आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH: CHENNAI

श्री महावीर सिंह, माननीय उपाध्यक्ष, एवं
श्री **जी. मंजूनाथा, , माननीय** लेखा सदस्य **के समक्ष**
BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.1158/Chny/2011**
निर्धारण वर्ष **/Assessment Year: 2001-02**

M/s.Pentasoft Technologies Ltd., No.1, First Main Road, United India Colony, Kodambakkam, Chennai – 600 024. [**PAN:** AAACP 1895 R]	**v.**	The ITO (OSD)/The ACIT, Company Circle-V(2), Chennai.
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**

आयकर अपील सं./**ITA No.1248/Chny/2011**
निर्धारण वर्ष **/Assessment Year: 2001-02**

The Asst. Commissioner- of Income Tax, Company Circle-V(2), Chennai.	**v.**	M/s.Pentasoft Technologies- Ltd., "Taurus", No.25, First Main Road, United India Colony, Kodambakkam, Chennai – 600 024. [**PAN:** AAACP 1895 R]
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**

Assessee by	:	Mr.I. Dinesh, Adv.
Department by	:	Dr.S.Palanikumar, CIT
सुनवाई की तारीख/Date of Hearing	:	26.08.2022
घोषणा की तारीख /Date of Pronouncement	:	16.11.2022

आदेश **/ O R D E R**

PER G. MANJUNATHA, AM:

These two cross-appeals filed by the assessee as well as the Revenue are directed against the order of the Commissioner of Income Tax (Appeals)-V, Chennai, dated 20.04.2011, and pertains to assessment year 2001-02. Since, the facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are being disposed off, by this consolidated order.

ITA No.1158/Chny/2011 for the AY 2001-02 – Assessee's appeal:

2. The assessee has raised the following grounds of appeal:

> *1. The learned Commissioner of Income Tax (Appeals) has erred in rejecting the assessee's claim that the income of Rs.33,37,093 may be treated as income derived from non-export activity only instead of income under Other Sources, so that the same could form part of domestic turnover.*
>
> *2. The learned Commissioner of Income Tax (Appeals) has erred in not allowing the unrealized sale proceeds of Rs.24,32,35,200 from the profits as per the Hon'ble High Court of Madras order approving to write off of the same.*
>
> *3. The learned Commissioner of Income Tax (Appeals) has erred in not excluding the unrealized sale proceeds of Rs.24,32,35,200 from the export turnover as well as total turnover in the light of the case of Abad Fisheries 258 ITR 641 KER*
>
> *The Appellant craves permission to amend, add or alter the above grounds of appeal.*
>
> *For these and other grounds that may be urged at the time of hearing of the above appeal, it is prayed that this appeal be allowed.*

3. The first issue that came up for our consideration from Ground No.1 of the assessee's appeal is assessment of other income under the head 'income from other sources'. The AO has assessed other income reported in P & L A/c under the head 'income from other sources'. Before the

Ld.CIT(A), the assessee submitted that in absence of break up for the income, it should be considered as income derived from non-export activities instead of income under the head 'income from other sources'.

3.1 We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. Although, the assessee has reported a sum of Rs.33,37,093/- under the head 'income from other sources', but no details have been furnished to prove source and nature of income except stating that it should be considered as income derived from non-export activities. In absence of any specific details, it is difficult to accept the contentions of the assessee that it should be derived from business activity. Therefore, we are of the considered view that there is no error in the reasons given by the authorities below to assess a sum of Rs.33,37,093/- under the head 'income from other sources' and thus, we are inclined to uphold the findings of the Ld.CIT(A) and reject the ground taken by the assessee.

4. The next issue that came up for our consideration from Ground No.2 of the assessee's appeal is allowing unrealized sale proceeds of Rs.24,32,35,200/- from profits as well as from the total turnover. The Ld.Counsel for the assessee fairly agreed that this issue is held against the assessee by the Hon'ble Madras High Court in Tax Case (Appeal) Nos.1135 & 1196 of 2008 dated 25.11.2013 for the AYs 2001-02 & 2002-03. Therefore, the same is to be decided in accordance with law.

4.1 The Ld.DR, on the other hand, supporting the order of the Ld.CIT(A), submitted that this issue has been decided against the assessee by the Hon'ble Madras High Court.

4.2 We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. We find that the Hon'ble Madras High Court in Tax Case (Appeal) Nos.1135 & 1196 of 2008 dated 25.11.2013, has considered the issue of allowing unrealized sale proceeds from profit or total turnover, and after considering relevant submissions held that the assessee could not furnish necessary evidences before the AO to prove that the RBI has permitted extension of time for remitting sale proceeds in foreign currency in India in order to allow the assessee to get the benefit. The relevant findings of the Hon'ble Madras High Court are as under:

> *"….20. As rightly pointed out by learned Standing counsel appearing for the Revenue, when the so called loss has not crystallized as a business loss during the year under consideration, merely on the score of the amount not having been realized, one cannot allow the loss as business loss. The assessee's contention before the Assessing Officer was that in respect of the said amount, they sought permission from Reserve Bank of India for extension of time for remitting the said amount. In the face of the facts pleaded, the Assessing Officer rejected the same stating that the assessee's case could not be accepted for the grant of relief. Accordingly, the Tax Case (Appeal) stands dismissed. The order of the Income Tax Appellate Tribunal is confirmed"…..*

4.3 In this view of the matter and by respectfully following the decision of the Hon'ble Madras High Court in the assessee's own case in Tax Case (Appeal) Nos.1135 & 1196 of 2008 dated 25.11.2013 for the AYs 2001-02 & 2002-03, we are of the considered view that there is no error in the

reasons given by the Ld.CIT(A) to sustain the additions made by the AO and thus, we reject the ground taken by the assessee.

5. The next issue that came up for our consideration from Ground No.3 of the assessee's appeal is non-exclusion of unrealized sale proceeds of Rs.24,32,35,200/- from export turnover as well as total turnover. The Ld.AR submitted that when unrealized sale proceeds are excluded from export turnover, then same needs to be excluded from total turnover and this view is supported by the decision of the Hon'ble Supreme Court in the case of CIT v. HCL Technologies Ltd., reported in [2018] 404 ITR 719 (SC).

5.1 The Ld.DR, on the other hand, supporting the order of the Ld.CIT(A), fairly agreed that this issue is covered by the decision of the Hon'ble Supreme Court in the case of HCL Technologies Ltd. (supra).

5.2 We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The issue of exclusion of expenditure including foreign currency loss or unrealized sale proceeds from export turnover and also from total turnover, is no longer ***res integra***. The Hon'ble Supreme Court in the case of HCL Technologies Ltd.(supra), had considered an identical issue and held that expenses incurred in foreign currency, excluded from total turnover also needs to be excluded from total turnover. The Hon'ble Kerala High Court in the case of CIT v. Abad Fisheries reported in [2002] 258 ITR 0641 (Ker.), held that unrealized sale proceeds have to be excluded from export turnover as well as total turnover. Therefore, considering the facts and circumstances of

the case and also by following the decision of the Hon'ble Supreme Court in the case of HCL Technologies Ltd.(supra), we direct the AO to re-compute deduction u/s.10A of the Act, by excluding unrealized sale proceeds from export turnover as well as total turnover.

6. In the result, the appeal filed by the assessee in ITA No.1158/Chny/2011 is partly allowed.

ITA No.1248/Chny/2011 for the AY 2001-02 – Revenue's appeal:

7. Ground Nos.1 & 6 are general in nature and thus, Ground Nos.1 & 6 are not specifically adjudicated.

8. The next issue that came up for our consideration from Ground Nos.2 to 2.2 of the Revenue's appeal is depreciation of Rs.84,78,14,130/- on STP assets being allowed despite non-furnishing of sufficient evidences. The AO has disallowed depreciation of Rs.84,78,14,130/- on STP assets on the ground that the assessee could not file supporting invoices for new assets acquired and installed during the Financial Year relevant to the assessment year 2001-02. The Ld.CIT(A) has allowed depreciation on additions to fixed assets on the ground that there is no dispute that the assessee had incurred the expenditure and the accounts have been duly verified in the Audit. The Ld.CIT(A) further held that the claim cannot be disallowed merely in the absence of relevant documents.

8.1 The Ld.DR submitted that the Ld.CIT(A), erred in allowing depreciation on the basis of benefit of doubt without considering the fact that the assessee could not even file necessary bills & vouchers and invoices for additions to fixed assets made during the Financial Year relevant to the assessment year 2001-02. The Ld.DR, further submitted that the Ld.CIT(A) completely erred in allowing relief only on the basis of Audit Report and accounts without appreciating the fact that it is the duty of the assessee to furnish invoices to claim acquisition of new assets. The assessee itself admitted the fact that it could not file necessary evidences. But the Ld.CIT(A) has allowed relief on the basis of benefit of doubt. In this regard, he has filed detailed written submissions on this issue which is as under:

Issue -1: Claim of Depreciation:

The assessee company filed its return of income on 20/10/2001 by admitting total loss of Rs.66,51,25,802. They had both STPI and non STPI business in the relevant A Y. The tax computation given along with the ROI filed on 20/10/2001 is enclosed as annexure-I. The audited P &L account is enclosed as annexure-2. As per the P&L account the net profit of the company for the AY 2001-02 was Rs.126,64,38,471.

- *The company had debited Rs.59,19,14,117 as the total depreciation. In the computation of income, a sum of Rs.43,61,77,801 was added back as depreciation as per Companies Act- non STP.*
- *Out of this Rs.104,82,56,327 was claimed as deduction of depreciation as per Income tax act.*
- *The company also claimed deduction of Rs132,18,47,053 as deduction of profit exempted u/s 10A- STP profit.*

The company had furnished the net profit calculation for STPI unit and non STPI unit separately to the AO. The details are enclosed as annexure-3& 4. In this statement, the company disclosed depreciation ofRs.45,58,41382 as depreciation for STP division and Rs.43,61,77,801 for non-STP division.

This means they ought to have maintained separate fixed asset register for both the units i.e. STPI and non STPI units. Without having that basic details, they cannot claim the said depreciation. It is seen from the assessment records, the AO had called for the evidences of fixed asset addition vide notice dated 05/02/2014 at question no.6 and the copy of this notice is enclosed as annexure-5. As the appellant could not furnish the evidences, she had allowed depreciation as per Companies Act as against the IT Rules. During the course of appeal this was one of the grounds and it was discussed by CIT(A) at paragraph 4.5 of the order dated 30/11/2006. The relevant page of this decision is enclosed as annexure-6. The CIT(A) directed the AO to verify the depreciation claim as

per IT Rules. Upon receipt of the order/direction of CIT(A), the AO had issued notice dated 06/02/2007 to the appellant by calling for the details to pass the Order giving Effect (OGE) order. As there was no compliance another notice dated 23/4/2007 was issued. As there was again the non-compliance; further noticed dated 24/7/2007 and 02/08/2007 were issued; The copies of all the notices are enclosed as annexure 7, 8, 9 and,10. As there was no compliance by the appellant to any of the notices, the AO had passed the consequential order dated 06/09/2007 by recording the non-compliance of the appellant. Against this OGE dated 06/09/2007 the assessee preferred appeal. However, the ld.CIT(A) in the second round vide his order dated 20/4/2011 ignored all these details and erred on fact by allowing the appeal of the company simply relying upon the written submission without examining the factual aspect of the discrepancies discussed above in the claim of depreciation. In the order, he had directed the AO to allow additional depreciation of Rs.84,78,14,130 which was nowhere claimed in the computation of income or Return of Income. It is pertinent to mention here that the cairn of depreciation as per the P&L Ale of STP division filed along with Return of Income was only Rs.45,58,41,382. The depreciation for non STP was Rs.43,61,77,801. These computations are already placed in the annexure discussed above. Hence, it is submitted that prima facie the CIT(A) grossly erred on law and fact. Against this order the department is in appeal before Hon'ble ITAT. As narrated above, it is a factual issue and the non-compliance of the assessee has been recorded since first notice. The CIT(A) ought not to have allowed the appeal without examining the facts and non-compliance. Hence it is prayed that the revenue's appeal ought to be allowed.

8.2 The Ld.AR, on the other hand, submitted that the AO has allowed depreciation in the first round of assessment proceedings. However, during the second round of proceedings, he has denied depreciation on additions to fixed assets because of non-furnishing of invoices, otherwise, there is no dispute with regard to fact that the assessee has acquired assets and capitalized during the impugned assessment year. The Ld.CIT(A) after considering relevant facts has rightly allowed the claim of the assessee and their orders should be upheld.

8.3 We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The assessee has debited depreciation of Rs.59,19,14,117/- for the year ending 31.03.2001 in the audited P & L A/c. as per Companies Act. The assessee claimed that out of Rs.59,19,14,117/-, depreciation pertains to non-STPI Units was at Rs.43,61,77,801/- and the same has been added back in the statement of

total income. The assessee has claimed depreciation as per Income Tax Act, 1961 at Rs.104,82,56,327/- in the statement of total income. The assessee had also claimed depreciation as per IT Act for STP Division at Rs.45,58,41,382/-. However, there is no details about depreciation as per Companies Act for non-STPI Units. The AO has not allowed depreciation on additions to fixed assets amounting to Rs.84,78,14,130/-, because, the assessee could not furnish necessary invoices for additions to fixed assets. The Ld.CIT(A) has directed the AO to verify the depreciation claim as per IT Rules and allow necessary relief. During the assessment proceedings before the AO, in pursuant to giving effect to the order of the Ld.CIT(A), the assessee, once again, failed to file necessary evidences. Therefore, the AO has denied depreciation claim of Rs.84,78,14,130/-, but in the second round of litigation, the Ld.CIT(A) on the basis of benefit of doubt has allowed depreciation claim of the assessee on the ground that even though, the assessee could not furnish invoices, but filed necessary details of additions to fixed assets in Tax Audit Report and thus, opined that merely for the reasons of non-furnishing invoices, claim of depreciation cannot be denied.

8.4 We find that the Ld.CIT(A) has allowed relief to the assessee without any basis. The main reason for the AO to deny depreciation on additions to fixed assets is non-furnishing of necessary evidences. Further, the assessee has claimed depreciation for STPI Units and non-STPI Units and if you consider depreciation claimed for both the Units, it does not match with

total depreciation debited into the P & L A/c for the year ending 31.03.2001. Even before us, the assessee could not explain with necessary evidences, the differential figures of depreciation claim in the P & L A/c and in the statement of total income, computation of income for STPI Units & non-STPI Units. Since, the assessee could not file necessary invoices in support of additions to fixed assets and also basis for adopting different figures of depreciation for computing income from STPI Units & non-STPI Units, we are of the considered view that the issue needs further verification from the AO and hence, we set aside the issue to the file of the AO and direct the AO to re-examine the issue in light of various averments made by the assessee and also taken into account computation of depreciation for STPI Units & non-STPI Units.

9. The next issue that came up for our consideration from Ground Nos.3 to 3.1 of the Revenue's appeal is depreciation on Intellectual Property Rights (in short "IPR"). The Ld.Counsel for the assessee submitted that this issue is covered in favour of the assessee by the decision of the ITAT Chennai Benches, in the assessee's own case for the AY 2002-03 in ITA No.1540/Mds/2006 dated 06.02.2008, where the Tribunal held that the assessee is entitled for depreciation on IPRs.

9.1 The Ld.DR, on the other hand, fairly agreed that the issue is covered in favour of the assessee by the decision of the ITAT Chennai Benches, in the assessee's own case.

9.2 We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The ITAT Chennai Benches, in the assessee's own case for the AY 2002-03 in ITA No.1540/Mds/2006, had considered an identical issue and after considering relevant facts held that IPRs are intangible assets entitled for depreciation u/s.32(1)(ii) of the Act. Therefore, considering the facts and circumstances of the case and also by following the decision of the ITAT in the assessee's own case for the earlier assessment years, we are of the considered view that there is no error in the reasons given by the Ld.CIT(A) to delete the additions made towards depreciation on IPRs and thus, we are inclined to uphold the findings of the Ld.CIT(A) and reject the ground taken by the Revenue.

10. The next issue that came up for our consideration from Ground Nos.4 to 4.2 of the Revenue's appeal is giving relief u/s.10A of the Act, amounting to Rs.7,45,30,071/-. The assessee has claimed deduction u/s.10A of the Act, for profits derived from STPI Units. The Ld.CIT(A) has computed income eligible for deduction u/s.10A of the Act, at Rs.19,22,24,915/- and such details have been furnished in Page Nos.12 & 13 of the Ld.CIT(A)'s order. There is no dispute on profit computed for deduction u/s.10A of the Act. However, the Revenue has challenged computation of total turnover by excluding unrealized sale proceeds of Rs.24,32,35,200/- on the ground that the matter has been already decided by the ITAT against the assessee and further, the findings of the Tribunal is affirmed by the Hon'ble Madras

High Court in Tax Case (Appeal) Nos.1135 & 1196 of 2008 dated 25.11.2013 for the AYs 2001-02 & 2002-03. Therefore, the Ld.CIT(A) erred in giving further relief by re-computing export turnover and total turnover.

10.1 The Ld.DR has furnished a detailed written submissions on this issue and argued that how to compute export turnover and total turnover for the purpose of deduction u/s.10A of the Act. The written submissions filed by the Ld.DR are as under:

> ***Issue-2: Quantification of Export Turn over:***
>
> *2.1 In the Return of Income, as per the computation, the profit of 10A unit (STP unit) claimed by the assessee for the AY 2001-02 was Rs.132,18,47,053. In order to claim deduction/ exemption the company ought to furnish Form 56 F as mandated in section 10A(5) of the IT Act. This form 56F filed by the assessee is enclosed as* ***Annexure 11****. As per Form 56F, the total turnover of the business was Rs.596,94,09,132. This includes overseas business turn over (Rs.496,33,99,855), domestic turnover (Rs.87,15,35,037) and other income (Rs.13,44,74,240) and the break up was available in the audited P&L a/c.*
>
> *2.2 In Form 56F the accountant has reported the Total Turnover (TTO) of the undertaking at Rs.483,869,97,879/ and Export Turnover (ETO) at Rs.205,14,65,831. Attention is drawn to the qualification given at point 18 by the Accountant. As per the qualification, out of TTO of Rs.205,14,65,831/ the company had brought in only Rs.70,10,93,076 only on or before 30/9/2001. They did not bring in the export turnover of Rs.135,03,72,755 within due date specified in section 10A(3) of the IT Act. Hence, as per subsection 4 of section 10A, the profit derived from the export of computer software has to be recomputed accordingly.*
>
> *The unrealized ETO of Rs.135,03,72,755 will not get any benefit of section 10A of the IT Act. The Form 56F issued by the CA itself had inherent mistake where he had wrongly calculated the ETO as well as TTO and reported incorrect deduction of section 10A.*
>
> *2.3 The assessing officer had recomputed the deduction /exemption of the undertaking in the original assessment order dated 31/3/2004 by restricting the deduction of l0A of the IT Act on account of the factual issues discussed above. In the assessment order apart from restricting the export turnover reported in form 56F the assessing officer had also allocated the expenditure between STP and non STP division as the company booked substantial profit in STP business and huge loss in non STP business that was taxable.*
>
> *2.4 As per the original order dated 31-3-2004, the AO quantified Rs.94,31,37,372 as profit of the undertaking as against Rs.132,18,47,053 by allocating the expenditures proportionately. In the next paragraph, he had considered only Rs.70,10,93,076 as Export turnover (ETO) that was brought in as convertible foreign exchange into country as per section 10A(3) of the IT Act. As per the original assessment order the deduction of 10A allowed by the AO was Rs.30,86,49,234/- only.*

2.5 ***CIT(A) order - First Round:*** *The CIT(A) in his order dated 30/11/2006 (first round) had set aside this issue back to the AO to re-compute the taxable and non-taxable income of the assessee in respect of STPI and non STPI division in the line of his predecessor's order for the AY 2002-03. This was discussed at paragraph 4.2 of the CIT(A) order. However, he upheld the restriction of the export turnover of Rs.70,10,93,076/ as against Rs.205,14,65,831/ reported in Form 56F. (Ref: paragraph 4.3).*

In this connection it is to be mentioned here that the CIT(A) had relied upon his predecessor order dated 27/2/2006 passed for the A Y 2002-03. Aggrieved by the order of CIT(A) the company had preferred the appeal before the Hon'ble ITAT.

2.6. ***Decision of ITAT:*** *The Hon'ble ITAT dealt this issue in ITA No.228(Mds)/2007 dated 14/3/2008. It is pertinent to mention that the alternative plea of the appellant company before the CIT(A) was that the unrealized sale proceeds of Rs.24,32,35200/ was claimed as write off of bad debt. This was not allowed by the CIT(A) as well as Hon'ble ITAT (Paragraph 5 of the decision). The assessee moved the appeal against this order before Hon'ble HC of Madras.*

2.7 ***Decision of High Court:*** *The Hon'ble HC of Madras had passed a speaking order on this aspect in its order dated 25/11/2013 and this order is placed between page 86 and 103 of the appellant's paper book dated 21/1/2019. The substantial question of law was answered against the assessee. Hence, all the ground of appeal of the appellant in IT A 11o.1128/2011 in infructuous.*

2.8 ***CIT(A) decision in second round:*** *By ignoring all these facts, the learned CIT(A) while deciding the appeal on the appellant against the order giving effect dated 6/9/2007 held that unrealized sale proceeds had to be deducted from the export turnover as well as total turnover by relying upon the Kerala HC order in Abad fisheries 258 ITR 641. This order of CIT(A) was passed on 20/4/2011. Against this decision the Revenue has filed appeal and it is pending in ITA.No.1248/CHNY/2011.*

2.9. It is pertinent to mention here that the Hon'ble HC of Madras has already examined this issue in its order dated 25-11-2013 and upheld the decision of ITAT. Hence, the CIT(A) order dated 20/4/2011 is no longer maintainable on this issue.

10.2 The Ld.Counsel for the assessee, on the other hand, submitted that there is no dispute with regard to profit computed by the Ld.CIT(A). However, as regards export turnover and total turnover, the Ld.CIT(A) has excluded unrealized sale proceeds from total turnover in light of the decision of the Hon’ble Kerala High Court in the case of Abad Fisheries (supra). Therefore, there is no error in the computation of deduction u/s.10A of the Act, by the Ld.CIT(A) and thus, no interference is called for from the Tribunal.

10.3 We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. There is no dispute with regard to the computation of profit eligible for deduction u/s.10A of the Act, which was computed at Rs.19,22,24,915/-. The only dispute is with regard to computation of total turnover by excluding unrealized sale proceeds of Rs.24,32,35,200/-. The Revenue has agitated the issue in light of decision of the ITAT Chennai Benches and also the decision of the Hon'ble High Court of Madras and contended that the Hon'ble jurisdictional High Court has settled the issue and held that the assessee is not entitled for exclusion of unrealized sale proceeds from profits. We have gone through the order of the Tribunal as well as the Hon'ble High Court of Madras and we find that the issue before the Hon'ble High Court was exclusion of unrealized sale proceeds as write off of bad debts from the profit, but not the issue of computation of deduction u/s.10A of the Act. Therefore, there is no merit in the arguments of the Ld.DR that once the matter attained finality at High Court level, the Ld.CIT(A) cannot take said issue giving further relief to the assessee.

10.4 Having said so, let us come back to the dispute on hand in question. Before us, is whether the Ld.CIT(A) is right in re-computing total turnover by excluding unrealized sale proceeds. We find that the Ld.CIT(A) admitted the fact that in the first round of litigation the ITAT has confirmed the order of the Ld.CIT(A) in denying exclusion of unrealized sale proceeds from total turnover. However, in the subsequent order dated 24.03.2008 for the AY

2003-04, the ITAT by following the decision of the Kerala High Court in the case of Abad Fisheries (supra), held that the unrealized sale proceeds have to be excluded from export turnover and total turnover. Therefore, on the basis of subsequent development, the Ld.CIT(A) has re-computed total turnover by excluding unrealized sale proceeds by following the decision of the Hon'ble Kerala High Court in the case of Abad Fisheries (supra), because said findings are further fortified by the decision of the Hon'ble Supreme Court in the case of HCL Technologies Ltd. (supra), where it has been held that any expenditure excluded from export turnover needs to be excluded from total turnover also. Therefore, considering the facts and circumstances of the case and also ratio laid down by the Hon'ble Kerala High Court in the case of Abad Fisheries (supra) as well as the Hon'ble Supreme Court in the case of HCL Technologies Ltd. (supra), we are of the considered view that there is no error in relief allowed by the Ld.CIT(A) in re-computing deduction u/s.10A of the Act and thus, we are inclined to uphold the findings of the Ld.CIT(A) and reject the ground taken by the Revenue.

11. The next issue that came up for our consideration from Ground Nos.5 to 5.2 of the Revenue appeal is exclusion of unrealized sale proceeds from total turnover. We find that this issue is covered in favour of the assessee by the decision of the Hon'ble Supreme Court in the case of HCL Technologies Ltd. (supra), where it has been clearly held that expenditure excluded from export turnover, also needs to be excluded from total

turnover. Therefore, by respectfully following the decision of the Hon'ble Supreme Court in the case of HCL Technologies Ltd. (supra), we are of the considered view that there is no error in the reasons given by the Ld.CIT(A) to exclude unrealized sale proceeds from total turnover and thus, we are inclined to uphold the findings of the Ld.CIT(A) and reject the ground taken by the Revenue.

12. In the result, appeal filed by the Revenue in ITA No.1248/Chny/2011 is partly allowed for statistical purposes.

13. In the result, the appeal filed by the assessee in ITA No.1158/Chny/2011 is partly allowed and appeal filed by the Revenue in ITA No.1248/Chny/2011 is partly allowed for statistical purposes.

Order pronounced on the 16th day of November, 2022, in Chennai.

Sd/-	***Sd/-***
(महावीर सिंह)	**(जी. मंजूनाथा)**
(MAHAVIR SINGH)	**(G. MANJUNATHA)**
उपाध्यक्ष /VICE PRESIDENT	लेखा सदस्य**/ACCOUNTANT MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 16th November, 2022.
TLN

आदेश की प्रतिलिपि अग्रेषित**/Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF