



## Global Business Tax Alert Sharp Insights

Rental income from sub-lease of office premises to be considered for section 10A benefit

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# Synopsis

The Karnataka High Court (High Court) held that rental income from sub-lease of office premises is deemed to be the profits of the business of undertaking for the purpose of extending the benefit of exemption under Section 10A of the Act.

## Facts

- Subex Limited (taxpayer), a public limited company, is engaged in the business of development and export of software. The taxpayer is a 100% Export Oriented Unit (EOU) approved by the Software Technology Park of India (STP).
- The taxpayer had entered into a non-cancelable lease agreement for its branch office in Canada which was used for development of software.
- A portion of the said premises being vacant was sub-let by the taxpayer on a temporary basis. The taxpayer received rental income from the sub-letting of part of the office premises and such rental income was lower than the rent paid.
- The taxpayer claimed that it did not carry on any activity other than development of software in Canada, and hence the sub-lease of office premises is inextricably connected with its business operations. Therefore the rental income should form part of the profits of the undertaking eligible for deduction under section 10A of the Income-tax Act, 1961 (“Act”).

## Issue before the High Court

Whether the rental income from temporary sub-lease of office premises can be regarded as “part of the profits of the business” for the purpose of deduction under Section 10A.

# Ruling of the High Court

- If the taxpayer is entitled to deduction only for the profit derived under Section 10A(1) of the Act i.e. profits derived by an undertaking from the export of articles or things or computer software, then the sub-section (4) to Section 10A which deals with profits of the business of the undertaking would be redundant.
- The sub-section (4) to Section 10A, which came into effect on 1 April 2002 by the Finance Act, 2001, recognizes that the profits of the business of the undertaking would be not only the profits and gains from the exports of articles or things or computer software, in addition to that, the undertaking may have some other profits also, which is derived from business of the undertaking.
- The premise was taken on lease for the business of the taxpayer. However, the portion of the premises which was not used for business purpose was rented out instead of keeping it vacant and suffering loss. Therefore, the rental income derived by the taxpayer from the sub-lease of office premises constitutes “income from business” . .
- By virtue of Section 10A(4), the rental income, even though is not derived from export of articles or things or computer software, is deemed to be the profits of the business of the undertaking for the purpose of extending the benefit of exemption under Section 10A.
- The High Court on the given facts held that rental income from sub-lease of office premises qualifies for determining benefits under section 10A.

## Comments

This ruling holds that for the purpose of section 10A, in addition to the profits from export of articles or things or computer software, the profits of the business of the undertaking will deem to include all other incidental incomes derived from the business of the undertaking.

**Source:** High Court order dated 28.10.2014 in Karnataka (ITA No. 46/2009 and ITA No. 47/2009)

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