

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "J", MUMBAI

Before Shri G S Pannu, Accountant Member
& Shri Pawan Singh, Judicial Member

ITA No.03/Mum/2017
Assessment Year : 2010-11

M/s. Soex India Pvt. Ltd., Nirmal, 21 st Floor, Nariman Point, Mumbai 400 021	Vs.	DCIT Central Circle -44, Mumbai
PAN AAGCS0625Q (Appellant)		(Respondent)

Appellant By : Shri Rahul K Hakani
Respondent By : Ms. Arju Garodia

Date of Hearing : 18.06.2018	Date of Pronouncement : 20 .06.2018
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ORDER

Per G S Pannu, Accountant Member

This appeal is directed against the order of the CIT(A)-50, Mumbai, dated 19.09.2016, which in turn has arisen out of the order passed by the Assessing Officer u/s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") relating to A.Y. 2010-11.

2. The assessee has raised the following Grounds of appeal:

"1. The learned CIT(A) erred in confirming order of learned Assessing Officer denying claim of assessee u/s. 10B of Rs. 2,69,60,127/- without appreciating that assessee has complied with all conditions prescribed u/s. 10B and there is no violation of condition prescribed U/s. 10B(2)(iii) and hence assessee claim u/s.10B may be allowed.

2. Without prejudice to above, the learned CIT(A) erred in confirming order of learned Assessing Officer denying claim of assessee u/s. 10B of Rs. 2,69,60,127/- without appreciating that all the conditions prescribed u/s. 10B have been complied with during the relevant Assessment year and hence assessee claim u/s.10B may be allowed."

3. The grievance of the assessee raised in the Grounds of appeal relates to the disallowance of deduction u/s. 10B of the Act. The facts in brief are that the assessee is engaged in the business of manufacturing Beedi(both tobacco and herbal) and related products. It filed its return of income for the year under consideration on 09.10.2010, declaring total income at ₹ 74,59,388. Subsequent to scrutiny, assessment was completed u/s. 143(3) of the Act determining the total income at ₹ 3,44,21,415/-. The assessee had claimed deduction u/s. 10B of the Act in respect of the unit located at village Takwe, Tal Maval, Pune. However, the Assessing Officer disallowed the claim on the ground that the conditions necessary for availing benefits under section 10B was not fulfilled by the assessee. On appeal, the CIT(A), following the order of his predecessor, upheld the action of the Assessing Officer. Aggrieved the assessee is in appeal before us.

4. At the time of hearing, the learned counsel for the assessee contended that identical issue, in its own case, had come up before the Tribunal and the Tribunal had set aside the matter to the file of the Assessing Office for finding of fact required to decide the issue. The learned DR, on the other hand, relied on the orders of the authorities below.

5. We have heard the rival submissions. We have also gone through the order of the order Tribunal dated 15.02.2017, in the assessee's own case, in ITA Nos. 3874/Mum/2013 for A.Y. 2006-07 and Ors, wherein it has been held as under:

"7. We have gone through the orders passed by lower authorities and find that the requisite finding of fact to decide the issue before us is conspicuously missing; therefore we send the matter to the file of the AO. The assessee shall submit all requisite details and evidences to show compliance of all the conditions of section 10B including the condition of old plant and machinery being less than 20%. The AO shall take into account the facts of the case and also judgements placed by both the sides before us to decide whether the assessee would be eligible to claim the deduction in A.Y. 2006-07 (third year of formation of unit) particularly when all the conditions were not fulfilled in AY 2003-04, being first year of the formation. The assessee shall be free to raise all the legal and factual issues in this regard. With these directions, all the grounds are sent back to the file of the AO and may be treated as allowed, for statistical purposes."

Facts and circumstances being identical, we set aside the issue to the file of the Assessing Officer for the year under appeal also with a direction to determine the requisite findings as directed by the Tribunal in its order dated 15.02.2017 (supra). The assessee shall provide all the evidences to show the compliance for availing deduction u/s. 10B of the Act. Needless to mention, the Assessing Officer, in the ensuing proceedings, shall allow reasonable opportunity of being heard to the assessee and thereafter pass an order in accordance with law.

6. Thus, for statistical purposes the appeal is treated as allowed.

Order pronounced in the open court on this day of 20th June 2018.

Sd/-
(Pawan Singh)
JUDICIAL MEMBER

Mumbai, Dated : 20th June, 2018.

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Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mumbai.
4. The CIT , Mumbai.
5. The DR, 'J' Bench, ITAT, Mumbai

Sd/-
(G S Pannu)
ACCOUNTANT MEMBER

BY ORDER

//True Copy//

(Assistant Registrar)
Income Tax Appellate Tribunal, Mumbai