

आयकर अपीलिय अधिकरण पुणे न्यायपीठ "SMC" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
SMC BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / ITA No.2492/PUN/2016
निर्धारण वर्ष / Assessment Year : 2009-10

Ansh Systems Pvt. Ltd.,
Nyati Tech Park,
Building A, 4th Floor,
Vadgaon Sheri,
Pune 411 014
PAN : AAGCA7731B

.... अपीलार्थी / Appellant

Vs.

ITO, Ward-1(1),
Pune

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Prateek Jha &
Shri Prayag Jha
प्रत्यर्थी की ओर से / Respondent by : Shri Ajay Modi, JCIT

सुनवाई की तारीख / Date of Hearing : 13.03.2018	घोषणा की तारीख / Date of Pronouncement: 26.03.2018
--	--

आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

This is the appeal filed by the assessee against the order of CIT(A)-1, Pune, dated 30-08-2016 for the Assessment Year 2009-10.

2. Grounds raised by the assessee are as under :

“1. The Ld.CIT(A) erred in upholding the reassessment proceedings though the Ld AO had reopened the assessment made u/s.143(3) on 28-11-2011 on the basis of same set of facts and merely on the basis of change of opinion.

2. Without prejudice to Ground No.1, the Ld.CIT(A) erred in holding that the assessee was entitled to deduction u/s.10A only in respect of profit earned between 01-01-2009 and 31-03-2009 and not for the entire year though there is no such provision in the Income Tax Act.

3. The appellant craves leave to revise, modify, alter or delete any of the above grounds or to add new Grounds of Appeal.”

3. Briefly stated relevant facts are that the assessee is a company and is engaged in the outsourcing of software development. Assessee filed its return of income on 02-11-2009 declaring total income at Nil and claimed deduction of Rs.47,32,885/- u/s.10B of the Act. Assessment u/s.143(3) of the Act was made on 28-11-2011 determining the income at Rs.3,94,861/-. Thereafter, the case was reopened u/s.148 of the Act on 10-03-2014. During the assessment proceedings, AO noticed that assessee failed to comply with the conditions specified in section 10B of the Act. Further, the alternate claim made by the assessee u/s.10A of the Act and the same was not considered favourable as per the discussion given in Para No.5 of the assessment order. Considering the fact that the alternate claim is raised for the first time without filing the return of income, AO denied the alternate claim of the assessee relying on the decision of Hon'ble Supreme Court in the case of Goetze India Ltd. Vs. CIT 157 Taxmann 1 relied on by the assessee. Eventually, the AO assessed the income of the assessee at Rs.39,48,610/- vide his order u/s.143(3) r.w.s.147 of the Act, dated 27-03-2015. Contents of Para No.5.8 of the AO's order are relevant and the same are extracted below :

“5.8 In view of the above discussion the contention of the assessee hereby rejected and the case is decided as per the law. For claiming deduction u/s.10B of the Act, the assessee should be a 100% Export Oriented Unit (EOU) as specified under explanation 2(iv) below to the section 10B of the Act which defines a “hundred percent export oriented undertaking” as a 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% EOUs are now being granted by the Development Commissioners which are later ratified by the Board of Approval. However the assessee is not approved by Development Commissioner hence deduction under section 10B of the Act at Rs.47,32,885/- is hereby disallowed and added to the total income of the assessee. The undersigned is satisfied that the assessee has furnished inaccurate particulars of income and hence penalty proceedings u/s.271(1)(c) are separately initiated.”

4. During the First Appellate Proceedings, the assessee challenged the validity of reopening of the assessment on the basis of same set of facts and on the basis of mere change of opinion and made elaborate submissions. The CIT(A) called for comments of the AO. Assessee also submitted the counter comments for the same. Para No.4 of the order of CIT(A) contains the submissions of the assessee, comments of the AO and the counter comments of the assessee. Eventually, the CIT(A) held the reassessment made by the AO as valid. Further, assessee raised the ground relating to allowability of claim of deduction u/s.10B of the Act before the CIT(A). CIT(A) upheld the allowability of claim of deduction u/s.10B of the Act. However, with regard to the alternate claim of deduction made by the assessee u/s.10A of the Act, he restricted the deduction to only 3 months, i.e. from 1-01-2009 to 31-03-2009 (Date of STPI approval on 01-01-2009) relying on the decision of Clarion Technologies Pvt. Ltd. Vs. DCIT – ITA No. 2554/PN/2012 & connected appeals, dated 30-10-2014

5. Aggrieved with the order of CIT(A), the assessee is in appeal before the Tribunal with the grounds mentioned above.

6. Narrating the above facts of the case, Ld. Counsel for the assessee submitted that assessee is located in the STPI unit. This is the first year of claim of deduction u/s.10B of the Act. Bringing my attention to page Nos. 46 and 47 of the paper book, Ld. Counsel submitted that the same constitutes certificate of approval dated 01-01-2009 and the same is valid upto 31-12-2013 (i.e. 4 years). Ld. Counsel explained the significance of date of approval and submitted that approval is STPI unit specific and the date of approval need not be taken as the cut off date for the purpose of allowing the deduction u/s.10A/10B of the Act.

He also brought my attention to a case where approval was given to a case which involves claim of deduction u/s.35(2AB) of the Act and also brought my attention to the judgment of Delhi High Court in the case of CIT Vs. Sundan Vikas (India) Ltd. 22 taxmann.com 19 (Del.) and submitted that the cut off dates mentioned in the certificate issued by Department of Scientific & Industrial Research is irrelevant. The claim u/s.35(2AB) of the Act has to be allowed for the entire year and not on proportionate basis. The said judgment has kept reliance to another judgment of Gujarat High Court in the case of CIT Vs. Claris Lifesciences Ltd. 174 Taxman 113 (Gujarat) which is again relevant for the similar proposition that the cut off date mentioned in the certificate issued by DSIR is of no relevant. Referring to these judgments, Ld. Counsel for the assessee submitted that the deduction is to be allowed to the assessee for the entire year and for the entire expenditure incurred on Research & Design facilities.

7. Ld. Counsel for the assessee also drew my attention to the decision of Coordinate Bench of the Tribunal in the assessee' own case in ITA No.185/PN/214, order dated 30-12-2015 for the A.Y. 2010-11 and submitted that the claim of the assessee was allowed in the subsequent year. Thus, it is the case of the assessee that deduction u/s.10A is allowable, in principle. The cut off date mentioned on the certificate issued by STPI authorities is of no significance or relevance in view of the above referred judgments/decision.

8. Ld. DR for the Revenue relied on the order of the AO dutifully.

9. I heard both the parties on the limited issue of granting proportionate deduction u/s.10A of the Act merely relying on the cut off date appearing on the certificate issued by the STPI authorities. On

similar facts, the various judgments and the Tribunal in assessee's own case has decided the issue and held that the cut off date mentioned on the certificates are of no relevance. Therefore, I am of the view that the claim made by the assessee u/s.10A of the Act has to be allowed for the entire year. In my view, the settled legal proposition delivered in the context of claim of deduction u/s.35(2AB) of the Act holds good for the purpose of claim of deduction u/s.10A of the Act as well. As such, the Tribunal in assessee's own case in ITA No.185/PN/2014, dated 30-12-2015 for the A.Y. 2010-11, has already held that, in principle, the assessee is entitled to claim of deduction u/s.10A of the Act. Accordingly, the grounds raised by the assessee are allowed.

10. In the result, appeal of the assessee is allowed.

Order pronounced on this 26th day of March, 2018.

Sd/-

(D.KARUNAKARA RAO)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे / Pune; दिनांक Dated : 26th March, 2018.

Satish

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 "SMC" / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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