

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: 'F', NEW DELHI**

**BEFORE SMT. BEENA A PILLAI, JUDICIAL MEMBER
AND SHRI MAHARISHI PRASHANT, ACCOUNTANT MEMBER**

**ITA No. 4384/Del/2015
AY: 2011-12**

Dy.CIT, Circle 27(2) New Delhi	vs.	Sh. Alok Gupta E 177, G.K.Part I New Delhi PAN: AAGPG4604A
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(Appellant)

(Respondent)

Department by : Sh. Surender Pal, Sr. D.R.
Assessee by : Sh. S. Krishnan, Adv.

Date of Hearing : 30.10.2018
Date of Pronouncement: 31.10.2018

ORDER

PER BEENA A PILLAI, JUDICIAL MEMBER

Present appeal has been filed by Revenue against order of Ld.CIT(Appeals)-22, New Delhi dated 22.04.2015 for A.Y 2011-12 on the following grounds of appeal:

1. *“On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in law and on the facts and in the circumstances of the case in deleting the addition amounting to Rs.1,03,35,632/- on account of exemption u/s 10B without appreciating the fact that the assessee has*

failed to fulfil all conditions to claim the above deduction as the unit was located at Palam and not at STPI Noida.

2. *The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.”*

2. Brief facts of the case are as under:

Assessee filed return of income on 20/09/11 declaring total income of Rs.46,09,400/-. The same was processed under section 143(1) of the Income Tax Act, 1961 (the Act) and subsequently selected for scrutiny. Accordingly notice under section 143 (2) of the Act was issued to assessee in response to which Representative of assessee appeared before Ld. AO from time to time and filed necessary details as called for.

2.1. During the course of assessment proceedings Ld.AO observed that assessee has claimed deduction/exemption under section 10 B of the Act for an amount of Rs.1,03,35,632/-. Ld.AO observed that the computers held by assessee was to an extent of Rs.17,150/-at the beginning of the year and Rs.6,860/- at the end of the year. He also noted that the Accountant's report in Form 56 G do not contain Annexure 'A'. Accordingly, assessee was called upon to furnish STPI certificate, based upon which deduction/exemption under section 10 B has been claimed. In response to query raised, assessee submitted that entire turnover of assessee is by way of online sale, where assessee views the item on net, chooses the same and makes payment through his chosen payment gateway. It was submitted that the software is downloaded by assessee on the net and only the license key is

transmitted to him by e-mail once he makes payment to the payment gateway. It was submitted before Ld. AO that there is no invoice that is generated or shipment of software involved. Since a large number of parties are involved the payment is received immediately by the payment gateway no party wise Ledger is also maintained. It was also submitted that the gateways on their part, deduct the commission, keep a deposit for charge backs and remit the amount periodically depending upon the sale volume.

2.2. Ld. AO however rejected assessee's submissions by observing that the unit is located at Palam and not STPI Noida and therefore is not established that assessee's unit is located at STPI which is primary for allowing the deduction/exemption claimed under section 10 B of the Act. Ld. AO also observed that there is no mentionable hardware infrastructure involved and there is no Internet charges, connectivity charges or lease line charges that has been debited to the P&L account which are essential for online activities vis-a-vis the volume of business recorded by assessee.

2.3. He thus made the addition of Rs.1,04,92,978/-in the hands of assessee.

2.4. Aggrieved by the addition made by Ld. AO, assessee preferred appeal before Ld.CIT(A). Ld.CIT(A) while granting relief to assessee observed that as per the STPI certificate the unit was eligible for deduction under section 10 B of the Act and also that assessee had ample number of computers to carry on the business activity as claimed.

3. Aggrieved by the order of Ld. CIT (A) revenue is in appeal before us now.

4. Ld.Sr.DR submitted that the expenses do not commensurate with the turnover and the certificate issued by Assistant Commissioner of Central Excise, Janakpuri whereas assessee has its STPI unit at Palam. He placed reliance upon the order passed by Ld. AO.

5. On the contrary Ld.Counsel appearing for assessee submitted that assessee has earned the entire turnover by way of online sale where the items are viewed on the net and chosen on which payments are made through payment gateway. He submitted that the software exported are mainly downloaded from Internet sites hosting the same and the server hosting the sites are located elsewhere which is not owned by assessee or located in its premises. He submitted that the disallowance has been made by Ld. AO under section 10 B on the ground that assessee's unit was located outside STPI Noida at Palam, New Delhi. Controverting the observations of Ld. AO Ld.Counsel submitted that the conclusion is not correct because the unit could be located outside the STPI in domestic tariff area, the only requirement is that the unit gets its warehouse custom Bonded.

5.1. It has been submitted by Ld.Counsel that the STPI has assessed the unit for adequacy of equipment, capital, infrastructure etc and only thereafter that certified it of being hundred percent export oriented unit. The Certificate issued by Central Excise authority dated 17/04/08 itself with the approval of the Palam address to be a hundred percent EOU unit. Placing

reliance upon the STPI Certificate dated 11/02/08, Ld.Counsel submitted that while issuing the said Certificate STPI Noida is well aware about the Certificate being issued to the assessee having address at Palam. He submitted that the cost of computers is written down value so there were adequate computers. He also submitted that internet expenses have been wrongly typed as interest expenses. He also showed salary expenses. He submitted that Ld. AO has not doubted any of the aforestated certificates and on surmises and conjunctures has disallowed the deduction/exemption claimed by assessee under section 10 B of the Act.

6. We have perused submissions advanced by both sides, in light of records placed before us.

7. On perusal of STPI Certificate dated 11/02/08 it is clear that assessee is eligible for deduction under section 10 B of the Act. Further upon a query being raised by the Bench regarding Annexure 'A' to form 56G, Ld. Counsel referred to the Certificate issued by Chartered Accountant which is dated 01/09/2011, placed in paper book, quantifying the deduction that is available to assessee under section 10 B of the Act. According to that Certificate, unit started claiming deduction u/s 10B w.e.f. 17.01.2008. The impugned appeal is for A.Y. 2011-12, therefore, this is not the first year of claim. Further, the activities of the assessee have been explained by the assessee showing adequate infrastructure such as computers and internet connectivity and staff. On perusal of order of Ld.CIT(A), no infirmity was pointed out by Ld.Sr.D.R. and we also did not find any.

7.1. Considering the totality of facts, we do not find any infirmity in the observations of Ld. CIT (A).

7.2. Accordingly grounds raised by revenue stands dismissed.

8. In the result appeal filed by revenue stands dismissed.

Order pronounced in the Open Court on 31.10.2018.

Sd/-

**(MAHARISHI PRASHANT)
ACCOUNTANT MEMBER**

Sd/-

**(BEENA A PILLAI)
JUDICIAL MEMBER**

Dt. 31st October, 2018

*GMV

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

- TRUE COPY -

By Order,

ASSISTANT REGISTRAR
ITAT Delhi Benches

	Date
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