IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH, AHMEDABAD

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No.2734/Ahd/2015
Assessment Year: 2008-09

M/s. Alphatech Software Pvt. Ltd., 5, Aryan Industrial Estate, Opp. Matruchaya Marriage Hall, B/h. PVR Cinema, Channi, Baroda ï 390 024. [PAN ï AADCA 0799 A]	vs.	Commissioner of Income Tax-I, Baroda.

Appellant by : Shri Tushar P. Hemani,
Respondent by : Shri Surendra Kumar, CIT (DR)

ITA No.2735/Ahd/2015
Assessment Year: 2008-09

M/s. Alphatech Software Pvt. Ltd., 5, Aryan Industrial Estate, Opp. Matruchaya Marriage Hall, B/h. PVR Cinema, Channi, Baroda ï 390 024. [PAN ï AADCA 0799 A] (Appellant)	vs.	Income Tax Officer, Ward ï 1(1), Baroda. (Respondent)

Appellant by : Shri Tushar P. Hemani,
Respondent by : Shri Mudit Nagpal, Sr. D.R.

Date of hearing : 04.12.2017
Date of pronouncement : 18.12.2017

O R D E R

PER N.K. BILLAIYA, ACCOUNTANT MEMBER

These are appeals by the Revenue preferred against two separate orders for the assessment year 2008-09.

2. Both these appeals were heard together and are disposed of by this common order for the sake of convenience.

3. First we take up **ITA No.2734/Ahd/2015**. With this appeal, the assessee has challenged the validity of order of the CIT-I, Baroda dated 22.03.3013 framed under section 263 of the Income Tax Act, 1961 (ñthe Actò hereinafter) pertaining to assessment year 2008-09.

4. The appeal is late by 860 days. In its request for the condonation of delay, the assessee stated that it came to know about the order framed under section 263 of the Act only when the assessment was framed pursuant to the directions given by the Commissioner which has caused the delay in filing of the appeal. The assessee further contends that he was under a bonafide belief that the assessee was not required to file an appeal against the order passed under section 263 of the Act.

5. We find that the reasons given by the assessee are too vague to be considered as a bonafide cause for the delay in filing the appeal. We find no merit in the contention of the assessee. The delay is not condoned and accordingly the appeal is dismissed.

6. Now we take up **ITA No.2735/Ahd/2015**. With this appeal, the assessee has challenged correctness of the order of CIT(A)-1, Vadodara dated 27.07.2015 pertaining to assessment year 2008-09. The only grievance of the assessee is that the CIT(A) erred in confirming action of the Assessing Officer in disallowing exemption of Rs.32,56,998/- claimed under section 10B of the Act.

7. The assessee is in the business of software development and testing and accordingly assessee claimed deduction of Rs.32,56,998/- under section 10B of the Act. The Assessing Officer was of the opinion that to claim deduction under section 10B of the Act, as per explanation 2(iv) to section 10B, the deduction is admissible to 100% EOU if the approval is granted by the Board of approval constituted by the Central Government under section 14 of Industries (Development and Regulation) Act. The Assessing Officer noticed that in the case in hand the approval is granted by the Director, Software Technology Parks of India which is a society formed under the Software Technology Park Scheme. The Assessing Officer was of the firm belief that the approval for the undertaking is not granted by the Board. Therefore, the assessee is not eligible for claim of deduction under section 10B of the Act and accordingly denied deduction of Rs.32,56,998/-

8. Assessee carried the matter before the CIT(A) but without any success. Before us, learned counsel for the assessee stated that the approval granted by the Director, STPI was subsequently ratified by the Board and therefore the assessee has fulfilled the mandatory conditions prescribed under the Act and eligible for the claim of deduction under section 10B of the Act. Learned Counsel relied upon the decision of Hon'ble High Court of Gujarat in the case of PCIT vs. ECI Technologies Pvt. Ltd., [2015] 375 ITR 595 (Guj.). Ld. Counsel also relied upon the CBDT Circular No.9309 and 859.

9. Per contra, learned Departmental Representative strongly supported the findings of the Assessing Officer.

10. We have given a thoughtful consideration to the orders of the authorities below. There is no dispute that the assessee has been duly granted approval by STPI. We find that the said approval of the STPI was ratified by the Board vide letter dated 13.08.2007 and the same is exhibited at pages 18 to 20 of the Paper Book. We also find that the CBDT has come out with the following circular:-

> **"CLARIFIFATION REGARDING DEDUCTION UNDER SECTION 10B**
>
> **[Instruction No.02/2009, Dated 9-3-2009, Corrected by [f. no.178/19/2008 – ITA-I] dated 8-5-2009]**
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> **Section 10B of the Income Tax Act provides for exemption of income in case of hundred per cent export oriented undertakings subject to prescribed conditions. Explanation 2(iv) below to the said section defines a "hundred percent export oriented undertaking" as an undertaking so approved by the Board appointed in this behalf by the Central Government under section 14 of the Industries Development and Regulation Act, 1951. Subsequent to the delegation of this power by the Ministry of Commerce and Industries to the Development Commissioners, such approvals to 100 per cent EOU's are now being granted by the Development Commissioners, which are later ratified by the Board of Approvals.**
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> **The matter regarding validity of approvals given by Development Commissioners has been examined in the Board it has been decided that an approval granted by the Development Commissioner in the case of hundred per cent export oriented unit will be considered valid once such an approval is ratified by the Board of Approval for EOU scheme."**

11. We further find that identical issue was considered by the Hon'ble jurisdictional High Court of Gujarat in the case of PCIT vs. ECI Technologies Pvt. Ltd. (Supra). The relevant findings read as under :-

"Heard the learned advocates appearing on behalf of the respective parties at length. At the outset, it is required that the assessee claimed deduction under section 10B of the Act claiming 100 per cent. export oriented unit. It is an admitted position that there was already a permission/approval granted by the Development Commissioner declaring/approving the assessee as 100 per cent. export oriented unit. However, on considering the word, approved by the Board of Approval as mentioned in section 10B of the Act and at the relevant time there was no ratification of the decision of the Development Commissioner by the Board of Approval, the Assessing Officer denied the deduction under section 10B of the Act. However, is required to be noted and it is not in dispute that, vide Circular/instruction of the Central Board of Direct Taxes dated March 9, 2009, it was clarified that the approval granted by the Development Commissioner in the case of export oriented unit set up in an export processing zone will be considered valid, once such an approval is ratified by the Board of Approval for Export Oriented Unit Scheme. In the present case, it is not in dispute that the permission/approval granted by the Development Commissioner has been ratified by the Board of Approval, may be subsequently. The moment the decision/approval of the Development Commissioner is ratified by the Board of Approval it will relate back to the date on which the approval was granted by the Development Commissioner. If that be so, it cannot be said that the assessee was not a export oriented unit, which was entitled to the deduction under section 10B of the Act. Incidentally it is to be noted that in the subsequent circular No. 68 issued by the Export Promotion Council for EOUS and SEZS, dated May 14, 2009, it mentions that from 1990 onwards the Board of Approval had delegated the power of approval of 100 per cent, to the Development Commissioner and, therefore, it can be very well argued and said that the Development Commissioner while granting the approval of 100 per cent, export oriented unit exercises delegated powers. In any case and apart from the above when it is found that at the relevant time the Development Commissioner granted the approval of 100 per cent, export oriented unit in favour of the assessee-company, which came to be subsequently ratified by the Board of Approval and as observed hereinabove as such the ratification shall be from the date on which the Development Commissioner granted the approval, both the learned Commissioner of Income-tax (Appeals) as well as the learned Tribunal have rightly held that the assessee was entitled to deduction under action 10B of the Act as claimed. We confirm the view taken by both the authorities below holding that the assessee was entitled to 100 per cent. EOU as claimed. No substantial question of law arises in the present tax appeal. Hence, the present tax appeal deserves to be dismissed and is accordingly dismissed."

12. Respectfully following the findings of the Hon'ble jurisdictional High Court of Gujarat (supra), we set aside the findings of the CIT(A) and direct the Assessing Officer to allow the claim of deduction of Rs.32,56,998/- made under section 10B of the Act.

13. Appeal filed by the assessee is accordingly allowed.

14. In the result, ITA No.2734/Ahd/2015 is dismissed and ITA No.2735/Ahd/2015 is allowed.

(Order pronounced in the open Court on this 18th day of December, 2017)

Sd/-	*Sd/-*
Rajpal Yadav	**N.K. Billaiya**
(Judicial Member)	(Accountant Member)

Ahmedabad, the 18th day of December, 2017

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Copies to: *(1)* *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad