

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.791/Chny/2017

निर्धारण वर्ष / Assessment Year : 2006-07

M/s Chain Sys (India) Pvt. Ltd.,
85, Ponniamman Nagar,
Ayanambakkam, Chennai - 600 095.

v. The Deputy Commissioner of
Income Tax,
Corporate Circle -1(1),
Chennai - 600 006.

PAN : AACCC 0304 N
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri G. Baskar, Advocate

प्रत्यर्थी की ओर से/Respondent by : Ms. S. Vijayaprabha, JCIT

सुनवाई की तारीख/Date of Hearing : 14.08.2018

घोषणा की तारीख/Date of Pronouncement : 12.09.2018

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) -5, Chennai, dated 17.02.2017 and pertains to assessment year 2006-07.

2. Shri G. Baskar, the Ld.counsel for the assessee, submitted that the assessee claimed deduction under Section 10B of the Income-tax Act, 1961 (in short 'the Act'). According to the Ld. counsel, the Assessing

Officer found that the assessee is not eligible for deduction under Section 10B of the Act. While challenging the order of the Assessing Officer before the CIT(Appeals), according to the Ld. counsel, the assessee made alternative claim under Section 10A of the Act. The CIT(Appeals) rejected the claim of the assessee on the ground that the alternative claim of deduction under Section 10A of the Act was not made in the return of income. According to the Ld. counsel, when the assessee is eligible for deduction under Section 10A of the Act, nothing wrong in examining the claim of the assessee if the conditions were otherwise satisfied. Moreover, the Apex Court found that the power of this Tribunal is not impugned to admit additional grounds. According to the Ld. counsel, the matter may be remitted back to the file of the Assessing Officer for reconsideration.

3. On the contrary, Ms. S. Vijayaprabha, the Ld. Departmental Representative, submitted that the assessee cannot make any fresh claim after reopening of assessment as held by the Apex Court in the case of CIT v. Sun Engineering Works Pvt. Ltd. (1992) 198 ITR 297. Moreover, according to the Ld. D.R., the claim was not made in the return of income, therefore, the CIT(Appeals) has rightly confirmed the order of the Assessing Officer.

4. We have considered the rival submissions on either side and perused the relevant material available on record. The assessment was reopened only for the purpose of re-examining the claim of the assessee under Section 10B of the Act. When the Assessing Officer examined the claim under Section 10B of the Act, the assessee made alternative claim under Section 10A of the Act before the CIT(Appeals) in respect of the very same income. This Tribunal is of the considered opinion that when the issue of exemption under Section 10B of the Act was examined by the Assessing Officer in the reopened assessment, in respect of the very same income, the assessee can make alternative claim under Section 10A of the Act. Therefore, the judgment of Apex Court in Sun Engineering Works Pvt. Ltd. (supra) supports the case of the assessee. Moreover, as rightly submitted by the Ld.counsel for the assessee, this Tribunal can entertain the claim even though the same was not made in the return of income.

5. When the assessee claims exemption under Section 10B of the Act in the return of income and it was rejected after reopening of assessment, the alternative claim made by the assessee under Section 10A of the Act needs to be examined, hence, the matter has to be remitted back to the file of the Assessing Officer. Accordingly, the orders of both the authorities below are set aside and the alternative claim of deduction under Section 10A of the Act is remitted back to the file of the

Assessing Officer. The Assessing Officer shall re-examine the matter in the light of the material that may be filed by the assessee and thereafter decide the issue afresh in accordance with law, after giving a reasonable opportunity to the assessee.

6. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the court on 12th September, 2018 at Chennai.

sd/-
(ए. मोहन अलंकामणी)
(A. Mohan Alankamony)
लेखा सदस्य/Accountant Member
चेन्नई/Chennai,
दिनांक/Dated, the 12th September, 2018.
Kri.

sd/-
(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-5, Chennai-34
4. Principal CIT-1, Chennai.
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.