

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'A' BENCH: CHENNAI**

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री जी मंजुनाथ लेखक सदस्य के समक्ष  
**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**  
**SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.1169 & 1320/Chny/2019  
निर्धारण वर्ष /Assessment Years: 2010-11 & 2009-10

**The Asst. Commissioner of**  
**Income Tax,**  
Non Corporate Circle-15,  
Chennai.

**M/s. Pleasant Health Care,**  
15/15A 3<sup>rd</sup> Cross Street,  
Nehru Nagar, Kottivakkam,  
Chennai – 600 041.  
**[PAN: AAHFP 5277H]**

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Appellant by  
प्रत्यर्थी की ओर से /Respondent by

: Mr. S. Sridhar, Advocate  
: Mr. ARV Sreenivasan, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 06.10.2021

घोषणा की तारीख /Date of Pronouncement

: 08.10.2021

**आदेश / ORDER**

**Per V. Durga Rao, Judicial Member:**

These two appeals filed by the Revenue are directed against the orders of the learned Commissioner of Income Tax (Appeals)-15, Chennai in I.T.A Nos.330 & 329/2016-17/CIT(A)-15 dated 27.08.2018 relevant to the Assessment Years 2010-11 & 2009-10 respectively.

2. There is a delay of 155 days in filing the appeal in ITA No.1320/Chny/2019 for Assessment Year 2009-10 and delay of 147 days in ITA No.1169/Chny/2019 for Assessment Year 2010-11 respectively, for which, the Revenue filed a petition for condonation of delay, which is extracted as under:

*"In this case, The Assistant commissioner of Income Tax, Non Corporate Circle-15 (1), Chennai is directed to file an appeal to the Income Tax Appellate Tribunal against the order of The Commissioner of Income Tax (Appeals)-15, Chennai in ITA NO 330&329/CIT(A)-16-17 dated 27/08/2018 for the Assessment Year 2009-10 received in this office on 27/08/2018 in the case of **M/S PLEASANT HEALTH CARE PAN AAHFP5277H.***

*I request you to kindly condone the delay of 155 days in filing the Income Tax Appeal Papers, in the above case, for the Assessment Year 2009-10. The appeal could not be filed in time as CIT(A)'s order was combined for the A.Ys. 2009-10 and 2010-11. So, we wrongly filed combined appeal for the both A.Ys, 2009-10 and 2010-11. I humbly request again that the delay may be condoned.*

*The delay was beyond the control of the under signed and not an intentional one, Hence it is submitted before the Hon'ble Income Tax Appellant Tribunal that the delay may kindly be condoned and the appeal may be admitted.*

*It is humbly again prayed that the Hon'ble Tribunal may be pleased to condone the delay and render the justice of the appellant"*

3. The Ld. D.R has submitted that the delay may be condoned and the order may be passed on merits.

4. On the other hand, the Id. Counsel for the assessee has not raised any objection.

5. We have gone through the petitions for condonation filed by the Revenue and find that the Revenue was prevented by sufficient cause,

there is a delay of 155 days for A.Y 2009-10 and 147 days for A.Y 2010-11 in filing of the appeals stand condoned and the appeals are admitted for adjudication.

6. The grounds of appeal raised by the Revenue are reproduced as under:

*"1. The order of the Ld. CIT(A) is contrary to the law and facts of the case.*

*2. The Ld, CIT(A) erred in allowing the claim of exemption u/s 10A of the Act after admitting fresh evidence, which was admitted without granting the AO any opportunity to examine it.*

*2.1. The Ld. CIT(A) erred in allowing the alternate claim of assessee u/s 10A, by relying on the decision of Hon'ble Tribunal in the case of ACIT vs. Severn Glocon (India) Pvt. Ltd. for AY 2010-11 vide order No.2816/Mds/2014 dated 19-06-2015, when the fact remains that the Hon'ble Tribunal had then only remitted back the issue to the AO to examine the claim of deduction u/s 10B.*

*3. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the Ld.CIT(A) be set aside and that of the Assessing Officer be restored."*

7. The brief facts of the case are that the assessee is in the business of insurance claim processing, filed its return of income admitting 'Nil' income after claiming deduction u/s. 10B of the Income Tax Act, 1961 (hereinafter as "the Act"). The case of the assessee was selected for scrutiny and on 07.10.2011 the assessment was completed u/s. 143(3) of the Act by accepting return of income filed by the assessee. Subsequently, the case of the assessee was reopened u/s. 147 of the Act by issuing a notice u/s. 148 of the Act on the ground

that the assessee does not have an approval granted by Development Commissioner, Special Economic Zone for the purpose of eligibility of deduction u/s. 10B of the Act and assessment was completed u/s. 143(3) r/w s. 147 of the Act dated 28.12.2016. In the assessment order, the A.O has noted as under:

*"I have gone through the submissions of the assessee/ Authorized Representative and material placed on records and found that the entire deduction was allowed u/s 10B of the IT ACT-1961 at the time of completing the assessment u/s 143(3) of the IT ACT-1961 on 12/02/2013. And it was also noticed the assessee does not have the approval granted by Development Commissioner, .Special Economic Zone. Section 10B of the IT ACT-1961 is reproduced below:-*

***"[Special provisions in respect of newly established hundred per cent export oriented undertakings.]***

***10B.(1)*** subject to the provisions of this section ,o deduction of such profits and gains as are derived by a hundred per cent export - oriented undertaking from the export of articles or things or computer software for a period of ten consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce articles or things or computer software, as the case may be, shall be allowed from the total income of the assessee:

***Provided*** that where in computibng the total income of the undertaking for any assessment year, its profits and gains had not been included by application of the provisions of this section as it stood immediately before Its substitution by the Finance Act-2000, the undertaking shall be entitled to the deduction referred to in this sub section only for the unexpired period of aforesaid ten consecutive assessment year:"

*In response to 148 notice, assessee claimed exemption u/s 10A of the IT ACT-1961 instead of 10B of the IT ACT-1961. This clearly looks like an afterthought in response to the notice u/s 148 of the IT ACT-1961. Assessee tried to accommodate the claim of exemption somehow u/s 10A whereas all along he had been claiming exemption u/s 10B of the IT ACT-1961. Assessee/ Authorized representative failed to submit the required proofs/ documents to claim the exemption u/s 10B of the IT ACT-1961 and also even for exemption claimed u/s 10A of the IT ACT-1961. Hence, the assessment is*

*completed by disallowing the deduction claimed by the assessee u/s. 10B of the IT Act.”*

8. On appeal, the Ld. CIT(A) has allowed deduction u/s. 10A of the Act. The relevant portion of the order Ld. CIT(A) is extracted as under:

*“I have carefully gone through the observation, of the AO in the assessment order as mentioned above under para 5.1 and the appellant's submission before the CIT(A) under para 5.2.*

*5.3.1. The common issue involved in both the AYs, 2009-10 and 2010-11, is the AO's denial of the appellant's claim of deduction u/s 10B and 10A. Initially, the appellant had claimed u/s 10B of the IT Act. By observing that the appellant did not have approval granted by the Development Commissioner, Special Economic Zone, the AO denied the appellant's claim of deduction u/s 10B. Although, the appellant claimed deduction u/s 10A during the assessment proceedings, the AO rejected its claim with an observation that it was an after thought and corresponding details were not filed.*

*5.3.2. Before the CIT(A), the appellant's AR has reiterated the appellant's main plea of deduction u/s 10B. However, the AR has admitted that the approval from the competent authority for claiming deduction u/s 10 is still pending. Therefore, I am convinced that the appellant is not entitled to claim deduction u/s. 10B. Therefore, the appellant's main plea of deduction u/s. 10B is rejected.*

*5.3.3. Now, coming to the appellant's alternate plea that it is eligible for deduction u/s 10A, I have perused the following particulars filed by the appellant's AR to substantiate that all the statutory conditions prescribed u/s 10A were fulfilled.*

- (a) Document corresponding to 100% Export Oriented Unit.*
- (b) STPI approval.*
- (c) Agreement with SETEP*
- (d) Statutory Form No.SGG.*

*5.3.4. The appellant's representative has categorically stated that all the , above particulars for claiming deduction u/s10A were filed before the AO during the assessment proceedings. In this regard, the appellant has filed an / affidavit dated 22-06-2018 signed by Mr.Palepu Srinivasa Prasad, partner of appellant firm, before the Notary Public, stating that all the above particulars were filed before the AO during the assessment proceedings.*

