

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH : CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।
[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. Nos.2082 & 2083/CHNY/2017.
निर्धारण वर्ष /Assessment years : 2006-2007 & 2010-2011.

The Deal India Pvt. Ltd,
(Formerly Boardex India Pvt. Ltd)
B Block Ground floor,
Sabari Sunny Side,
8/17, Shafee Mohammed Road,
Chennai 600 034.

The Income Tax Officer,
Corporate Ward 1(1)
Chennai 600 034.

[PAN AACCB 1457B]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. J. Satish, C.A. & Shri. M. Narayanan, Retd. Addl. CIT.

प्रत्यर्थी की ओर से /Respondent by : Mrs. Vijayaprabha, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing : 13-03-2018

घोषणा की तारीख /Date of Pronouncement : 05-04-2018

आदेश / ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

Assessee in these appeals is aggrieved that its alternative claim for allowing deduction u/s.10A of the Income Tax Act, 1961 (in short "the Act") was not allowed by the lower authorities.

2. Ld. Counsel for the assessee submitted that assessee had in the returns filed for the impugned assessment years claimed exemption u/s.10B of the Act. As per the Id. Authorised Representative, Id. Assessing Officer denied such deduction for a reason that assessee was not a 100% Export Oriented Unit coming within clause (iv) of Explanation 2 to Section 10B of the Act. Further, as per the Id. Authorised Representative, assessee was denied such exemption relying on judgment of Hon'ble Delhi High Court in the case of *CIT vs. Regency Creations Ltd (2012) 27 Taxmann.com 322*. Contention of the Id. Authorised Representative was that in its appeal before the Id. Commissioner of Income Tax (Appeals) assessee had made an alternative claim for allowing deduction u/s.10A of the Act. As per the Id. Authorised Representative, Id. Commissioner of Income Tax (Appeals) relying on the judgment of Hon'ble Apex Court in the case of *Goetze (India) Ltd vs. CIT 284 ITR 323* rejected this claim for a reason that assessee had not preferred such claim before the Id. Assessing Officer. Ld. Authorised Representative relying on the judgment of Hon'ble Apex Court in the case of *NTPC vs. CIT 229 ITR 383* submitted that Appellate authority ought have considered the alternative claim and adjudicated such claim. According to him, just

for a reason that assessee had not preferred this claim before Id. Assessing Officer, Id. Commissioner of Income Tax (Appeals) was not justified in denying it.

3. Per Contra, Id. Departmental Representative relying on the very same judgment in the case of *Goetze (India) Ltd (supra)* submitted that assessee having not filed a revised return, could not be allowed to make a fresh claim.

4. We have perused the orders and heard the rival contentions. It is not disputed that assessee had preferred a claim u/s.10B of the Act for the impugned assessment years but was denied such claim for a reason that assessee was not an 100% Export Oriented Unit. No doubt, deduction under Sections 10B and 10A of the Act operate in different field. When Section 10B of the Act gives exemption from profits of 100% Export Oriented Undertaking, Section 10A of the Act gives a deduction of profit derived by an undertaking from an export. Both these sections are for encouraging export trade. In our opinion, though Id. Assessing Officer is well within his powers to deny a such

claim made by an assessee under Section 10B of the Act when he finds that it is not a 100% EOU, he has to accord it the deduction u/s.10A of the Act, if other conditions are satisfied. In any case, Hon'ble Apex Court in the case of *NTPC (supra)* had clearly held that the Tribunal can examine a question of law which arises from the facts as found by the lower authorities which is having bearing tax liability of the assessee. The question whether assessee can be allowed deduction u/s.10B of the Act if it is denied exemption deduction u/s.10B of the Act is one of law. In our opinion, judgment of Apex Court in the case of *Goetze (India) Ltd (supra)* only restricted the powers of the Id. Assessing Officer. However appellate authorities can examine a claim made by the assessee if it appears to be genuine. We are therefore of the opinion that the question whether assessee could be given deduction u/s.10A of the Act has to be looked in by the Id. Assessing Officer. We therefore set aside the orders of the lower authorities and remit the question whether assessee could be given deduction u/s.10A of the Act back to the file of the Id. Assessing Officer for consideration afresh in accordance with law. Needless to say such deduction shall not be allowed to the assessee if it does not

satisfy each and every condition mentioned in the said section.

5. In the result, the appeals of the assessee are allowed for statistical purpose.

Order pronounced on Thursday, the 5th day of April, 2018, at Chennai.

Sd/-

(एन.आर.एस. गणेशन)
(N.R.S. GANESAN)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(अब्राहम पी. जॉर्ज)
(ABRAHAM P. GEORGE)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated:5th April, 2018.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |