as the case may be".

A reading of the above sub-section would clearly show that section 115JB will not apply to a business carried on by an entrepreneur or a Developer in a Unit or Special Economic Zone. The Sub-section does not say that the Unit has to be functioning from a Special Economic Zone. The word 'Unit' has not been defined under the Income Tax Act. Disjunctive expression 'or' has been used by the legislature between the words unit and Special Economic Zone. Implication can only be that there is no condition that a unit has to function in an SEZ for claiming the benefit of sub-section (6). Since sub-section 6 of section 115JB of the Act was inserted by Special Economic Zone, 2005, the meaning of the term 'Unit ' given in the said Act will , in our opinion, be relevant since such word is not defined in the Income Tax Act . Section 2(zc) of Special Economic Zone Act 2005 defines a Unit as under : -

"UNIT means a Unit set up by Entrepreneur in a Special Economic Zone and includes an existing unit, an off shore Banking Unit and a Unit in an International Financial Services Centre whether established before or established after the commencement of the Act".

The above definition clearly mentions that a Unit includes an existing Unit. Section 2(l) of the Special Economic Zone Act 2005 defines an existing Unit as every Unit which has been set up on or commencement of the Special Economic Zone Act , 2005. Thus, in our opinion, the necessity to have a physical location inside an SEZ is not essential for applying the exclusionary clause of sub-section 6 of section 115JB of the Act . One of the grounds taken by Revenue says that assessee has not claimed any exempt ion under section 10AA of the Act for applying Section 6 of Section 115JB of the Act . We do not find any such requirement in sub-section 6 of section 115JB of the Act. Assessee was also governed by the same Rules as applicable to the Special Economic Zone and reported to the same authority mentioned under the Special Economic Zone. Therefore, ld. CIT(Appeals), in our view, was right in holding that assessee was eligible to claim the benefit of sub-section 6 of section 115JB of the Act. In these circumstances, we do not find any reason to interfere with the order of ld.CIT(Appeals)."

13. Before us the submission of the learned DR was that in AY 2008-09 the question of deduction u/s.10AA of the Act was never an issue as the claim for deduction was made by the Assessee u/s.10A of the Act for the said AY. His submission was that the decision rendered in the context of Sec.115JB(6) of the Act and with reference to Sec.10A of the Act cannot hold good for allowing deduction u/s.10AA of the Act in the present AY. He reiterated the stand of the AO.

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14. On behalf of the Assessee reliance was placed on the written submissions filed before CIT(A) which have been incorporated in the impugned order of the CIT(A). It was emphasised that the Assessee was an existing SEZ and existing unit within the meaning of SEZ Act and was entitled to benefits of Sec.10AA of the Act. It was reiterated that physical presence of unit within an SEZ was not required in respect of "existing SEZ" and "existing unit".

15. We have given a very careful consideration to the rival submissions. We need to set out the concept of SEZ. India was one of the first in Asia to recognize the effectiveness of the Export Processing Zone (EPZ) model in promoting exports, with Asia's first EPZ set up in Kandla in 1965. With a view to overcome the shortcomings experienced on account of the multiplicity of controls and clearances; absence of world-class infrastructure, and an unstable fiscal regime and with a view to attract larger foreign investments in India, the Special Economic Zones (SEZs) Policy was announced in April 2000. This policy intended to make SEZs an engine for economic growth supported by quality infrastructure complemented by an attractive fiscal package, both at the Centre and the State level, with the minimum possible regulations. SEZs in India functioned from 1.11.2000 to 09.02.2006 under the provisions of the Foreign Trade Policy and fiscal incentives were made effective through the provisions of relevant statutes. A geographical region encompassing more liberal economic laws than a country's typical economic laws can be referred to as a Special Economic Zone (SEZ).

16. For the promotion of Software exports from the country, the Software Technology Parks of India was set up in 1991 as an Autonomous Society under the Department of Electronics and Information Technology. The services rendered by STPI for the Software exporting community have been statutory services, data communications servers, incubation facilities, training and value added services. STPI has played a key developmental role in the promotion of software exports with a

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special focus on SMEs and start up units. The STP Scheme which is a 100% export oriented scheme has been successful in fostering the growth of the software industry. The exports made by STP Units have grown over the years.

17. The STP scheme allows software companies to set up operations in convenient and inexpensive locations and plan their investment and growth driven by business needs. The STP units were given the following benefits:

Income Tax benefits,
Customs Duty Exemption in full on imports.
Central Excise Duty Exemption in full on indigenous procurement.
Central Sales Tax Reimbursement on indigenous purchase against from C.
All relevant equipment / goods including second hand equipment can be imported (except prohibited items).
Equipment can also be imported on loan basis/lease.
100% FDI is permitted through automatic route.
Sales in the DTA up to 50% of the FOB value of exports permissible.
Use of computer imported for training permissible subject to certain conditions.
Depreciation on computers at accelerated rates up to 100% over 5 years is permissible.

18. In May 2005, the SEZ Act was passed by the Parliament and SEZ Rules came into force from February 10, 2006, which not only simplified procedures but also extended single window clearance for matters relating to central as well as state governments.

19. The Assessee set up a "Unit" in the Software Technology Park (STP) for rendering IT Enabled Services in the software Technology park set up by the Ministry of Commerce, Government of India, pursuant to its Information and Technology Policy for setting up and rendering ITES to the foreign country-customers in various fields for securing Net Foreign Exchange earnings for India This was aimed at building-up the foreign exchange reserves as quickly as possible, to strengthen India's balance of payment situation. For this purpose, Government of India placed the Export Processing Zone, STP's and Special Economic Zones (SEZ's) at par and gave

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similar support and entitlements to all these areas for augmenting Net Foreign Exchange earnings. In particular, the STP's were placed on level footing with the EPZ's and SEZ's as regards control and development, by placing them under the direction of Department of Commissioners and for this purpose the Director of STP's were equated with Development Commissioners and the EPZ's were declared as SEZ's. The STP unit of the Assessee was issued with a license for export of IT enabled Services and was located in the area of control of the Falta EPZ. A letter of approval from STP dated 5.1.2005 approving the Assessee as STP has been issued. Falta Special Economic Zone (earlier FEPZ) was set up by the Government of India in the year 1984. This has now come under the purview of the SEZ Act & Rules with effect from 10th February, 2006 in terms of Government of India Notification No. S.O.195(E) dated 10.02.2006.

20. EPZ concept was created and were set up for giving quick administrative support by dedicating the necessary staff etc., for speedy clearances of all units, including the STP units and the other similar units which were grouped under these EPZ's. The sole aim for all these units EPZ/STP/SEZ was to earn Net Foreign Exchange and were monitored in the same manner by the Government agencies. All these units were granted identical reliefs and support for importing all capital goods, raw materials and were besides duty-free imports, also given full income tax exemption in respect of the income from these exports up to a time bound period.
In so far as income tax exemptions were concerned these were covered by a progressive introduction of appropriate exemptions, coming within the scope of the category "Income which do not form part of the Total Income" in Chapter III of the Income Tax Act, 1961 (Act).

21. Under Sec.10A of the Act, 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

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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 . For the purpose of Sec.10A, "free trade zone" means, the Kandla Free Trade Zone and the Santacruz Electronics Export Processing Zone and includes any other free trade zone which the Central Government may, by notification in the Official Gazette, specify for the purposes of this section.
Under Sec.10B of the Act, covered export initiatives of Export Oriented businesses, also included, inter alia, export of computer software as described in Sec.10A above.
10AA was brought in along with the consolidation and quick development of export initiatives in all the units, past, present and future, located in SEZ's or which were in existence in all parts of India even prior to the promulgation of the SEZ Act, 2005. It is important to note that, for the first time, this section extended the exemption coverage to "Computer IT ES" besides computer software. The SEZ Act itself was brought into effect from 10th Febtruary, 2006, and was made applicable for and from AY 2006-07 and in respect of units set up and which commenced manufacture after 1.4.2005. It is to be noted that Sec.10AA was telescoped with the earlier Sec.10A, as that section was excluded for application from AY 2006-07 for the reason that Sec.10AA was made to continue to apply to the remaining span of the "left over" years of relief under Sec.10A and which would spill over to the remaining assessment year after 2006-07.

22. All these initiatives required that the earning of Foreign Exchange was to be "Net Surpluses" and were to be accruing to the Indian Economy. All the regulatory parameters were similar, as was the sole purpose of the Exports promoting effort. In a sweeping move to galvanize the export efforts into higher value and volume terms, all the units set up in the past, and those that were being grouped in a specific location were covered by the Special Economic Zones Act, 2006 and brought into effect from February, 2006 and made uniformly applicable to "All units" past, present, and future, as regards the benefits and were subject to the same and identical responsibilities and

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liabilities for complying with all the procedures. As a measure of uniform integration of the Income Tax exemptions, it was provided in the SEZ Act, 2005 that the period of benefit will be cumulatively calculated span which will take into account the relief already availed of, under any earlier Income Tax Act notifications section and only for the remaining period will be available

23. The unit to claim benefits of SEZ Act, 2005 need not be physically located within an SEZ, especially an "existing unit" such as the Assessee. As already discussed under the scheme of coverage, the existing EPZ's are included as SEZ's and the definitions of the term "Entrepreneur" includes the unit recognized as such by the STP Director who has been equated with the "Development Commissioner" for this purpose. The Assessee's license sets out three points. In addition the Directorate in charge of STPI, Kolkata, come within the EPZ/SEZ of Falta and this has also been confirmed in his letter dated 3.5.2011 that the Assessee's unit is an existing unit and has all the necessary accreditations from the Ministry of Information Technology with regard to the setting up of the unit as per the licence issued to it. By notification F.No.114/10/2003 FTT, existing "Export Processing Zone" (EPZ) were to be renamed as "Special Economic Zone" (SEZ's).

24. The following definitions under the SEZ Act, need to be looked into in the light of the position that existed prior to the SEZ Act and the express provisions in the SEZ Act in respect of units existing prior to the Act.:

"2. Definitions

In this Act, unless the context otherwise requires,-

a to k…

j. "entrepreneur" means a person who has been granted a letter of approval by the Development Commissioner under sub-section (9) of Section 15;

k. "existing Special Economic Zone" means every Special Economic Zone which is in existence on or before the commencement of this Act;

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l. "existing Unit" means every Unit which has been set up on or before the commencement of this Act in an existing Special Economic Zones;

(za) "Special Economic Zone" means each Special Economi Zone notified under the proviso to sub-section (4) of section 3 and sub-section (1) of section 4 (including Free Trade and Warehousing Zone) and includes an existing Special Economic Zone;

(zc). "Unit" means a Unit set up by an entrepreneur in a Special Economic Zone and includes an existing Unit, an Offshore Banking Unit and Unit in an International Financial Services Centre, whether established before or established after the commencement of this Act;

25. The following other provisions of SEZ Act also needs to be looked into:

4. Establishment of Special Economic Zone and approval and authorisation to operate it to, Developer

1. *The Developer shall, after the grant of letter of approval under sub-section (10) of Section 3, submit the exact particulars of the identified area referred to in sub-sections (2) to (4) of that section, to the Central Government and thereupon that Government may, after satisfying that the requirements, under sub-section (8) of Section 3 and other requirements, as may be prescribed, are fulfilled, notify the specifically identified area in the State as a Special Economic Zone :*

   Provided that an existing Special Economic Zone shall be deemed to have been notified and established in accordance with the provisions of this Act and the provisions of this Act shall, as far as may be, apply to such Zone accordingly :

   Provided further that the Central Government may, after notifying the Special Economic Zone, if it considers appropriate, notify subsequently any additional area to be included as a part of that Special Economic Zone.

2. *After the appointed day, the Board may, authorise the Developer to undertake in a Special Economic Zone, such operations which the Central Government may authorise.*

44. Applicability of provisions of this Act to existing Special Economic Zones

All the provisions of this Act (except Sections 3 and 4) shall, as far as may be, apply to every existing Special Economic Zone."

26. A perusal of the definition of "Unit" under the SEZ Act includes an existing unit. "Existing SEZ unit" has been defined as every Special Economic Zone which is in

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existence on or before the commencement of this Act. There is no definition of "Special Economic Zone which is in existence on or before the commencement of the SEZ Act. Therefore, in the light of the objectives for creation of SEZ/EPZ/STP, it can be concluded that all STP units enjoyed special economic benefits and were intended to achieve objective of Net Foreign Exchange earnings, and qualify to be called "Existing Special Economic Units". They were therefore to be considered as "existing Unit" within the meaning of the SEZ Act i.e., Unit which has been set up on or before the commencement of this Act in an existing Special Economic Zones. Sec.44 of the SEZ Act provides that all provisions of the SEZ Act (except Sec.3 & 4) will apply to every existing Special Economic Zone. Physical presence of the unit in SEZ is therefore not necessary in respect of "existing units". The legislature in its wisdom has not chosen to restrict the application of the provisions of SEZ Act to 'existing SEZ'or 'existing units' nor has it chosen to define with precision what is "Existing SEZ" or "Existing Unit". In such circumstances, we have to agree with the reasoning adopted by the CIT(A) that the Assessee which was an STP unit registered under STPI Scheme was "Existing SEZ" and "Existing Unit" under the SEZ Act and therefore can claim benefits available to an SEZ. As a corollary to the above conclusion, the physical presence of "existing SEZ" or 'Existing Unit' in a SEZ is not a condition for allowing deduction u/s.10AA of the Act. As we have already seen, Sec.10AA was telescoped with the earlier Sec.10A, as that section was excluded for application from AY 2006-07 for the reason that Sec.10AA was made to continue to apply to the remaining span of the "left over" years of relief under Sec.10A and which would spill over to the remaining assessment year after 2006-07. Moreover, section 4(1) of SEZ Act provides that an existing SEZ unit shall be deemed to have been notified and established in accordance with provisions of SEZ Act and the provisions of Special Economic Zones Act shall apply to such existing SEZ units. The above intent of the relevant statutory provisions also supports the conclusions which we have arrived at as above.

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27. For the reasons given above, we concur with the order of the CIT(A) on this issue.

28. The second reason given by the AO for denying the benefit of deduction u/s.10AA of the Act to the Assessee was that as per Sec.10AA(4)(i) of the Act the unit has to begin manufacture or produce articles or things or provide services during the previous year relevant to AY commencing on or after the 1st day of April, 2006 (i.e., financial year 2005-06 or any subsequent year) in any Specialized Economic Zone and that the Assessee had begun production of article or thing prior to 1.4.2006 and has been claiming exemption u/s.10A of the Act, the deduction u/s.10AA of the Act cannot be allowed to the Assessee. In view of our conclusion that the Assessee was an "existing unit", we are of the view that this condition will not apply to the Assessee.

29. The third & fourth reason given by the AO was that the Assessee does not fulfil the following conditions laid down in Sec.10AA(4)(ii) & (iii) of the Act which reads thus:

(ii) it is not formed by the splitting up, or the reconstruction, of a business already in existence:

(iii) it is not formed by the transfer to a new business, of machinery or plant previously used for any purpose.

30. The AO referred to the amalgamation of M/S.Last Peak BPO Pvt.Ltd., with the Assessee during the previous year. M/S.Last Peak BPO Pvt.Ltd., was in all respects an STP unit and was similarly placed as that of the Assessee in terms of approval and being eligible for deduction u/s.10A of the Act, etc. The amalgamation was effective 23.4.2008. The Assessee had a license dated 17.6.2005 from the Asst.Commisioner of Customs 100% EOU/STP for private bonded warehouse cum manufacturing in its name. Pursuant to the amalgamation of the M/S.Last Peak BPO Pvt.Ltd., the Assessee applied for recognizing M/S.Last Peak BPO Pvt.Ltd., also as covered by the

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erstwhile license for private bonded warehousing cum manufacturing. The endorsement was done by the Asst.Commissioner of Customs on 11.2.2010. According to the AO there was no approval of M/S.Last Peak BPO Pvt.Ltd. as 100% EOU upto 11.2.2010 and therefore deduction u/s.10AA of the Act could not be granted. Further the AO also expressed opinion that the Assessee was formed by transfer to a new business, of machinery or plant previously used by M/S.Last Peak BPO Pvt.Ltd. and therefore there was violation of Sec.10AA(4)(iii) of the Act.

31. The CIT(A) did not decide on this issue at all. We have considered the order of the AO and are of the view that the reason given by the AO, to say the least, is frivolous. It is undisputed position that M/S.Last Peak BPO Pvt.Ltd. was enjoying STP unit status as it was in ITES. Therefore there was no question of the Assessee having been formed by splitting up or reconstruction of a unit already in existence. The Assessee is already an existing unit. The deduction u/s.10AA of the Act is claimed for the period within 10 years contemplated by Sec.10AA of the Act even after considering the exemption already availed by the Assessee. Even M/S.Last Peak BPO Pvt.Ltd. had not availed Sec.10A deduction for period beyond 10 years before amalgamation with the Assessee. In such circumstances, the very basis of application of Sec.10AA(4)(ii) & (iii) of the Act is flawed. We are of the view that the objection of the AO in this regard is without any merit.

32. The fifth objection of the AO that the Assessee did not operate from SEZ and therefore did not export goods from SEZ and derive income therefrom and therefore not entitled to deduction u/s.10AA of the Act, is not sustainable in view of our conclusion that the Assesssee was an “existing unit”.

33. The sixth objection with regard to non-filing of Form No.56F is a valid objection. But on this ground the Assessee cannot be denied the benefit of deduction u/s.10AA of the Act. The non-furnishing of Form No.56F along with the return of

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income is not mandatory. The Assessee is directed to file the report in the prescribed form for AO's consideration. The non-furnishing of Form No.3CEB report in respect of international Transaction which the Assessee had with it's Associated Enterprise in terms of Sec.92 of the Act, has nothing to do with allowing deduction u/s.10AA of the Act. This objection of the AO is therefore held to be unjustified.

34. The last objection of the AO for not allowing deduction to the Assessee u/s.10AA of the Act was that the Assessee did not claim deduction u/s.10AA of the Act in the return of income. The CIT(A) has not commented on this issue. The Revenue in ground No.4 of the grounds has not chosen to take objection on this aspect. Nevertheless, the appellate authorities can take note of claim not made in a revised return of income, more so in the present case where a claim had been made in a revised computation of total income before the AO. This objection of the AO in our view is therefore devoid of any merits. Besides the above reasons, it is also seen that the AO, ought to have considered the claim of the Assessee for deduction u/s.10B of the Act, as made in the original return of income. He has chosen to ignore the same and sought to deny the benefit of Sec.10AA of the Act alone. The order of the AO is silent on the claim of the Assessee u/s.10B of the Act. This approach of the AO in our view is nor proper. We therefore reject this objection raised by the AO.

35. We therefore uphold the order of the CIT(A) in so far as his action in allowing deduction u/s.10AA of the Act is concerned.

36. The next issue that arises for our consideration is the manner of computation of book profits u/s.115JB of the Act. The narrow dispute between the Assessee and the Department in this regard is with regard to interpretation of the provisions of Sec.115JB(6) of the Act. As we know the method of computation of book profits is provided by Sec.115JB of the Act. It lays down where in the case of an assessee, being a company, the income-tax, payable on the total income as computed under the

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Act in respect of any previous year relevant to the assessment year commencing on or after a particular AY, is less than a particular percentage of its book profit, such book profit shall be deemed to be the total income of the assessee and the tax payable by the assessee on such total income shall be the amount of income-tax at the rate of prescribed percentage. The percentage of book profits and rates are different for various AYs. It is not in dispute that the provisions of Sec.115JB of the Act are applicable to the Assessee as the percentage Book profits for the purpose of Sec.115JB of the Act has been defined to mean the net profit as shown in the profit and loss account for the relevant previous year prepared under sub-section (2) i.e., profit and loss account prepared in accordance with the Companies Act, 1956 and laid before the General Meeting of the shareholders of a company. To this profit certain additions and deletions have to be made as laid down in the explanation below Sec.115JB(2). One of the items of exclusion from the profit as per profit and loss account referred to above is " the amount of income to which any of the provisions of section 10 other than the provisions contained in clause (38) thereof or section 11 or section 12 apply, if any such amount is credited to the profit and loss account". Sec.10A/10B/10AA of the Act is not included in the above exclusion clause. Sec.115JB(6) however lays down that income of the SEZ should be excluded from the profits as per profit and Loss account for the purpose of computing "book-profits". The said provision reads as follows:

> *"(6) The provisions of this section shall not apply to the income accrued or arising on or after the 1st day of April, 2005 from any business carried on, or services rendered, by an entrepreneur or a Developer, in a Unit or Special Economic Zone, as the case may be."*

37. According to the AO, the Assessee was a unit in Special Economic Zone and therefore the provisions of Sec.115JB(6) of the Act were not applicable. We have already held while deciding the earlier grounds that this conclusion of the AO is not correct. Besides the above, the Tribunal in Assessee's own case in AY 08-09 held in favour of the Assessee. The relevant portions of the order of Tribunal have already

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been extracted in the earlier part of this order. For the reasons stated above, we hold that the profits of the Sec.10AA unit of the Assessee should be excluded for the purpose of computing book profits u/s.115JB of the Act from the profit as per Profit and Loss account referred to in that section.

38. The next issue that arises for is with regard to disallowance of a sum of Rs.1,05,060/- which was expenditure incurred to increase the authorized share capital of the Assessee from Rs.49,00,000 to Rs.1,99,00,000/-. The AO held that the expenditure so incurred was capital expenditure as it has been incurred to increase the capital base of the company. The AO followed the decision of the Hon'ble Supreme Court in the case of Punjab State Industrial Development Corpn. Ltd. (1997) 93 Taxman 5 (SC), wherein it was held that fees paid for increase in authorized capital is a capital expenditure and not allowable as a deduction, the AO disallowed the claim of the Assessee for deduction of the aforesaid sum.

39. Before CIT(A) the Assessee pointed out that the expenditure in question was not incurred for issue of shares to the public but for the purpose of issue of whereby the reserves of the Assessee were converted into Share Capital. It was highlighted that in such circumstances, the decision of the Hon'ble Supreme Court in the case of Punjab State IDC (supra) will not be applicable. The CIT(A) agreed with the argument of the Assessee and deleted the addition made by the AO.

40. We have heard the rival submissions. The issue in question is no longer res integra and has been settled by the Hon'ble Supreme Court in the case of CIT Vs. General Insurance Corporation Ltd. 205 CTR 280 (SC) wherein it was held that expenditure incurred in connection with issuance of bonus shares, constitutes revenue expenditure. It was held that issuance of bonus shares does not result in any inflow of fresh funds or increase in the capital employed, the capital employed remains the same. Issuance of bonus shares by capitalization of reserves is merely a reallocation

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of company's fund. That being so, it cannot be held that the company acquires a benefit or advantage of enduring nature. Therefore, the expenditure on issuance of bonus shares is revenue expenditure. In view of the aforesaid decision, we are of the view that the order of CIT(A) has to be upheld on this issue.

41. The next issue that arises for consideration is the disallowance of depreciation by the AO. The AO disallowed depreciation to the extent of Rs.29,88,000 by reworking the WDV of the assets of Last Peak BPO Pvt.Ltd., which got amalgamated with the Assessee during the previous year by invoking the provisions of Explanation 2 to Sec.43(6) of the Act. Though the Assessee raised a specific ground challenging the action of the AO in this regard, the CIT(A) has not adjudicated the same. The revenue has raised a ground on the presumption that the addition made by the AO in this regard was deleted by the CIT(A). On a careful perusal of the order of the CIT(A), we find that the CIT(A) has not adjudicated the issue at all. We are therefore the view that it would be just and appropriate to direct the CIT(A) to adjudicate this issue. We order and direct accordingly.

42. The next issue that arises for consideration is the set off of brought forward loss. The AO denied the benefit of deduction u/s.10AA of the Act to the Assessee and brought the income of the said unit to tax. He set off business and depreciation loss on amalgamation of Rs.49,33,807 and arrived at the total income that was to be brought to tax. Though the Assessee had filed elaborate submission on this issue before CIT(A), the CIT(A) has decided the issue but has not given any reasons for his decision.

43. The Assessee, as we have already seen, filed return of income for AY 09-10 declaring total income of nil. The Assessee's income from the STP unit was Rs.7,29,47,045 including interest received on deposit of call money received of Rs.13,73,888. The Assessee in the return of income claimed deduction u/s.10AA of

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the Act on a sum of Rs.7,15,73,157 (Rs.7,29,47,045 – Rs.13,73,888). The remaining sum of Rs.13,73,888 was offered to tax. A carried forward business loss (including loss of Last Peak BPO Pvt.Ltd. of Rs.31,87,212) of Rs.49,33,807 existed and this was adjusted against the interest income on call money of Rs.13,73,888 and the remaining business loss of Rs.35,59,919 (49,33,807-13,73,888) was sought to be carried forward for set off in the succeeding AYs.

44. The AO did not allow the claim of the Assessee for deduction u/s.10AA of the Act. The AO also excluded the sum of Rs.13,73,888 which was interest on call money from the business income and was of the view that the same has to be considered not as business income but income from other sources. He set off the entire loss of Rs.49,33,807 against the business income computed by disallowing depreciation, fee paid for increase in share capital of Rs.7,21,02,983.

45. The plea of the Assessee before CIT(A) was that from the income eligible for deduction u/s.10AA of the Act there can be no set off of carried forward loss and deduction u/s.10AA of the Act has to be allowed on the said income only. The further claim of the Assessee was that the carried forward loss has to be allowed to be set off against "interest income on call money".

46. As already stated the CIT(A) without any discussion allowed the claim of the Assessee. We have heard the rival submissions. Sec.10AA(6) of the Act provides that Loss referred to in sub-section (1) of section 72 or sub-section (1) or sub-section (3) of section 74, in so far as such loss relates to the business of the undertaking, being the Unit shall be allowed to be carried forward or set off. The loss that is sought to be set off and carried forward in the present case is not that of the 10AA unit on which the Assessee has claimed deduction u/s.10AA of the Act. The loss in question is that of Last Peak BPO Pvt.Ltd. This loss pursuant to the order of amalgamation by the Hon'ble Kolkata High Court has to be considered as loss of the Assessee not relating

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to the business of the undertaking of the Assessee. Such loss is covered by the provisions of Sec.70 & 71 of the Act and not by the provisions of Sec.72(1) or Sec.74(3) of the Act. They are therefore to be allowed to be set off against the income of the Assessee under any other source. The decision of the Special Bench of the ITAT in the case of Scientific Atlanta India Technology Pvt.Ltd. Vs. ACIT (2010) 38 SOT 0252 (SB)(Chennai) supports the above conclusion. The CBDT in File No.279/Misc./M-116/2012-ITJ dated 16.7.2013 circulated to the Assessing officers has after referring to conflicting views on whether section 10A and 10B provisions are deduction provisions or exemption provisions, has expressed its view that section 10A/10B provisions are deduction provisions. The said circular becomes a benevolent circular when there is loss in the 10A/10B unit against taxable income of non-10A/10B unit. Even on the basis of the circular to the extent it is benevolent in the facts and circumstances of the present case, has to be followed. Even on this basis, the claim of the Assessee deserves to be accepted. Accordingly, we uphold the order of the CIT(A) on this issue.

