

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD òBö BENCH

**Before: Shri Mahavir Prasad, Judicial Member  
And Shri Amarjit Singh, Accountant Member**

**ITA No. 1609/Ahd/2014  
Assessment Year 2008-09**

Schneider Electric India Pvt. Ltd. (Formerly L.K. India Pvt. Ltd.), 328/23 Rasulabad Road, Village Jarod, Tal. Waghodia, Dist: Vadodara-391510 PAN: AAACL3236C (Appellant)	Vs	The CIT-I, IInd Floor Aayakar Bhavan Racecourse Circle, Vadodara, (Respondent)
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**ITA No. 967/Ahd/2017  
Assessment Year 2008-09**

L.K. India Pvt. Ltd. (Current known as Schneider Electric India Pvt. Ltd.), 328/23 Rasulabad Road, Village Jarod, Tal. Vaghodia, Dist: Vadodara-391510 PAN: AAACL3236C (Appellant)	Vs	The ITO, Ward-1(1)(4), Vadodara, (Respondent)
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**Revenue by: Shri Alok Singh, CIT-D.R.  
Assessee by: Shri S.K. Agarwal &**

**Shri Rahul Goel, A.Rs.**

Date of hearing : 30-07-2019

Date of pronouncement : 18-09-2019

**आदेश/ORDER**

**PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-**

These two assessee's appeals for A.Y. 2008-09, arise from order of the CIT-1, Baroda dated 21-03-2014 & 02-01-2017, in proceedings under section 263 & 143(3) r.w.s. 263 of the Income Tax Act, 1961; in short the Act.

2. The fact in brief is that assessee has filed return of income declaring income at Rs. Nil after claiming deduction of Rs. 1,47,84,491/- u/s. 10B of the act. The case was referred to Additional CIT (TPO) Ahmedabad as the assessee has entered into international transactions. The TPO has passed order u/s. 92CA(3) of the act and made an upward adjustment in arm's length price of Rs. 1,06,95,168/-. In consequent to order u/s. 92CA(3), the assessing officer has passed assessment order u/s. 143(3) of the act on 22<sup>nd</sup> December, 2011 determining total loss at Rs. -19,90,048/-. Subsequently, the Principal CIT-1, Baroda has examined the assessment record and find that order passed by the assessing officer was erroneous and prejudicial to the interest of revenue on account of following reasons.

*“(i) It is noticed from the notes forming part of the account submitted by the CA that the assessee had charged Profit & loss a/c to the extent of Rs.2,92,26,055/- on account of write down of inventories. As inventory is written down when actual physical closing stock of inventory is found short of closing stock of inventory as per books of account. No explanation of this huge difference in actual physical closing stock and closing stock as per books was furnished. This clearly indicated that the assessee had sold the inventory outside the books of account and debited the P/L to cover the difference. As such this amount was required to be disallowed. Failure to do so resulted in short levy of tax of Rs. 1,40,99,81/-.*

(ii) In respect of its EOU status as per computation of deduction u/s. 10B and return filed by the assessee. it revealed that claimed undertaking was granted 100% EOU status by the Development Commissioner, KASEZ on 17.02.2000 under Exim Policy 1997-2002 by conversion of the existing DTA unit into 100% EOU at 328/23, Rasulabad Road, Village Jarod Taluka Waghodia, Dist. Baroda. It was however noticed from the ITR-V that the assessee company was formed back in 23.06.1987. As such, 10 years of commencement of production ended in the year 1997. As such, the assessee company was not eligible for deduction u/s. 10B of the Act in view of the clarification circular issued by the CBDT. It was however noticed that the assessee had claimed deduction of Rs.1,47,84,491/- u/s. 10B in this A.Y. and the same was allowed.

(iii) It is noticed from 3CA report that the assessee had MODVAT credit closing balance of Rs. 1,44,21,873/- and opening balance of the same is shown at Rs.60,33,451/-. The assessee had debited the entire central excise duty from its cost of sales. It was required to add difference of closing balance and opening balance of MODVAT credit of Rs.83,88,422/- u/s. 145 of the Act.

(iv) It is also noticed that the assessee company had claimed deduction of Rs.1,47,84,491/- u/s. 10B and the same has been allowed. However, it is noticed from Form 56G furnished by CA under rule 16E of the Income-tax Rule, that there was an arithmetic mistake in computation of amount of deduction u/s. 10B. The correct deduction amount u/s. 10B comes to Rs.96,29,546/- only.

Total turnover of the undertaking = Rs.38,20,73,060/-

(A)

Export turnover of the undertaking = Rs.37,50,39,623/-

(B)

Total profit of undertaking = Rs.98,10,138/-

(C)

As such deduction u/s. 10B comes to 96,29,546 (B X C / A = 96,29,546)''

Therefore, notice u/s. 263(1) of the act was issued on 10<sup>th</sup> December, 2013. The assessee has furnished the written submission reported at page no. 2 to 12 of the order u/s. 263 of the act. In brief, the assessee has submitted that it had two independent units, the DTA Unit manufactures products for the domestic market and EOU unit manufactures products for the European market. It is also submitted that EOU unit after getting approval of Development Commissioner has started manufacturing of products for the European market in the assessment year 2001 - 2002. The assessee has also raised objection to notice u/s. 263 of the act stating that order passed by the assessing officer was not erroneous and prejudicial to the interest of the revenue. Regarding written down value of inventories, the assessee has submitted that company had carried out the valuation as per the accounting standard-2 at lower cost or net realizable value. It is also submitted that

assessee has been consistently following the said policy over the years and the said policy has been accepted by the income tax department over the years and the assessing officer has accepted the said policy after considering all these facts. The assessee has also submitted that the company has claimed deduction u/s. 10B of the Income Tax Act for the EOU unit for the first time in the assessment year 2001-2002. As per the provisions of the Income Tax Act, the company is entitled to deduction for a period of consecutive 10 years beginning from the year in which the unit starts manufacturing of its product or article. The assessee has also submitted that as per the provisions of Income Tax Act, the company is entitled to deduction from assessment year 2001-2002 till assessment year 2010-11. The assessee has also stated that assessing officer has granted the deduction to the company for all these years after due verification as the company had satisfied the conditions for eligibility as per the provisions of section 10B of the Income Tax Act. The assessee has also submitted that the claim of deduction has been allowed in the past 7 assessment years, this is the 8<sup>th</sup> year of the claim u/s. 10B of the act. Therefore, the deduction u/s. 10B could not be denied in succeeding year when it was granted for 7 consecutive years on the same set of facts. Regarding method of accounting, the assessee has stated that on examination of the section 145 of the Income Tax Act no where it is stated that company is required to add the difference of closing and opening balance of MODVAT. Briefly the assessee has submitted in detail as elaborated in the order of Id. CIT that assessing officer has passed the assessment order after due consideration of the facts and details submitted by the assessee during the course of assessment and the order passed by the assessing officer was not erroneous and prejudicial to the

interest of the revenue, therefore, the provision of section 263 would not apply. The Id. CIT has not accepted the submission of the assessee and held that assessing officer has not examined the issues pertaining to exemption u/s. 10B of the act and the issue pertaining to written down of inventory properly. The relevant part of decision of Id. CIT is reproduced as under:-

*"3.1. In respect of issue of- write down of inventories to the tune of Rs. 2.9 crores, it has been stated that the assessee is following Accounting Standard-2 according to which inventories should be valued at the lower of cost and net realizable value. It is further contended that this has been a consistently followed method and accepted by the Department over the years and that the notices is based on the incorrect appreciation of facts. The facts on record however, suggest that there is no consistency in methods followed by the assessee. In this regard in the Note to the Account in Schedule-XVI for the period ending on 31-03-2002, the following has been stated by the Auditors:*

*"Inventories are stated at cost **inclusive of taxes, duty, cess etc. or net realizable value whichever is lower. Cost of raw materials is arrived at following the weighted average method inclusive of taxes. Cost of components and sub-assemblies include cost of material, labour cost, and production overheads.***

*The cost of finished goods include cost of materials, labour cost and production overheads.*

*Stock in process includes cost of materials, labour cost and production overheads.*

*The inventories are accounted net of obsolescences."*

*For the Period ending on 31<sup>st</sup> March, 2007 following remarks have been made by the Auditors in Schedule forming part of balance-sheet.*

*"Inventories are stated at cost exclusive of taxes duty, cesst etc. or net realizable value, whichever is lower. Cost of raw materials is arrived at following the Weighted Average method.*

*Cost of components and sub-assemblies include cost of material, labour cost, and production overheads. **During the year there is a change in the valuation method of from FIFO to Weightage Average method.** Stock in process includes cost of materials, labour cost and production overheads.*

*The cost of finished goods include cost of materials, labour cost and production overheads"*

*Coming back to the balance- sheet of the year under consideration in Schedule XVII, notes forming part of the accounts, Auditor's have made the following remarks:*

*"Inventories are stated at cost **exclusive of taxes, duty, cess, etc. or net realizable value, whichever is lower. Cost of raw materials is at following the Weighted Average Method. Cost of components and sub-assesmbles include cost of material, labour cost and manufacturing overheads. Stock in process and finished goods include cost of materials labour cost and manufacturing overheads. Net realizable value is the estimated selling price in the ordinary course of business less estimated costs of completion and estimated costs necessary to make the sale"***

*3.2. It can be seen that over the years sometimes inventories are stated at cost exclusive of taxes, duty, cess etc. and sometimes stated inclusive of taxes, duty, cess etc. Similarly sometimes inventories are accounted net of obsolescences and sometimes on net realizable value. Yet again net realizable value is defined in the note as estimated selling price in the ordinary course of business less estimated cost of completion and estimate cost necessary to. make sale. The first thing that is noticed is that there is no consistency in the method being followed year after year. Secondly, it is also not explained and not clear as to whether the definition of net realizable value would equally apply to Components and Spares. It is apparent from the assessment order the inconsistency in the method has not been (examined by the Assessing Officer at all.*

3.3. The assessee has not explained why it has made provision for inventory write down and why it should be allowed at all, being a mere provision. The Assessing Officer completely failed to examine this provision and its allowability as per law. This assumes further significance in view of the fact that the inventories are sometimes accounted for net of obsolescences as claimed in notes to accounts as noted above. It is very much apparent that the Assessing Officer had completely failed to note that there has been no consistency in the method of accounting in respect of inventories and it has been changing according to the convenience of the assessee. Apart from the fact that the claim that method of accounting has been followed consistently is misleading, the fact is that the method adopted and frequent change in method needed serious investigation which was not done by the Assessing Officer at all.

3.4 On the question of eligibility of exemption u/s 10B, it has been noticed that the contention of the assessee in its submission dated 20-01-2014 that the company is entitled to deduction from A.Y.2001-02 to A.Y. to 10-11 is completely misleading. The Auditors in the Audit Report for the period ending on 31-03-2002 pertaining to A.Y. 2002-03 have stated that the unit is entitled to deduction u/s 10B w.e.f. A.Y. 2000-01. Therefore, even as per assessee's own Auditors Report, the 10<sup>th</sup> year ends in A.Y 2009-10 and, therefore, the claim that it is eligible for deduction till A.Y. 20010-11 is misleading. But that issue will be taken up in relevant assessment year. For the present proceedings, the issue is that 100% EOU status was granted to the existing DTA unit which was existing since A.Y. 1988-89. Approval letter dated 17-02-2000 by the Development Commissioner, Kandla Free Trade Zone, inter alia stated the following:

"Dear Sirs,

I am directed to refer to the above mentioned application . The Government is pleased to extend to you all the facilities and privileges admissible and subject to the provisions of the Export Oriented Scheme as envisaged in Export and Import Policy 1997-2002 for **the conversion of your existing DTA unit into 100% EOU at 328/23 , Rasulabad Road, Village Jarod, Tal. Waghodia, Dist: Vadodara."** (emphasis supplied)

From the above it is seen that the unit was already in existence and it was merely conversion/re-construction of business already in existence. As per the Board's Circular No. 1/2005 F.No. 149/194/2004 dated 06-01-2005 when the existing unit is converted into an EOU, it shall be eligible for deduction u/s 10B of the I.T.Act only from the year under which it has got the approval as 100% EOU and shall be available only for the remaining period of the 10 consecutive assessment year. In view of this circular, the 10<sup>th</sup> year already expired before it got approval for the purpose of section 10B.

3.5. The assessee in its written submission dated 28-01-2014 has argued that the said circular is only applicable to those converted undertaking which were previously set up in DTA and derived profit from export of articles or thing or computer software etc. It was contended that the assessee has though it had started manufacturing in 1987 in DTA, but had not derived any profit from the export of articles or things and therefore, the said circular was not applicable to the assessee. It is further argued that the said circular was issued in January, 2005 while the assessee was availing the benefit from 2001-02. It is argued that the provisions of circular cannot be applied retrospectively.

3.6. The contention of the assessee is based on deliberate misunderstanding of the above referred circular. It is undisputed that the assessee's unit was already in existence and it was merely a restructuring of the existing DTA unit into EOU. The circular referred above is a beneficial circular which extended benefit to those EO units which were formed out of existing units. The circular extends benefits to those converted units for remaining period of 10 consecutive assessment years. But for this circular, these converted units will not get exemption u/s 10B on plain reading of the said section. If the assessee does not fall into the ambit of circular it will not get benefit of section 10B at any point of time as it was merely conversion of existing unit and therefore, it failed at the very threshold of section 10B. In the case of the assessee 10 years elapsed before the approval.

3.7. Further as noted above, the claim of the assessee in the written submission that it is eligible for deduction since A.Y. 2001-02, has been negated by its Auditors note in its own account for the

*period ending on 31-03-2001. Therefore, it is apparent that there has been consistency in claiming incorrect claims throughout the period.*

*3.8. In view of the facts noted above, it is apparent that the order passed by the Assessing Officer in allowing the claim u/s 10B on the face of such overwhelming negative facts was not only erroneous but was prejudicial to the interest of revenue. Provision of section 10B was not applied keeping in view the facts of the assessee's case. The Assessing Officer is, therefore, directed to reframe the assessment by withdrawing the claim of exemption u/s 10B.*

*4. A separate point was raised in the notice that if an addition is at all allowable it should be Rs. 96.29 lacs and not Rs. 1.47 crores as claimed. Since in the preceding paras, the very claim u/s 10B has been found to be not allowable, this issue remains only of academic interest and it is held that, if at all, the claim u/s 10B cannot be more than Rs. 96,29,546/-.*

*4.1. On the issue of incorrect working of modvat credit it is contended that no where it is stated that the company is required to add the difference of closing balance and opening balance of modvat credit to the total income of the assessee and therefore, what assessee has done is correct.*

*4.2. Since the order is being set aside on the issue of inventory write down, this issue is also set aside as apparently the Assessing Officer has not examined this issue properly. The Assessing Officer is directed to examine the accounting method followed vis-a-vis view of the provisions of section 45A. The Assessing Officer would reconstruct the accounts, if required after applying the provision of Section 45 A. For this purpose the Assessing Officer is directed to give adequate opportunity of being heard to the assessee and bring evidence on record before passing a speaking order."*

3. During the course of appellate proceedings before us, the ld. counsel has submitted that ld. CIT has erroneously initiated proceeding u/s. 263 of the act in respect of aforesaid three issues contested in the appeal. The ld. counsel has submitted that all the issues in the appeal have been decided in favour of the assessee after due verification of relevant details and evidences by the assessing officer. He has further submitted that identical issues has been consistently considered on identical facts in favour of the assessee from assessment year 2001-2002 to 2010-2011. The ld. counsel has also referred the case of Malabar Industrial Company Ltd. (2000) 243 ITR 83 (SC) wherein it is held that prerequisite to exercise of jurisdiction by the CIT u/s. 263 is that the order of the income tax officer is erroneous in so far as it is prejudicial to the interest of the revenue. He has further contended that the facts of the case demonstrate that the ld. CIT has not fulfilled the prerequisite conditions of exercising jurisdiction u/s. 263 of the act as laid down by the Honøble Supreme Court in the above cited decision. It is also

contended that exemption u/s. 10B of the act has been consistently granted by the assessing officer since 2001-02 to 2008-09 and in all the years, the assessing officer has allowed the deduction after due verification of the detail on identical facts. It is also contended that even in assessment year 2009-10, the assessing officer has allowed deduction u/s. 10B of the act on identical facts. The ld. counsel has also referred paper book no. 2 pertaining to detailed questionnaire issued by the assessing officer vide notice u/s. 142(1) of the act on 23<sup>rd</sup> July, 2010 stating that at serial no. 2.14 and 2.16, the assessing officer has called the details pertaining to inventory of opening and closing stock with valuation and it was also asked whether the closing stock of finished goods has been shown after including the excise component if any please give the amount of excise component and explanation as to why the same should not be added. The ld. counsel has also referred page no. 3 and 6 of the paper book pertaining to the submission made by the assessee vide letter dated 10<sup>th</sup> August, 2010 in which it has been clearly stated that inventories are stated at cost exclusively of taxes, duty, cess etc. or net realizing value whichever is lower. Cost of raw material is arrived at following the weighted average method. Cost of component and sub- assemblies include cost of material, labour cost and manufacturing overhead. Stock in process and finished goods include cost of material, labour cost and manufacturing overhead. Net realizable value is the estimated selling price in the ordinary course of business, less estimated cost of completion and estimated cost necessary to make sale. Day to day inventories records are maintained in the SAP system. The ld. counsel has also referred page no. 4 of paper book pertaining to the submission made by the assessee as per annexure E for inventory of opening stock and closing

stock and also given the details that opening stock and closing stock shown after including excise component. The ld. counsel has contended that the above facts demonstrate that assessment order made by the assessing officer was not erroneous and prejudicial to the interest of Revenue and the ld. CIT has passed the order u/s. 263 on imagination basis without contradicting the aforesaid material facts. On the other hand, the ld. departmental representative has supported the order of ld. CIT

4. We have heard both the sides and perused the material on record carefully. With the assistance of the ld. representative, we have gone through the submission of the assessee placed in the paper book as briefly referred above in this order. The assessee has placed copy of order sheet dated 1/11/2011 in the paper book at page no. 1 showing that the assessing officer has enquired about the justification of claim of deduction u/s. 10B of the act. The assessee has placed at page no. 2 of the paper book the information pertaining to the claim of deduction u/s. 10B of the Act supplied to the assessing officer along with report and annexure in support of its claim of deduction u/s. 10B of the Act. With the assistance of the ld. representatives, we have also gone through the submission of the assessee placed at page no. 3 to 5 of the paper book vide letter dated 10/08/2010 along with annexures pertaining to valuation of inventory as reflected above in this order. It is observed that the assessee has furnished complete details relating to valuation of opening and closing stock during the course of assessment proceedings in response to the information sought by the assessing officer vide notice u/s. 142(1) dated 23-07-2010. It is noticed that

vide serial no. 2.4, 2.14, 2.16 of notice u/s. 142(1), the assessing officer has called the information pertaining to the inventory on the following points:-

--- A brief note on method of maintenance of stock whether day to day stock register/record is maintained ?

--- Inventory of opening stock and closing stock with valuation.

--- State as to whether the closing stock of finished goods has been shown after including excise duty component if not please give the amount of excise component and explanation as to why the same should not be added.

The assessee has also furnished the required detail in respect of claim of deduction u/s. 10B of the Act in response to the query raised by the assessing officer vide order sheet dated 1/11/2011. It is also noticed that during the course of proceedings u/s. 263 of the act, the ld. PCIT has reported the submission of the assessee at page 2 to 11 of his order that the matter was also subject of discussion and certification during the course of assessment proceedings u/s. 143(3) of the Act. It is also noticed that in the above referred submission, the assessee has referred various information explanations called for by the assessing officer before the finalization of the assessment on the issues referred in the show cause notice issued u/s. 263(1) of the Act. The company has been regularly assessed to tax under section 143(3) of the act for all the years beginning from A.Y. 2001-02 and assessing officer has granted the deduction u/s. 10B of the Act for all the years after due verification as the company had satisfied the conditions for eligibility as per the provisions of section 10B of the Income Tax Act. It is also contended that even in assessment year 2009-10, the assessing officer has allowed deduction u/s. 10B of the act on identical facts. After perusal of the above facts and submission, we observe that the ld. PCIT has not

contradicted the aforesaid facts reported in the submission of the assessee made during the course of proceedings u/s. 263 of the act. Further, the submission of the ld. counsel briefly stated at para 3 of this order, substantiate that Ld. PCIT has failed to articulate that order passed by the assessing officer is erroneous in so far as it is prejudicial to the interest of the Revenue. In the light of the above facts, we observe that ld. PCIT has failed to substantiate the existence of following two conditions as laid down by the Honøble Supreme Court in the case of Malabar Industrial Co. Ltd. (2000) 243 ITR 83 (SC)

- (i) the order of the assessing officer sought to be revised is erroneous and
- (ii) it is prejudicial to the interest of revenue.

In the light of the above facts and circumstances, it is clear that the ld. PCIT has not fulfilled the pre-requisite of exercising jurisdiction u/s. 263 of the act, therefore, we are not inclined with the findings of the Ld. PCIT for invoking the proceedings u/s. 263 of the act. In the result, appeal of the assessee is allowed.

ITA No. 967/Ahd/2017

5. In consequent to order passed u/s. 263 of the act by the ld. CIT on 22<sup>nd</sup> March, as referred above vide ITA No. 1609/Ahd/2014, the assessing officer has passed the order u/s. 143(3) r.w.s. 263 of the act on 18<sup>th</sup> March, 2015 and disallowed the deduction u/s. 10B of the act and made addition of Rs. 1,47,84,491 and also made addition due to inventory written off of Rs. 2,92,26,055/-.

6. Aggrieved assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has dismissed the appeal of the assessee. The relevant part of decision of Id. CIT(A) is reproduced as under:-

*"4.3. I have considered the facts of the case, the submission of the appellant and the AO's observations. So far as the second ground of appeal is concerned, the CIT-1, Vadodara in his order, u/s 263 has given a clear cut direction to the AO to reframe the assessment by withdrawing the claim of exemption u/s 10B of the Act. Hence, this issue cannot be decided in the current appellate proceedings and the same has to be decided in the appeal, if any filed by the appellant before the ITAT against the order u/s 263 of the Act. Further, besides, the reason given by the CIT-1, Vadodara for denial of exemption u/s 10B, during the course of the appellate proceedings, the appellant's AR was asked to file a copy of approval granted by the board of directors of the appellant's unit in order to make it eligible for deduction u/s 10B. In this regard, the appellant has filed following additional submission:*

*"Submission on Approving Authority for Section 10B of the Income Tax Act, 1961.*

*1. Definition of Export Oriented Unit (EOU):*

*"Hundred per cent export-oriented undertaking" means an undertaking which has been approved as a hundred per cent export-oriented undertaking by the Board appointed in this behalf by the Central Government in exercise of the powers conferred by section 14 of the Industries (Development and Regulation) Act, 1951 (65 of 1951), and the rules made under that Act;*

*2. The appellant Company has claimed the deduction under Section 10B of the Act as it has a running 100% EOU. It is an admitted position that there was already a permission/approval granted by the Development Commissioner declaring/approving the assessee as 100% EOU.*

*Your appellant company places reliance upon the circular/instruction by the Export Promotion Council for EOUs & SEZs dated 14/05/2009 (Copy of the said circular is enclosed and marked as Annexure-1.) by, which the Circular/Instruction of the CBDT dated 09/03/2009 (Copy of the said circular/instruction is enclosed and marked as Annexure-2) was further clarified, your Appellant Company submits that as so observed in the circular/instruction of the Export Promotion Council for EOUs & SEZs dated 14/05/2009 that from 1990 onwards Board of Approval has delegated the power of approval of 100% EOU to the Development Commissioner, it is submitted that therefore at the relevant time when the development Commissioner, it is submitted that therefore at the relevant time when the Development Commissioner granted the permission/approval of 100% EOU, the Development Commissioner exercised the delegated power. It is submitted that therefore the approval granted by the Development Commissioner was not required to be ratified as the Development Commissioner exercised the delegated powers,*

*3. The aforesaid proposition finds support from the following decision of jurisdiction High Court.*

*1. Principal Commissioner of Income Tax v. ECI Technologies (P.) Ltd [2015] 61 taxmann.com 309 (Gujarat), Copy enclosed is enclosed and marked as Annexure 2.*

*4. In view of the aforesaid discussion we request your Honour to allow the 10B exemption as it is duly approved EOU unit by the designated authority."*

*4.3.1. I have considered the facts of the case, the submission of the appellant and the AO's observations. It is admitted fact in the present case that the unit, claimed by the appellant as eligible for deduction u/s. 10B, was approved and registered at the Kandla Special Economic Zone as a 100% EOU on 17.2.2000 by a letter of permission issued by Development Commissioner, Kandla SEZ. No approval has been given by the Board appointed on behalf of the Central Government in exercise of the powers conferred by Sec. 14 of the Industrial [Development*

*and Regulation] Act, 1951 and the rules made under the Act, In this regard it is seen that the Hon'ble High Court of Delhi in its decision in the case of Regency Creations Ltd. [2013] 353 ITR 326 (Delhi) has clearly held that if an unit is only approved by Directors STPI but approval has not been ratified by Board constituted u/s.14 of the IDR Act for the purposes of approval u/s.10B, then the unit will not be eligible for deduction u/s. 10B of the Act. This decision has also been mentioned by the Hon'ble Court in its decision in the case of Tecnovet Solutions Pvt. Ltd. [2013] 32 Taxman.com 290 (Delhi), while considering the issue of deduction u/s. 10A of the Act. In this decision, the Court has held that so far as deduction u/s. 10A of the Act to units functioning with the Software Technology Pack is concerned, the STPI Director was having the authority of the nature of Inter Ministerial Standing Committee and hence all approvals granted by STPI Director are deemed to be valid, Further, the Court has also referred to the decision in the case of Regency Creations Ltd, and has held that this decision could be of no use to the revenue in as much as that decision was concerned specifically with the provisions of sec. 10B which stands on entirely different footing than the provisions of sec. 10A. Thus, the Court has reiterated that for deduction under section 10B, decision in the case of Regency Creation Ltd, (supra) will be applicable. Besides in the decision in the case of ECI Technologies (supra) relied upon by the appellant, it has been clearly mentioned that the approval by the Development Commissioner was subsequently ratified by the Board of approval, Accordingly/ the denial of exemption u/s 108 Is upheld on this account also.*

*4.4. So far as the addition due to writing off of inventory is concerned, again, the CIT-1, Vadodara has given his findings in his order to the effect that the methods being followed by the appellant is not consistent. There is re consistency in the accounting policy adopted by the assessee. Sometimes inventories are stated at cost exclusive of taxes, duty, cess etc, and sometimes these are stated inclusive of taxes duty and cess etc, Similarly sometimes inventories are accounted net of obsolescence and sometimes on net realizable value, The appellant has not filed any detailed explanation to controvert the findings of the CIT-1, Vadodara regarding such inconsistencies in accounting for the valuation of the closing stock. How the valuation of the closing stock in this year has been done so as to compute the amount of inventory written down to the tune of f 2.92 crores has also not been explained, Under such circumstances, the issue having been decided by the CIT-1, Vadodara in his order u/s 263 and on account of the inability of the appellant to controvert his findings, the disallowance made by the AO is upheld and the first ground of appeal is also dismissed.”*

7. During the course of appellate proceedings, the ld. counsel has contended that ld. CIT has not adjudicated the issue in appeal on merit and simply sustained the addition on the basis of order passed u/s. 263 of the act. He has further stated that ld. CIT has erred in confirming the disallowance without considering on merit the material facts and detailed information submitted by the assessee during the course of assessment and appellate proceedings. On the other hand, ld. departmental representative has supported the order of ld. CIT.

8. We have quashed the order passed u/s. 263 of the act vide ITA appeal 1609/Ahd/2014 as reported above in this order, therefore, the assessment made u/s. 143(3) r.w.s. 263 of the act on 18<sup>th</sup> March, 2015 has become infructuous. Therefore, this appeal of the assessee is also allowed.

9. In the result, both the appeals filed by the assessee are allowed.

Order pronounced in the open court on 18-09-2019

**Sd/-**  
**(MAHAVIR PRASAD)**  
**JUDICIAL MEMBER**  
**Ahmedabad : Dated 18/09/2019**

**Sd/-**  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

**आदेश क० त० तालिम अ० षत / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपील अ० अधकरण,  
अहमदाबाद