

आयकर अपीलीय अधिकरण पुणे न्यायपीठ “एक सदस्य” पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
SMC BENCH, PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / ITA No.2759/PUN/2016
निर्धारण वर्ष / Assessment Year : 2007-08

DCIT, Circle-1(1),
Pune

.... अपीलार्थी/Appellant

Vs.

M/s. Celoxis Technologies Pvt. Ltd.,
3, Shreyas Eterna, NDA Pashan Road,
Bavdhan, Pune – 411 021
PAN : AABCC7213R

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Dr. Vivek Aggarwal
प्रत्यर्थी की ओर से / Respondent by : Shri Kishor Phadke

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| सुनवाई की तारीख / Date of Hearing : 21.03.2018 | घोषणा की तारीख / Date of Pronouncement: 23.03.2018 |
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आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

This appeal is filed by the Revenue against the order of CIT(A)-1, Pune, dated 28-09-2016 for the Assessment Year 2007-08.

2. Grounds raised by the Revenue read as under :

“1. The order of the Ld. Commissioner of Income-tax (Appeals) 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, once the Ld. CIT(A) had upheld the order of the Assessing officer in denying deduction u/s 10B.

3. 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 the provisions of section 80A (5) of the IT Act, 1961 which mandate that no deduction u/s 10 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 of the case and in law in allowing alternate claim of the assessee 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 Taxmann 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. SC in the case of CIT vs Shelly Products reported in 129 Taxmann 271 wherein it has been held that the assessing authority may grant relief to an assessee, 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 learned Commissioner of Income-tax (Appeals), Pune grossly erred in ignoring the section 10A(5) of the Act as per which deduction u/s10A 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 has been filed beyond the prescribed date as from No.56F was not filed with the Return of Income. Claiming deduction u/s10B in original return by filing from No. 56G and making alternate claim u/s10A by filing from No.56F cannot be permitted.”

3. Before us, Ld. DR for the Revenue summarised the above grounds and submitted that the only issue raised in the above grounds relates to the allowability of deduction u/s.10A of the Act alternatively when the conditions specified for allowing deduction u/s.10B of the Act were not met. Revenue raised all these grounds against allowing of said alternate claim of deduction u/s.10A of the Act despite fulfilment of conditions specified in section 10A of the Act

4. At the outset, Ld. Counsel for the assessee filed a copy of the order of Tribunal in the assessee’s own case – ITA No.205/PN/2014, dated 18-03-2015 for the A.Y. 2010-11 and submitted that the issue of allowing alternate claim of deduction u/s.10A of the Act stands covered in favour of the assessee. In this regard, Ld. Counsel for the assessee brought our attention to the contents of Para Nos. 6 to 9 of the order and submitted that the issue is identical and the claim of deduction u/s.10A is allowable with respect to the profits of the STPI units.

5. Briefly stated relevant facts of the case are that the assessee is a company and engaged in the business of Software Development and Software Export. Assessee filed the return of income on 30-10-2007 declaring total income of Rs.12,370/-. Assessee made payment of taxes under the provisions of section 115JB of the Act and claimed deduction of Rs.36,52,889/- u/s.10B of the Act. At the end of the assessment, AO assessed the income at Rs.36,65,260/- and denied the claim of deduction u/s.10B of the Act. CIT(A) allowed the alternate claim of the assessee u/s.10A of the Act relying on his own decision in the case of M/s. Clarion Technology Pvt. Ltd. for the A.Y. 2009-10.

6. Aggrieved with such order of the CIT(A) the Revenue is in appeal before us with the grounds raised above.

7. After hearing the Ld. DR who dutifully relied on the order of AO and after perusing the orders of the Revenue and the decision of the Tribunal in the assessee's own case in ITA No.205/PUN/2014 dated 18-03-2015 for the A.Y. 2010-11, we find it relevant to extract the relevant operational paras for the sake of completeness and the same are reproduced here as under :

“6. The second Ground raised by the assessee is an alternative Ground whereby assessee has put-forth its claim for deduction u/s 10A of the Act. The aforesaid Ground is a fresh Ground raised before the Tribunal, which was hitherto not raised before the lower authorities. In this context, the claim of the assessee is that since its unit is approved by the Directorate of STPI, the profits derived therefrom are eligible for the benefits of section 10A of the Act and in support a reference has been placed on the judgement of the Hon'ble Delhi High Court in the case of CIT vs. Technovate E Solutions (P.) Ltd., (2013) 32 taxmann.com 290 (Delhi). At the time of hearing, the Ld. Representative for the assessee submitted that once the claim of the assessee for deduction u/s 10B of the Act is rejected by the income-tax authorities following the judgement of the Hon'ble Delhi High Court in the case of Regency Creations Ltd. (supra), the alternative claim of the assessee is quite justified as the same meets with the requirements of section 10A of the Act. The Ld. Representative pointed out that in the past years, assessee had claimed deduction u/s 10B of the Act under similar circumstances, and it was also being allowed by the income-tax authorities. Therefore, at the time of filing of the return of income and even in the course of assessment proceedings, there was no occasion for the assessee to entertain a belief that the claim u/s 10B of the Act was not allowable. It was pointed out that the judgement of the Hon'ble Delhi High Court in the case of Regency Creations

Ltd. (supra) was of a date later than the filing of return. Justifying the additional Ground now sought to be raised, it was pointed out that the factum of the assessee's unit being approved by the prescribed authority u/s 10A is already on record. It was also pointed out that the facts necessary to examine assessee's plea for claim u/s 10A of the Act are substantively already on record and that the claim u/s 10A of the Act be entertained having regard to the parity of reasoning laid down by the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. vs. CIT, (1998) 229 ITR 383 (SC). It has also been pointed out that in somewhat similar circumstances, the Pune Bench of the Tribunal in the case of Clarion Technologies Pvt. Ltd. (supra) has accepted assessee's plea for examination of its alternate claim for deduction u/s 10A of the Act.

7. Before us, the Ld. Departmental Representative pointed out that in this case the deduction u/s 10A of the Act was not claimed in the return of income and therefore it could not have been entertained by the Assessing Officer at a later stage. Accordingly, the plea of the assessee is sought to be opposed.

*8. We have carefully considered the rival submissions. In our considered opinion, assessee cannot be faulted for not staking its claim for deduction u/s 10A of the Act in its return of income because in the earlier years it was claiming deduction in terms of section 10B of the Act, which was also allowed by the income-tax authorities. Therefore, the stand of the Revenue that the claim was not made in the return of income is no ground to shutout the present plea being raised by the assessee. Nevertheless, assessee is entitled to raise an additional Ground even before the Tribunal, which was hitherto not raised before the lower authorities, so far as it relates to a point of law arising from the facts already on record. In this context, the parity of reasoning laid down by the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. (supra) is worthy of notice. In the present context, it is undisputable that EOU of the assessee is registered with the Directorate of STPI which is a fundamental condition for allowance of deduction u/s 10A of the Act. In-fact, under identical circumstances, the Hon'ble Delhi High Court in the case of CIT vs. Valiant Communication Ltd. in ITA Nos.440 - 441/2012 dated 04.01.2013 considered assessee's alternate claim for deduction u/s 10A of the Act and directed the income-tax authorities to examine the same, once assessee was found to have failed in its claim for deduction u/s 10B of the Act. In the case of **Clarion Technologies Pvt. Ltd. (supra)**, a somewhat similar situation had arisen and the following discussion of the Tribunal is relevant :-*

"16. We have carefully considered the rival submissions. In the present case, in the past years assessee has been allowed the claim of deduction u/s 10B of the Act. In the return of income filed for the assessment year under consideration i.e. 2010-11 also assessee claimed deduction u/s 10B of the Act in relation to the profits derived from its STPI unit. This claim of deduction came to be denied on the ground that the approval from Director, STPI was insufficient and that the assessee was required to take approval from the Board appointed for this purpose by the Central Government, following the judgement of the Hon'ble Delhi High Court in the case of Regency Creations Ltd. (supra). In the aforesaid situation, at the time of filing of return of income for the instant assessment year, assessee could not have envisaged the denial of its claim of deduction u/s 10B of the Act, which was being allowed in the past. The aforesaid circumstance clearly establishes the bonafides of the reasons prevailing with the assessee for not having made a claim for deduction u/s 10A of the Act in the return of income. Having regard to the peculiar facts and circumstances of the instant case, in our view, the stand of the Revenue that assessee cannot be allowed the benefits of section 10A of the Act merely because the prescribed Audit Report in Form No.56F

was not filed in the return of income, is quite erroneous. Pertinently, after denial of deduction u/s 10B of the Act in the assessment order, the earliest opportunity for the assessee to stake claim for deduction u/s 10A of the Act was before the CIT(A); and, the assessee made the claim before the CIT(A) along with the prescribed Audit Report in Form No.56F. The Hon'ble Delhi High Court in the case of Valiant Communications (supra) in similar circumstances held that the claim of the assessee for deduction u/s 10A of the Act is required to be examined in accordance with law. Pertinently, even in that case assessee had claimed deduction u/s 10B of the Act in the return of income, which was not allowed ultimately in the absence of the unit being approved by the Board appointed by the Central Government, whereas the unit was only registered with the STPI. The Hon'ble Delhi High Court directed the lower authorities to consider the claim of deduction u/s 10A of the Act in accordance with law. In the present case also, we find no reason to deny the assessee an opportunity to put-forth its claim for deduction u/s 10A of the Act with regard to the profits of its STPI unit, subject of-course to the fulfillment of the prescribed conditions.

17. Section 10A of the Act provides a deduction of such profits and gains derived by an undertaking from export of articles or things or computer software manufactured or produced by it. The assessee claimed that it has undertaken export of computer software manufactured by it and its unit is registered with Director, STPI. The approval granted by Director, STPI has been held to be a sufficient compliance with requirements of section 10A(2)(i)(b) of the Act even as per the CBDT vide Instruction No.1 of 2006 dated 31.03.2006. Therefore, prima-facie the 100% EOU of the assessee, being registered with STPI, is eligible to stake claim for deduction u/s 10A of the Act, provided the other conditions laid down in section 10A of the Act are satisfied. Therefore, in conformity with the judgement of the Hon'ble Delhi High Court in the case of Valiant Communications (supra), we deem it fit and proper to remand the matter back to the file of the Assessing Officer for verifying the claim of the assessee for deduction u/s 10A of the Act as per law. **The Assessing Officer shall consider the Form No.56F furnished by the assessee before the CIT(A) and such other material and submissions that the assessee may put-forth in order to justify its claim of deduction u/s 10A of the Act. Needless to say, the Assessing Officer shall allow a reasonable opportunity of being heard to the assessee before adjudicating on the claim of the assessee for deduction u/s 10A of the Act in accordance with law. Thus, on the alternate plea assessee succeeds."**

9. Following the aforesaid precedent, in our view, assessee's plea for claim of deduction u/s 10A of the Act with regard to the profits of the STPI unit cannot be shutout without appropriate verification. Since such a claim was not before the lower authorities, we deem it fit and proper to restore the matter back to the file of the Assessing Officer, who shall allow the assessee an opportunity to present and substantiate its claim for deduction u/s 10A of the Act in accordance with the conditions prescribed in the section. The assessee shall be at liberty to furnish such submissions and material which it may find appropriate in order to justify its claim for deduction u/s 10A of the Act. The Assessing Officer shall examine the plea setup by the assessee in accordance with law and thereafter pass an order afresh with regard to the assessee's plea for deduction u/s 10A of the Act. Thus, on this aspect assessee succeeds for statistical purposes."

8. Considering the above position, we are of the opinion that the issue raised in the grounds by the Revenue stands covered in favour of the assessee. Consequently, the decision of CIT(A) on this issue discussed in Para11 of his order does not call for any interference. Accordingly, the grounds raised by the Revenue are dismissed.

9. In the result, appeal of the Revenue is dismissed.

Order pronounced on this 23rd day of March, 2018.

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(D.KARUNAKARA RAO)
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे / Pune; दिनांक Dated : 23rd March, 2018.
Satisb

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. आयकर आयुक्त / The CIT-1, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "एक सदस्य" / DR 'SMC', ITAT, Pune;
6. गार्ड फाइल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune