

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A' NEW DELHI**

**BEFORE SHRI O.P. KANT, ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**I.T.A. No.1537/Del/2015
Assessment Year: 2009-2010**

**Valiant Communications Ltd.,
17/1, Shivaji Marg,
New Delhi.
(PAN: AAACV4250G)
(Appellant)**

**vs ACIT, Circle 17(1),
New Delhi.
(Respondent)**

Appellant by: Shri Gautam Jain, Advocate
Shri Lalit Mohan, CA
Respondent by: Shri P.V. Gupta, Sr. DR

**Date of hearing: 03.06.2018
Date of Pronouncement: 04 .06.2018**

ORDER

PER K. NARASIMHA CHARY, JM

Aggrieved by the order dated 7.12.2012 in Appeal No.160/2011-12 passed by the Ld. Commissioner of Income- tax (Appeals)-19, New Delhi. (for short hereinafter called "Ld. CITA"), assessee preferred this appeal.

2. For the Asstt. Year 2009-10, assessee filed the return of income on 10.9.2009 declaring a taxable income of Rs.1,25,78,250/- and during the scrutiny, learned AO found that the assessee had claimed deduction u/s

10B of the Income-tax Act, `1961 (“the Act”) during the year under consideration. Learned AO further noted that for the earlier years, namely, Asstt. Years 2003-04 to 2008-09, the claim of deduction u/s 10B of the Act of the assessee was rejected, but such a claim was found favour with the learned CIT(A). He further recorded that the orders of the first appellate authority for those Asstt. Years were upheld by the ITAT and the matter travelled to the Hon’ble High Court. Learned AO, however, noticing the orders of the learned CIT(A) felt that since the department had filed appeals before the Hon’ble High Court against the orders of the Ld. CIT(A) and ITAT also, following Instruction No.1 dated 31.3.2006, rejected the claim of the assessee u/s 10B of the Act.

3. Learned AO also considered the claim for deduction u/s 10A of the Act but did not accept the same. He, therefore, added a sum of Rs.1,46,97,111/- to the income of the assessee.

4. Appeal preferred by the assessee was dismissed by the learned CIT(A) by way of impugned order. Hence, the assessee is before us in this appeal challenging the disallowance of deduction u/s 10B of the Act. However, by way of application seeking permission to raise addition ground, prayed that the claim of deduction u/s 10A of the Act may be allowed.

5. At the outset, it is brought to our notice by the learned AR that the Hon’ble High Court by order dated 4.1.2013 remanded the matter relating to the assessment years 2003-04 to 2008-09 to the file of the ITAT to consider the claim of the assessee in the light of the relevant documents and to decide whether the assessee is entitled to the benefit

u/s 10A of the Act as claimed. Pursuant to this order, a coordinate Bench of this Tribunal by order dated 27.4.2014 set aside the orders of the authorities below for the Asstt. Years 2003-04 to 2007-08 and remanded the matter to the file of the learned AO with a direction to re-examine the matter the claim of the assessee u/s 10A of the Act. Pursuant to this order of the Tribunal, learned AO passed the orders dated 29.3.2016 for all these years allowing the claim of the assessee u/s 10A of the Act. Learned AR fairly conceded that in view of the order of the Hon'ble High Court, assessee cannot press their claim u/s 10B of the Act, hence, the same has to be decided against the assessee, but he prayed that the claim u/s 10A may be considered in view of the fact that the led. AO held so for the Asstt. Year 2003-04 to 2007-08.

6. There is no dispute from the ld. DR as to this fact of the Hon'ble High Court remanding the matter to the file of the Tribunal, the Tribunal setting aside the orders of the authorities below and remanding the matter to the file of the assessing officer with a direction to the Ld. AO to consider the claim of the assessee u/s 10A of the Act afresh and the learned AO passing orders dated 29.3.2016 for all these years accepting the claim of the assessee for deduction u/s 10A of the Act.

7. We have gone through the record. In the order dated 27.6.2014, the Tribunal considered the reasons for denial of the benefit of deduction u/s 10A of the Act by the ld. AO and recorded that the facts in all the years are identical to the facts involved in the year 2005-06. The Tribunal further held that in view of the decision of the Hon'ble jurisdictional High Court in the case of the assessee and also in the case of CIT vs Contimeters Electricals (P) Ltd., 317 ITR 249, the mere fact

that no claim was made in the return of income could not be a ground to deny the same.

8. There is no denial of the submission on behalf of the assessee that the facts permeating through all these years are very similar and as on the date of the learned AO passing order dated 25.11.2011 for the Asstt. Year 2009-10, the order of the Hon'ble High Court was not available, and in the light of the order dated 4.1.2013 of the Hon'ble High Court, the Tribunal re-considered the matter afresh and by order dated 27.6.2016 reached a conclusion that in spite of the reasons recorded by the learned AO for rejecting the claim of the assessee u/s 10A of the Act, the matter requires re-consideration and on that ground, the matter was remanded to the file of the ld. AO. It is also not in dispute that subsequently, the learned AO considered the matter in the light of the order dated 27.6.2014 rendered by the Tribunal for the Asstt. Year 2003-04 to 2007-08 and in terms of Instruction No.1 dated 31.3.2016 whereunder it was directed that the approval of the Director, STPI, was sufficient and conclusive evidence to be eligible to claim deduction u/s 10A of the Act and also in view of the decision of the Hon'ble jurisdictional High Court in the case of CIT vs. Technovate E Solutions (P) Ltd., 354 ITR 110 dated 26.2.2013, accepted the claim of the assessee for allowing deduction u/s 10A of the Act.

9. Since the facts forming the basis for the addition made for all these years are similar, in view of the decision of the Hon'ble Apex Court in the case of Radha Saomi Satsang 1992 AIR 377, the Department has to take a consistent view, in the absence of any compelling reasons. On a reading of the record and the orders for all

these years, we do not find any compelling reasons to depart from the view taken by the learned AO in the orders dated 29.3.2016 for the AYs 2003-04 to 2007-08. We, therefore, hold the issue in favour of the assessee and direct the learned AO to allow deduction u/s 10A of the Act. Additional ground raised by the assessee is, therefore, allowed.

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

Order pronounced in the Open Court on 4th June, 2019.

Sd/-

(O.P. KANT)
ACCOUNTANT MEMEBR

sd/-

(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Dated: 4th June, 2019
VJ

Copy forwarded to:

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

By order

Asstt. Registrar

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