

आयकर अपीलीय अधिकरण पुणे न्यायपीठ एक-सदस्य मामला पुणे में

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "SMC", PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष  
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA No.2301/PUN/2016

निर्धारण वर्ष / Assessment Year : 2010-11

The Income Tax Officer,  
Ward 1(3), Pune

.... अपीलार्थी/Appellant

Vs.

Enterprise DB Software India Pvt. Ltd.,  
Unit 3, Ground Floor,  
Godrej Castlemaine,  
Next to Ruby Hall,  
Sasoon Road,  
Pune – 411001

.... प्रत्यर्थी / Respondent

PAN: AABCE5660N

अपीलार्थी की ओर से / Appellant by : Shri Achal Sharma

प्रत्यर्थी की ओर से / Respondent by : Shri Naresh Kumar

सुनवाई की तारीख / Date of Hearing : 21.02.2018	घोषणा की तारीख / Date of Pronouncement: 27.02.2018
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The appeal filed by the Revenue is against the order of CIT(A)-1, Pune, dated 11.07.2016 relating to assessment year 2010-11 against order passed under section 250 / 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. The Revenue has raised the following grounds of appeal:-
  1. *The order of the Ld. Commissioner of Income-tax (Appeals-1) is contrary to the law and on facts and in the circumstances of the case.*
  2. *The Ld. Commissioner of Income-tax (Appeals) erred on the facts and in the circumstances of the case and in law in allowing alternate claim of the assessee for deduction u/s 10A of the Act, when the Ld. CIT(A) had upheld the order of the Assessing Officer in denying deduction u/s. 10B.*
  3. *The Ld. Commissioner of the income-tax (Appeals) erred on the facts and in the circumstances of the case and in law in allowing alternate claim of the assessee for deduction u/s 10A of the Act ignoring the provisions of section 80A(5) of the IT Act, 1961 which mandate that no deduction u/s 10A would be allowable unless so claimed by the assessee in the Return of income.*
  4. *The Ld. Commissioner of income-tax Appeals) erred on the facts and in the circumstances at the case and in law in allowing alternate claim of the assesses for deduction u/s 10A of the Act ignoring the decision of the Hon'ble Supreme Court in the case of Goetze India Ltd Vs CIT reported in 157 Taxman 1, wherein it has been held that an assessee can amend a return filed by him for making a claim for deduction only by filing a revised return.*
  5. *The Ld. Commissioner of Income-tax Appeals) erred on the facts and in the circumstances of the case and in law in allowing alternate claim of the assessee for deduction u/s 10A of the Act ignoring decision of the Hon'ble Supreme Court in the case of CIT vs Shelly Products reported in 129 Taxmann 270 wherein it has been held that the assessing authority may grant relief to an assesses, if an assessee by mistake or inadvertence or on account of ignorance, included in his Income any amount which is exempted from payment of income-tax, or is not income within the contemplation of law, which is clearly not established in this case.*
  6. *On the facts & circumstance of the case, the Ld. Commissioner of income-tax (Appeals), Pune grossly erred in ignoring the section 10A(5) of the Act as per which deduction u/s 10A cannot be allowed unless report of an accountant is furnished in prescribed Form No.56F certifying that deduction has been correctly claimed as per law. In this case Form No.56F have been filed on 22.01.2013 which is beyond the prescribed date as form No.56F was not filed with the return of income. Claiming deduction u/s 10B in original return by filing Form No.56G and making alternate claim u/s 10A by filing form No.56F cannot be permitted.*
  7. *For these and such other grounds as may be urged at the time of hearing, the order of the Ld. Commissioner of Income-tax (Appeals) may be vacated and that of the Assessing Officer be restored.*
3. The learned Authorized Representative for the assessee at the outset pointed out that the issue raised in the present appeal by the Revenue in

allowing alternate claim of assessee for deduction under section 10A of the Act, where the plea of assessee for claiming deduction under section 10B of the Act was denied, is squarely covered by the orders of Pune Bench of Tribunal.

4. The learned Departmental Representative for the Revenue on the other hand, placed reliance on the order of Assessing Officer.

5. The issue which arises in the present appeal is limited to claim of deduction under section 10B / 10A of the Act. The assessee in the return of income had claimed the deduction under section 10B of the Act. However, the same was denied to the assessee. During the course of assessment proceedings itself, the assessee made an alternate plea of claiming deduction under section 10A of the Act, which was denied by the Assessing Officer. The CIT(A) however, allowed the claim of assessee relying on his own order in the case of M/s. Clarion Technology Pvt. Ltd. relating to assessment year 2009-10, order dated 11.12.2015.

6. After hearing rival contention and on perusal of record, we find that the issue raised in the present appeal is squarely covered by series of decisions of Pune Bench of Tribunal. Reference is made to the ratio laid down in ESDS Software Solution Pvt. Ltd. Vs. ACIT in ITA No.1529/PUN/2015, relating to assessment year 2011-12, order dated 27.07.2017, wherein it was held as under:-

*“7. On perusal of record, we find that similar issue of claim of deduction under section 10A of the Act in respect of 100% EOU approved by the STPI vis-à-vis claim made in the return of income under section 10B of the Act arose before the Tribunal in Approva Systems Pvt. Ltd. Vs. DCIT (supra) and it was held as under:-*

“8. We have heard the rival contentions and perused the record. The first issue of claim of deduction under section 10B/10A of the Act arose before the Tribunal in assessee’s own case in assessment year 2009-10. The Tribunal observed that the assessee was 100% EOU registered with STPI and was claiming deduction under section 10B of the Act from assessment year 2003-04 onwards and the same was being granted to the assessee. The deduction under section 10B of the Act was denied to the assessee as it had obtained approval from the Director and Chief Executive of the STPI and not from the Development Commissioner. The Assessing Officer also rejected the alternate claim of deduction under section 10A of the Act, since no such claim was made in the return of income and the prescribed report of auditor was not filed at the time of furnishing the return of income. The Tribunal acknowledged that the assessee had filed report of accountant in Form 56F during the course of assessment proceedings and had made the alternate claim under section 10A of the Act. Relying on the ratio laid down by the Hon’ble Madras High Court in CIT Vs. Heartland KG Information Ltd. (2013) 39 taxmann.com 132 and other decisions, the Tribunal held that the assessee would be entitled to the benefit of deduction under section 10A of the Act and in order to verify the fulfillment of conditions provided in section 10A of the Act, the matter was set aside to the file of Assessing Officer. The relevant paras 11 and 11.4 of the order of Tribunal, which read as under:-

“11. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and the CIT(A) and the Paper Book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the Bopodi unit of the assessee is registered with the STPI as a 100% EOU w.e.f., 20-05-2002. The assessee was claiming deduction u/s.10B of the I.T. Act from A.Y. 2003-04 onwards and the same was being granted to the assessee. We find during the impugned assessment year the AO disallowed the deduction claimed by the assessee u/s.10B of the Act on the ground that the assessee is not an 100% EOU within the meaning of clause (iv) of Explanation 2 to section 10B of the I.T. Act since it has obtained approval from the Director and Chief Executive of the STPI and not from the Development Commissioner. He also rejected the alternate claim of deduction u/s.10A of the Act on the ground that the assessee has not claimed the deduction u/s.10A, through filing of return of income and has not furnished the prescribed report of the auditor at the time of filing of the return of income. It is pertinent to mention here that during the course of assessment proceedings the assessee has filed the report of the accountant in Form No.56F and has made alternate claim of deduction u/s.10A of the Act in case the deduction is not allowed u/s.10B. We find in appeal the Ld.CIT(A) upheld the 19 action of the AO in disallowing the claim of deduction u/s.10A of the I.T. Act.

11.1 So far as the alternate claim of the assessee that in case deduction u/s.10B is not allowed then he should be allowed the deduction u/s.10A, the Ld.CIT(A) rejected the same also holding that the unit of the assessee will not meet the fundamental condition of having been located in free trade zone for claiming the deduction u/s.10A. Further, according to him, the availability of the deduction from one section to another cannot be switched

so easily because otherwise the legislature would not have provided 2 different sections in the first place. He accordingly rejected the claim of the assessee.

11.2 We find a somewhat similar issue had come up before the Hon'ble Madras High Court in the case of CIT Vs. Heartland KG Information Ltd.(Supra). In that case, the assessee was an industrial undertaking engaged in Medical Transcription business. There was another undertaking K which got approval as 100% EOU from STPI and started its new business of medical transcription during F.Y. 1999-2000. It also had another undertaking engaged in the business of development of software exported outside India. In respect of business income earned from export the said undertaking claimed exemption u/s.10A of the I.T. Act. In July, 2001 the company K transferred its entire undertaking engaged in the export business of medical transcription along with all transcriptions, contracts, books, 20 records, all rights, all permits, warranties including computer software and export obligation to the assessee company. The transfer was recognised and allowed by the STPI. The assessee claimed deduction u/s.10B in respect of income from export. However, the AO rejected the claim on the ground that approval obtained from STPI for purpose of section 10B would not be sufficient to grant relief. According to him, the transfer was only related to machinery and thus the claim could not be sustained. He however granted deduction u/s.80HHE on alternative claim of the assessee. In appeal the Ld.CIT(A) referring to CDBT Circular File No.15/5/63(IT)(A-1) held that the benefit with the vendor company in respect of individual undertaking engaged in the manufacture of articles could be claimed by successor company for the remaining tax holiday period since the entire undertaking of the business of medical transcription was transferred to the assessee. Thus, the assessee would be entitled to have the benefit u/s10A of the Act for the remaining period. He therefore held that relief u/s.80HHE would be available to the assessee. The Hon'ble Tribunal affirmed the order of the CIT(A). On further appeal by the Revenue, the Hon'ble High Court dismissed the appeal filed by the Revenue and upheld the order of the Tribunal. While doing so, the Hon'ble High Court held that even assuming for a moment that the assessee has not referred to the section correctly, the fact remains that if the claim could be favourably considered under any of those special deduction provisions and all the conditions specified therein being satisfied there is no justifiable ground exist for the revenue to contend that the assessee shall not be entitled to have the benefit of section 10A of the I.T. Act.

11.3 Since in the instant case although the assessee has not claimed the deduction u/s.10A of the Act in the return filed u/s.139(1), however, the assessee has claimed such an alternate deduction before the AO during the assessment proceedings itself by filing the requisite report of the accountant along with Form No.56G. Therefore, if the assessee is not eligible for deduction u/s.10B of the Act but eligible u/s.10A of the Act, we find no reason as to why such benefit should be denied to the assessee. After all these are incentive provisions and are to be liberally construed. If the assessee otherwise fulfils

*all the legal requirements for claiming the deduction u/s.10A of the Act but inadvertently claimed the same u/s.10B of the Act which was granted to it in the past, we find no reason as to why the alternate claim of the assessee should not be accepted.*

*11.4 However, since the lower authorities have not thoroughly examined the allowability of deduction u/s.10A of the Act and merely rejected the claim on the ground that the same was not claimed in the original return filed, therefore, we in the interest of justice deem it proper to restore the issue to the file of the AO with a direction to give an opportunity to the assessee to substantiate its eligibility for deduction u/s.10A of the I.T. Act. We hold and direct 22 accordingly. Since we are restoring the issue to the file of the AO for deciding the alternate claim of the assessee for deduction/s.10A, therefore, we refrain ourselves from adjudicating the allowability of deduction u/s.10B of the I.T. Act. The grounds raised by the assessee are accordingly allowed for statistical purposes.”*

*9. The issue which arises before us is identical to the issue before the Tribunal in assessment year 2009-10. The year under appeal before us is assessment year 2010-11 and following the same parity of reasoning, we hold that the assessee is not entitled to the claim of deduction under section 10B of the Act. However, eligibility of deduction under section 10A of the Act in the hands of assessee merits to be verified. Accordingly, we remit this issue back to the file of Assessing Officer to verify the claim of assessee and pass order in accordance with law and also following the directions of Tribunal in earlier years. Accordingly, the grounds of appeal No.2 and 3 raised by the assessee are allowed for statistical purposes.”*

*8. Similar issue has been decided by the Tribunal in Credit Pointe Services Pvt. Ltd. Vs. DCIT (supra).*

*9. The issue arising in the present appeal before us is identical to the issue before the Tribunal in Approva Systems Pvt. Ltd. Vs. DCIT (supra) and Credit Pointe Services Pvt. Ltd. Vs. DCIT (supra). Following the same parity of reasoning, we hold that the assessee can raise an alternate plea of deduction under section 10A of the Act. However, in order to verify whether the assessee has fulfilled the conditions laid down in section 10A of the Act, the issue is sent back to the file of Assessing Officer, who shall decide the same in line with our directions in Approva Systems Pvt. Ltd. Vs. DCIT (supra). The grounds of appeal raised by the assessee are thus, allowed for statistical purposes.”*

*7. The issue arising in the present appeal is identical to the issue before the Tribunal and following the same parity of reasoning, we uphold the order of CIT(A) in holding that the assessee can raise alternate plea of the deduction under section 10A of the Act, as against the original claim of deduction under section 10B of the Act. The Assessing Officer is directed to verify the same*

and allow the claim in accordance with law. The grounds of appeal raised by the Revenue are thus, allowed for statistical purposes.

8. In the result, appeal of Revenue is allowed for statistical purposes.

Order pronounced on this 27<sup>th</sup> day of February, 2018.

<b>Sd/-</b> <b>(ANIL CHATURVEDI)</b>	<b>Sd/-</b> <b>(SUSHMA CHOWLA)</b>
लेखा सदस्य / <b>ACCOUNTANT MEMBER</b>	न्यायिक सदस्य / <b>JUDICIAL MEMBER</b>

पुणे / Pune; दिनांक Dated : 27<sup>th</sup> February, 2018.

*GCVSR*

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-1, Pune;
4. The Pr.CIT-1, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे, एक-सदस्य  
मामला / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune