

आयकर अपीलिय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI R.S.SYAL, VP AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No. 154/PUN/2018

निर्धारण वर्ष / Assessment Year : 2011-12

The Income Tax Officer
Ward 2(1), Pune.

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Zentest Labs
Office No.1, Floor-2,
Abza Pavilion, Above Cotton Kings,
D.P Road, Aundh,
Pune-411 007
PAN : AAAFZ4433A

.....प्रत्यर्थी / Respondent

Assessee by : Shri Ketan Ved

Revenue by : Shri Sudhendu Das

सुनवाई की तारीख / Date of Hearing : 28.06.2021

घोषणा की तारीख / Date of Pronouncement : 29.06.2021

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the Revenue emanates from the order of the Ld. CIT(Appeal), Pune-3 dated 31.10.2017 for the assessment year 2011-12 as per the following grounds of appeal on record:

"1. On the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the disallowance u/s.10A of the I.T. Act as the Software

Technology Parks of India (STPI) Unit of the assessee firm is formed by splitting up or reconstruction of the existing business and therefore, violates the conditions stipulated u/s 10A of the Act.

2. On the facts and circumstances of the case, the Ld. CIT(A) erred in deleting the disallowance u/s 10A of the Act by relying on the decision of Hon'ble Pune Tribunal in the assessee's own case for A.Y. 2010-11 wherein the Hon'ble Karnataka High Court's decision in the case of CIT Vs. Expert Outsource (P) Ltd. 358 ITR 518, is relied upon. The Ld. CIT(A) failed to appreciate the fact that Expert Outsource (P) Ltd. began operation prior to the date of registration with STPI but export of goods commenced only after registration with STPI. However, in the present case, the issue is not of conversion of existing unit into STPI, rather it is a case of approval obtained for a fresh unit under STPI which has started w.e.f. 01/04/2009.

3. On the facts and circumstances of the case, the Ld. CIT(A) erred in deleting the disallowance u/s 10A of the Act by relying on the decision of Hon'ble Karnataka High Court in the case of CIT Vs Expert Outsource (P) Ltd. 358 ITR 518, without appreciating the fact that in the case of Expert Outsource (P) Ltd., export commenced only after obtaining the approval as STPI i.e. on 04/08/2004, however, in the present case, the assessee was already engaged in the export of computer software prior to obtaining the approval under STPI which had been carried out by the assessee.

4. On the facts and circumstances of the case, the Ld. CIT(A) erred in deleting the disallowance u/s 10A of the Act by relying on the Circular No.1 12005 dated 06.01.2005, which speaks of an undertaking set up in Domestic Tariff Area (DTA) and deriving profit from export and which is subsequently converted into an Export Oriented Undertaking (EOU) shall be eligible for deduction u/s 10B of the Act, without appreciating the fact that the same could not apply to the present case, as the earlier undertaking set up by the assessee was not a DTA unit and also not approved as 100% EOU by Board as contemplated by the aforesaid circular.

5. The appellant prays to be allowed to add, amend, modify, rectify, delete or raise any grounds of appeal during the course of appellate proceedings.”

2. The only grievance of the Revenue is with regard to the deletion of addition by the Ld. CIT(Appeal) which was made consequent upon disallowance by the Assessing Officer u/s.10A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') as the Software Technology Parks of India (STPI) Unit of the assessee firm was formed by splitting up or reconstruction of the existing business and as per the Revenue, it had violated the conditions stipulated u/s.10A of the Act.

3. The brief facts in this case are that the assessee is a firm engaged in providing computer software testing services. The return of income for the year under consideration was e-filed on 30.09.2011 declaring total income of Rs.44,54,495/- which was assessed by the Assessing Officer u/s.143(3) of the Act vide order dated 11.03.2014 determining total income at Rs.3,80,40,340/- and made various disallowances/additions.

4. The issue was observed by the Assessing Officer in his order at Para 4 onwards wherein it was seen that the assessee had claimed deduction of Rs.3,34,39,024/- u/s.10A of the Act for its STPI unit. This is the second year of claiming deduction u/s.10A of the Act. The assessee claimed deduction u/s.10A of the Act for the first time for assessment year 2010-11 and the Assessing Officer for assessment year 2010-11, had disallowed the claim of deduction u/s.10A of the Act by holding that export unit of the assessee was formed by the splitting up and reconstruction of the business already in existence.

5. Thereafter, the Assessing Officer relied on the said order of the assessee for assessment year 2010-11 and vide Para 4.3 onwards up to 4.6, the Assessing Officer relying on the findings for assessment year 2010-11 for this year also, the deduction claimed by the assessee u/s.10A of the Act was disallowed.

6. The Ld. CIT(Appeal) vide Para 6.3 at Page No.12 of his order has relied on the decision of the Pune Bench of the Tribunal in assessee's own case for the assessment year 2010-11 in ITA No.2287/PUN/2014 dated 12.05.2017 and had provided relief to the assessee. It was observed by the Ld.

CIT(Appeal) that on the identical facts and circumstances, the Tribunal had provided relief to the assessee on identical issue. The relevant portion of the said order of the Tribunal has also been made part of the order of the Ld. CIT(Appeal) which is not reproduced herein again on the ground of repetitiveness.

7. The Ld. DR fairly conceded that the issue is squarely covered in favour of the assessee by the Tribunal's order in assessee's own case (supra.) for the assessment year 2010-11 which was the first year when the assessee claimed deduction u/s.10A of the Act and for this year also, facts being identical, the relief given to the assessee by the Ld. CIT(Appeal) may be sustained.

8. Having perused the relevant case records and the Tribunal's order in assessee's own case for the assessment year 2010-11 (supra.), we find that the Tribunal had extensively examined the issue in its order from Para 7 onwards after placing reliance on the decision of the Hon'ble Karnataka High Court in the case of CIT Vs. Expert Outsource (P) Ltd. reported as 358 ITR 518 and had also analyzed the CBDT Circular No.1/2005 and thereafter, had provided relief to the assessee. In fact, the Hon'ble Karnataka High Court in its decision (supra.) itself has analyzed the applicability of CBDT Circular No.1/2005 dated 06.01.2005 and that it had granted certain benefits u/s.10B of the Act and though the circular was in the context of section 10B, the ratio of the circular equally applies to Section 10A of the Act also.

9. In view of the facts and circumstances, we do not find any reason to interfere with the findings of the Ld. CIT(Appeal) which is hereby upheld and relief provided to the assessee is sustained.

10. In the result, **appeal of the Revenue is dismissed.**

Order pronounced on 29th day of June, 2021.

Sd/-
R.S.SYAL
VICE PRESIDENT

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 29th June, 2021.
SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeal), Pune-3
4. The Pr. CIT-2, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	28.06.2021	Sr.PS/PS
2	Draft placed before author	28.06.2021	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		