

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F" NEW DELHI
BEFORE SHRI S.V. MEHROTRA : ACCOUNTANT MEMBER
AND
SHRI C.M. GARG: JUDICIAL MEMBER

ITA no. 176/Del/2014

Asstt. Yr: 2007-08

Income-tax Officer,
Ward-14(4), New Delhi.

Vs. quantum Coders Ltd.,
501-502, Plot no. 1,
DDA Bldg. Distt. Center,
Janakpuri, New Delhi.
PAN: AAaCQ 1197 M

(Appellant)

(Respondent)

Appellant by : Ms. Rakhi Bimal Sr DR.
Respondent by : Shri Ved Jain CA

Date of hearing : 12/05/2016.

Date of order : 27/05/2016.

ORDER

PER S.V. MEHROTRA, A.M:

This is revenue's appeal against the order dated 23.10.2013, passed by the ld. CIT(A)-XVII, New Delhi, relating to A.Y. 2007-08.

2. Brief facts of the case are that during the year the assessee company was engaged in the business of software exports. It had claimed deduction of Rs. 38,98,220/- u/s 10A for the year under assessment. The AO noticed that assessee company got approval from software Technology Parks of India (STPI) on 8.12.2006, whereas it had claimed deduction for the complete year viz. from 1.4.2006 to 31.3.2007. He pointed out that as per the approval from STPI dated 8.12.2006, letter of permission was valid for 3 years from its date of issue within which the project was to be implemented and

commercial production commenced. The AO, therefore, allowed deduction u/s 10A of Rs. 12,17,526/- for the period from 8.12.2006 to 31.3.2007 and disallowed the deduction claimed to the extent of Rs. 26,80,695/-(Rs. 38,98,220 – Rs. 12,17,526). He initiated penalty proceedings u/s 271(1)(c) and after considering the assessee's submissions levied a penalty of Rs. 13,12,154/-.

3. Ld. CIT(A) deleted the penalty by observing that in quantum appeal the ITAT vide its order dated 30.4.2013 had deleted the addition and therefore no ground for levy of penalty remained.

4. Aggrieved the department is in appeal before us and has taken following grounds of appeal:

“1. On the facts & in the circumstances of the case, the Ld. CIT(A) has erred in deleting the penalty of Rs. 13,12,134/- imposed by the assessing officer u/s 271(1)(c) of the Act on the account of disallowance of deduction u/s 10A of the Act.

1.1 On the facts & in the circumstances of the case, the Ld. CIT(A) has erred in deleting the penalty of Rs. 13,12,134/- keeping in view the favorable decision made by the Hon'ble ITAT in respect of quantum appeal but ignoring the fact that Revenue is in appeal in the Hon'ble High Court against the said decision of the ITAT. Hence the issue has not attained its finality.

2. The appellant craves to be allowed to add any fresh grounds of appeal and/or delete or amend any of the grounds of appeal.

5. At the time of hearing ld. counsel for the assessee referred to grounds of appeal and pointed out that the department had specifically taken a ground that against Tribunal's order in quantum, the matter was pending before Hon'ble High Court. He filed before us a copy of Hon'ble High

Court's decision dated 4.2.2014 in ITA no. 542/2013, wherein the Hon'ble High Court has dismissed the department's appeal and the review petition also filed by the department was dismissed on 1.8.2014. In view of these facts, the penalty levied by the revenue has no legs to stand. Accordingly, order of Id. CIT(A), deleting the penalty levied u/s 271(1)(c) is upheld.

6. In the result, revenue's appeal is dismissed.

Order pronouncement in open court on 27/05/2016.

Sd/-
(C.M. GARG)
JUDICIAL MEMBER

Dated: 27/05/2016.

MP

Copy of order to:

1. Assessee
2. AO
3. CIT
4. CIT(A)
5. DR, ITAT, New Delhi.

Sd/-
(S.V. MEHROTRA)
ACCOUNTANT MEMBER