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

SHRI. ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

I.T.A No.28/Bang/2013
(Assessment Year : 2009-10)

Income-tax Officer,
Ward -1 (1), Bengaluru .. Appellant

v.

M/s. C K S Consulting P. Ltd,
CKS House, 100 ft Road Indiranagar,
Bengaluru 560 038 .. Respondent
PAN : AACCC3124A

Assessee by : Smt. Jayna Kothari, Advocate
Revenue by : Smt. Swapna Das, JCIT

Heard on : 21.06.2016
Pronounced on : 26.08.2016

O R D E R

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER :

In this appeal filed by Revenue its grievance is that asessee was held as eligible for deduction u/s.10B of the Income-tax Act, 1961 ('the Act' in short).

02. Facts apropos are that assessee a 100% EOU engaged in software development had claimed deduction of Rs.44,03,765/- u/s.10B of the Act. AO during the course of assessment proceedings noted that assessee had not

received statutory approval by the Board as a 100 percent EOU, which was essential for claiming deduction u/s.10B of the Act. When this was put to the notice of the assessee, its reply was that the Central Government u/s.14 of the Industries (Development and Regulations) Act, 1951, had delegated the powers to the Director of STPI by virtue of notification No.SO388 (E), dt.30.04.1995. As per the assessee power of the approval was delegated to the Commissioners and this was also accepted by CBDT by virtue of Circular F. No.178/19/2008 – ITA -I, dt.09.03.2009. However, the AO was not impressed. According to him statutory approval from the Board was required for claiming deduction u/s.10B of the Act. Relying on the decision of Hyderabad bench of the Tribunal in the case of Infotech Enterprises Ltd v. JCIT [(2003) 85 ITD 325], the claim was denied.

03. In its appeal before CIT (A), argument of the assessee was that it was an approved 100% EOU of STPI which fell under Ministry of Information and Technology. As per the assessee, approval u/s.14 of IDR Act, 1951, was delegated to Interministerial Standing Committees and notification dt.30.04.1995 which delegated such powers clearly stated that the word 'STP' would be substituted for EOU / EPZ. Assessee also brought to the notice of

CIT (A) a decision of Chandigarh bench of the Tribunal in the case of Bebo Technologies P. Ltd v.JCIT [(2011) 57 DTR 402]. Reliance was also placed on judgment of Hon'ble Delhi High Court in the case of CIT v. Enable Exports P. Ltd [(2012) 217 Taxmann 182] CIT (A) was appreciative of these contentions. According to him, though the decision of Hyderabad Bench in the case of Infotech P. Ltd (supra) was against the assessee, Chandigarh bench in the case of Bebo Technologies P. Ltd (supra) as well as the Delhi Bench of the Tribunal in the case of M/s. Vallent Communication Ltd v. DCIT [ITA.2706/Del/2008, dt.23.04.2010] had held in favour of the assessee. Further according to him assessee was claiming such exemption since last eight years based on the direction given by the Director of STPI. He thus held that assessee was eligible for deduction u/s.10B of the Act.

04. Now before us, Ld. DR strongly assailing the order of CIT (A) submitted that Hon'ble Delhi High Court in the case of CIT v. Regency Creations Ltd [(2013) 353 ITR 326 had held that there was a deliberate segregation made by the legislature between the benefits given to an assessee between Sections 10A and 10B of the Act. As per the Ld. DR, their Lordship held that for qualifying for the benefits under section 10B of the Act, the procedure laid down enacted in the said section had to be followed. Thus as per the Ld. DR, a 100% EOU set up

under the STPI scheme could not be deemed as an approval for giving benefit u/s.10B of the Act.

05. Per contra, Ld. AR submitted that the very same Hon'ble Delhi High Court in the case of Enable Exports (supra), as well as the Hon'ble Punjab & Haryana High Court in the case of CIT v. Excel Softtech Ltd [(2003) 13 DTR 201] had held that approvals given by Development Commissioner was good enough for a claim u/s.10B of the Act. According to her, unless and until there was a jurisdictional High Court decision against assessee, judgment in favour of the assessee had to be followed.

06. We have perused the orders and heard the rival contentions. In the first place what we find is that assessee was claiming deduction u/s.10B for a period of eight years and this finding of the CIT (A) has not been disputed by the Ld. DR before us. Rule of consistency requires that a deduction given to an assessee under a particular section ought not be denied in later years when the fact-situation remained the same. It cannot be presumed that in the earlier years such allowance was given by the AO without considering the provisions of law. Thus the AO had already taken a view in the earlier years that assessee was eligible for deduction u/s.10B of the Act based on the approval given to it by the Director of STPI. A view taken by

the Revenue, which permeates through a number a number of years ought not have been disturbed in the impugned assessment year citing a reason that approval of STPI was insufficient for giving relief u/s.10B of the Act. In any case, I find that Hon'ble Delhi High Court in the case of Enable Exports P. Ltd (supra) had taken a view in favour of the assessee, though the judgment of the very same court in Regency Creations (supra) went against the assessee. Assessee's case is also fortified by the decision of Hon'ble Gujarat High Court in the case of Pr. CIT v. ECI Technologies P. Ltd [(2015) 375 ITR 595]. In the circumstances of the case, we do not find any reason to interfere with the order of CIT (A).

07. In the result appeal of the Revenue stands dismissed.

Order pronounced in the open court on 26th day of August, 2016.

Sd/-

(ABRAHAM P GEORGE)
ACCOUNTANT MEMBER

MCN

Copy to:
1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax
4. Commissioner of Income-tax(A)
5. DR

6. GF, ITAT, Bangalore

By Order

Assistant Registrar