

## TAX FLASH NEWS

# Delhi High Court declines to examine the taxpayer's claim for grant of tax holiday benefit under Section 10A while rejecting the taxpayer's contention that units approved under a single regulatory license were separate and independent

### Background

Recently, the Delhi High Court (High Court) in the case of HCL Technologies<sup>1</sup> (the taxpayer) declined to examine the taxpayer's claim for grant of tax holiday benefit under Section 10A of the Income-tax Act 1961 (the Act) on the basis of factual findings by lower authorities that the units were only an extension of the existing unit. The taxpayer had contended that units approved under a single regulatory license were separate and independent.

### Facts of the case

- The taxpayer is a public limited company engaged in providing software development services. It had set up a software development undertakings in the Software Technology Park of India (STPI).
- During the Assessment Year (AY) 2005-06, the taxpayer had 31 software development units or undertakings set up at distinct locations. These were registered under 13 licenses with STPI authorities.
- The taxpayer filed its return of income, claiming benefit of Section 10A of the Act. In the return of income, the taxpayer considered 13 mother licenses issued by the STPI authorities as 13 eligible undertakings or units.
- Subsequently, the taxpayer filed its revised return of income wherein deduction under Section 10A of the Act was enhanced. The taxpayer sought to treat 31 undertakings registered with STPI under 13 mother licenses as independent undertakings eligible for the said deduction, separately and individually.
- The Assessing officer (AO) disallowed the additional deduction claimed under Section 10A of the Act by way of revised return on the grounds that the 31 units were mere expansion of the existing units. The AO held that there was no separate approval as a new unit by the STPI authorities and the claim that the units set up were independent and separate new units, was raised belatedly which could not be gone into at this late stage.
- Accordingly, the AO restricted the taxpayer's claim of deduction under Section 10A of the Act to 13 mother licenses/undertakings instead of 31 independent and eligible units. The Dispute Resolution Panel (DRP) upheld the order of the AO.
- The Income-tax Appellate Tribunal (the Tribunal) held that the taxpayer could not claim enhanced deduction under Section 10A by departing from its earlier position that the units were only an extension or expansion of the pre-existing units and were not new units. The Tribunal held that the fact that the STPI authorities endorsed on the existing licenses meant that the new and separate locations added were in the nature of expansion of the existing undertakings. It was held that the enhanced claim made through the revised return was clearly belated and could not be said to be in the nature of an inadvertent mistake.

<sup>1</sup> HCL Technologies v. ACIT (ITA No. 46/2015) – Taxsutra.com

## High Court's ruling

### **Claims made in the revised return**

- The Supreme Court in the case of *C. Parakh & Co.*<sup>2</sup> held that the taxpayer's treatment of a claim would not be determinative of the treatment. The claim has to be determined as per the provisions of the statute. Various Courts<sup>3</sup> had held that the taxpayer can go back from its earlier position in order to claim benefits available to it under the Act.
- If, on an application of the statutory provision, the taxpayer is entitled to the benefits under the Act, the mere circumstance that for the past 5 to 7 years, or even 10 years, it did not claim such benefit would not preclude it from availing it in the assessment year in question.
- The taxpayer cannot go back from the given set of facts. However, if, based on the same set of facts, it seeks to claim deduction under Section 10A which it had foregone earlier, the taxpayer's claim must be allowed, provided, the requirements of Section 10A are satisfied.
- In the present case, if the taxpayer establishes that the 31 units constitute separate undertakings for the purposes of Section 10A, it would be entitled to the claims made in the revised return.

### **High Court accepted concurrent findings of the fact by the Tribunal**

- The High Court relied on the following observations of the lower authorities and the Tribunal and declined to examine the taxpayer's claim for grant of tax holiday benefit under Section 10A of the Act while rejecting the taxpayer's contention that units approved under a single regulatory license were separate and independent:
  - The taxpayer's contention that there were having separate lease deeds for each premise, separate STPI approval documents, and separate Customs Bond certificates, did not establish that there was an emergence of a new and distinct unit.

- There was no material on record to establish that the taxpayer had treated the 31 units as distinct undertakings.
- The taxpayer placed no evidence on record to establish that each and every unit had a separate bank account and maintaining separate books of accounts for the 31 units.
- There has been no emergence of a fresh new undertaking and no fresh investments have been made. The profits and capital of the 31 units have been carved out from the original 13 units.
- No record of profits has been shown by the taxpayer from the year of inception thus clearly showing that the so called separate units did not exist prior to the current AY.
- No evidence has been provided that the new units were engaged in executing jobs which were distinct from the original units.
- There is no document available on record on the basis of which an inference can be drawn that the taxpayer's application before the STPI authorities was for setting up a new undertaking and not for expanding an existing undertaking. The taxpayer has never placed on record the document seeking STPI permission.

- The taxpayer relied on the Supreme Court's decision in *Textile Machinery Corporation Ltd.*<sup>4</sup> to contend that 31 units were separate undertakings for the purposes of Section 10A. The Supreme Court in the case of *Textile Machinery Corporation Ltd.* dealt with the issue of determining the existence of a new undertaking where it was held that the answer (as to whether a unit is a separate undertaking) depends upon the peculiar facts and circumstances of each case and no hard and fast rule can be laid down to determine the issue. In the present case, the lower authorities have arrived at their conclusion based on an adequate examination of facts.
- No interference on this issue was warranted since the concurrent finding of fact by lower authorities indicates that the material produced by the taxpayer was insufficient to treat each of the 31 units as separate undertakings. Consequently, it was held that the 31 units cannot be treated as separate undertakings for the purposes of availing benefit under Section 10A of the Act.

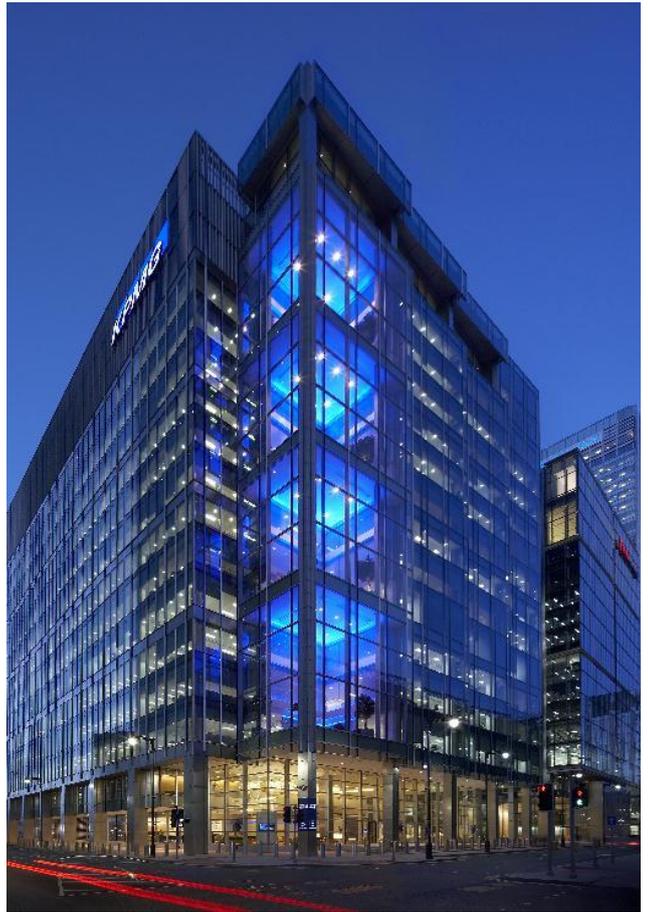
<sup>2</sup> CIT v. C. Parakh & Co (India) Ltd [1956] 29 ITR 661(SC)

<sup>3</sup> CIT v. Bharat General Reinsurance Co Ltd [1971] 81 ITR 303 (Del)  
CIT v. Nalwa Investment Ltd. [2009] 322 ITR 233 (Del)  
CIT v. Laxmi Metal Industries [1999] 236 ITR 130 (All)

<sup>4</sup> Textile Machinery Corporation Ltd. v. CIT [1977] 107 ITR 195 (SC)

## Our comments

The High Court in the present case relying on the order of lower authorities held that 31 units of the taxpayer cannot be treated as separate undertakings for the purposes of availing benefit under Section 10A of the Act. It appears that the High Court refused to intervene in the issue of whether separate and distinct undertakings had emerged under the same license, as claimed by the taxpayer. The High Court based its decision in this regard on the findings recorded by the Tribunal that there was inadequate evidence to support the claim of the taxpayer. It would be interesting to see whether tax holiday claim on each unit would be available and may not be restricted to license issued by the specified authorities if the taxpayer can establish that several units constitute separate undertakings.



**Ahmedabad**

Commerce House V, 9th Floor,  
902 & 903, Near Vodafone House,  
Corporate Road,  
Prahlad Nagar,  
Ahmedabad – 380 051  
Tel: +91 79 4040 2200  
Fax: +91 79 4040 2244

**Bengaluru**

Maruthi Info-Tech Centre  
11-12/1, Inner Ring Road  
Koramangala, Bangalore 560 071  
Tel: +91 80 3980 6000  
Fax: +91 80 3980 6999

**Chandigarh**

SCO 22-23 (1st Floor)  
Sector 8C, Madhya Marg  
Chandigarh 160 009  
Tel: +91 172 393 5777/781  
Fax: +91 172 393 5780

**Chennai**

No.10, Mahatma Gandhi Road  
Nungambakkam  
Chennai 600 034  
Tel: +91 44 3914 5000  
Fax: +91 44 3914 5999

**Delhi**

Building No.10, 8th Floor  
DLF Cyber City, Phase II  
Gurgaon, Haryana 122 002  
Tel: +91 124 307 4000  
Fax: +91 124 254 9101

**Hyderabad**

8-2-618/2  
Reliance Humsafar, 4th Floor  
Road No.11, Banjara Hills  
Hyderabad 500 034  
Tel: +91 40 3046 5000  
Fax: +91 40 3046 5299

**Kochi**

Syama Business Center  
3rd Floor, NH By Pass Road,  
Vytilla, Kochi – 682019  
Tel: +91 484 302 7000  
Fax: +91 484 302 7001

**Kolkata**

Unit No. 603 – 604,  
6th Floor, Tower – 1,  
Godrej Waterside,  
Sector – V, Salt Lake,  
Kolkata 700 091  
Tel: +91 33 44034000  
Fax: +91 33 44034199

**Mumbai**

Lodha Excelus, Apollo Mills  
N. M. Joshi Marg  
Mahalaxmi, Mumbai 400 011  
Tel: +91 22 3989 6000  
Fax: +91 22 3983 6000

**Noida**

6th Floor, Tower A  
Advant Navis Business Park  
Plot No. 07, Sector 142  
Noida Express Way  
Noida 201 305  
Tel: +91 0120 386 8000  
Fax: +91 0120 386 8999

**Pune**

703, Godrej Castlemaine  
Bund Garden  
Pune 411 001  
Tel: +91 20 3050 4000  
Fax: +91 20 3050 4010