47. Thus the appeal of the Revenue being ITA No.154/Kol./2013 is treated as partly allowed for statistical purpose.

48. **ITA No. 155/Kol.2013**: This is an appeal by the Revenue against the order dated 8.10.2012 of CIT(A)-I, Kolkata relating to AY 2009-10. This appeal arises out of an order passed by the AO treating the interest income on call money as "Income from other sources". The Assessee, as we have already seen, filed return of income for AY 09-10 declaring total income of nil. The Assessee's income from the STP unit was Rs.7,29,47,045 including interest received on deposit of call money received of Rs.13,73,888. The Assessee in the return of income claimed deduction u/s.10AA of the Act on a sum of Rs.7,15,73,157 (Rs.7,29,47,045 – Rs.13,73,888). The remaining sum of Rs.13,73,888 was offered to tax. A carried forward business loss (including loss of Last Peak BPO Pvt.Ltd. of Rs.31,87,212) of Rs.49,33,807 existed and this was

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adjusted against the interest income on call money of Rs.13,73,888 and the remaining business loss of Rs.35,59,919 (49,33,807-13,73,888) was sought to be carried forward for set off in the succeeding AYs.

49. The AO did not allow the claim of the Assessee for deduction u/s.10AA of the Act. The AO also excluded the sum of Rs.13,73,888 which was interest on call money from the business income and was of the view that the same has to be considered not as business income but income from other sources. He however omitted to add the said sum to the total income of the Assessee. By an order dated 21.2.2012 he brought the said sum to tax and also treated the said sum as "Income from other sources". The dispute in this appeal is only on the head of income. There is no tax implication because the claim of the Assessee for set off of this income against the carried forward business loss has already been accepted.

50. The Assessee made available to its own bankers its funds as money on call. These were not fixed deposit but certificates of deposit that were callable at the option of the Assessee depending on market conditions and its exigencies of business as it perceived. The Assessee made these sums available as money's call against certificates of deposit as part of its normal business dealings activities and being its own treasury management function. Having regard to the volatility of the money market as the Assessee perceived and having regard to its liquidity on account of the buoyancy dollar vis-vis a falling rupee, the Assesse thought it prudent to negotiate special rates with its own bankers for extending moneys on call to them at different rates that were advantageous to the Assessee. The Assessee claimed that the activity was part of its treasury options and an integral part of liquidity management of the Assessee and ell within the normal ambit of the Assessee's business and was to be regarded as income from business though not income derived from the Sec.10AA unit. The AO did not agree with the submissions of the Assessee. The CIT(A) without giving any independent reasons agreed with the submissions made by the Assessee.

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51. We are of the view that the dispute in this appeal is only on the head of income. There is no tax implication because the claim of the Assessee for set off of this income against the carried forward business loss has already been accepted. We therefore leave the question open without adjudication and uphold the conclusions of the CIT(A).

52. In the result the appeal of the revenue is dismissed.

53. In the result, ITA No. 154/Kol/13 is partly allowed for statistical purpose, while ITA No. 155/Kol/2013 is dismissed.

Order pronounced in the court on 30.10.2015.

Sd/- **Sd/-**

[Waseem Ahmed]
Accountant Member

[N.V.Vasudevan]
Judicial Member

Date: 30.10.2015.
R.G.(.P.S.)

Copy of the order forwarded to:

1. M/s. Last peak Data Pvt. Ltd., D2, Rawdon Chamber, 11A, Rawdon Street, Kolkata-700017.
2 I.T.O., Ward-2(3), Kolkata
3. The C.I.T.(A)- I, Kolkata
4. The CIT(A)- I, Kolkata
5. C.I.T.(DR), Kolkata Benches, Kolkata

True Copy,

By order,

Deputy /Asst. Registrar**,** ITAT, Kolkata Benches

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