*5.3.5. With regard to the appellant's claim that its claim of alternate plea to claim deduction u/s 10A can be entertained, the appellant's AR has relied on the decision of Hon'ble ITAT, Chennai in the case of ACIT Vs. Severn Glocon (India) pvt. Ltd. in AY 2010-11 vide ITA No, 2816/Mds/2014 dated 19-06-2015, I have perused the decision of Hon'ble ITAT, Chennai in the*

above mentioned case, wherein under para -9, the ITAT has observed as under:

*“We have considered the rival submissions on either side and perused the relevant material on record. Explanation 2(iv) to Section 10B clearly says that approval by the Board appointed by Government of India under section 14 of the Industries (Development & regulation) Act, 1951 is an essential condition. In this case, though the assessee claims that the approval initially granted by Development Commissioner, Special Economic Zone was ratified by the Board! it is not clear from the material available on record whether ratification was accorded by the Board constituted by Government of India under Section 14 of the Industries(Development & Regulation) Act, 1951. In the absence of any material to show that whether the approval was accorded by the Board constituted under Industries(Development & Regulation) Act, 1951, In the absence of any material to show that whether the approval was accorded by the Board constituted under Industries (development & Regulation) Act, 1951, this Tribunal is of the considered opinion that the matter needs to be re-examined. Moreover, Section 10A also gives exemption to 100% export oriented unit. Therefore, this Tribunal is of the considered opinion that the matter needs to be re-examined by the Assessing Officer in the light of the provisions of Section 10A of the Act, in case the assessee is not eligible under Section 10B of the Act. Accordingly, the orders of the lower authorities are set aside and the entire issue is remitted back, to the file of the Assessing Officer. The Assessing Officer shall re-examine the issue afresh and find out whether the Board constituted by Government of India under Section 14 of the Industries (Development & Regulation) Act, 1951 has approved the assessee as 100% export oriented unit. In case such approval was not granted, the Assessing Officer shall also examine the claim of the assessee under Section 10A of the Act on merit, in accordance with law, after giving a reasonable opportunity to the assessee”.*

*5.3.6. The Hon'ble ITAT's decision in the above mentioned case makes it clear that even if an assessee is not eligible for deduction u/s 10B, its claim of deduction u/s 10A can be examined by the Assessing Officer. Although, all the relevant details were filed before the AO, the AO has not controverted the appellant's eligibility to claim deduction u/s 10A. After perusal of the supporting documents, I am of the considered opinion that the appellant is entitled to claim deduction u/s 10A as it has fulfilled the necessary conditions. Accordingly, the AO is directed to allow the appellant's claim of deduction U/s 10A of the IT Act. Thus, the appellant's alternate plea is **allowed** in both AYs **2009-10 and 2010-11.**”*

9. On being aggrieved, the Revenue carried the matter before the Tribunal.

10. The Ld. D.R has submitted that the deduction claimed by the assessee in the original return of income was only u/s. 10B of the Act and the deduction u/s. 10A of the Act cannot be considered. He further submitted that during the course of reopening proceedings, the assessee has claimed alternatively u/s. 10A of the Act also and not filed the relevant details. So far as s. 10B of the Act is concerned, the assessee has not produced the certificate from the Development Commissioner, Economic Zone and therefore, he is not eligible for deduction u/s. 10B of the Act.

11. He further submitted that the Ld. CIT(A) without examining the eligibility criteria u/s. 10A of the Act allowed the deduction claimed by the assessee without calling the remand report therefore, the order passed by the Ld. CIT(A) is not correct.

12. On the other hand, the Id. Counsel for the assessee has submitted that the assessee has claimed deduction u/s. 10B as well as s.10A of the Act. If the A.O is of the opinion that the assessee is not eligible for deduction u/s. 10B of the Act, the alternative plea of the assessee u/s. 10A of the Act may be considered.

13. He further submitted that the Ld. CIT(A) after examining all the details, eligibility criteria for s. 10A of the Act and grant deduction u/s.

10A of the Act and he strongly supported the order passed by the Ld. CIT(A).

14. We have heard both the sides, perused the material available on record and gone through the order of the authorities below. The case of the assessee is that he is eligible for deduction u/s. 10B of the Act accordingly, he has claimed the same. The case of the assessee was reopened and the A.O has asked the assessee to produce a certificate from the Development Commissioner, Special Economic Zone that the assessee is approved u/s. 10B of the Act. The assessee has not produced the certificate, therefore, the A.O has denied the deduction claimed by the assessee u/s. 10B of the Act. He also noted that even for exemption claimed u/s. 10A also no documents are filed.

15. On appeal, the Ld. CIT(A) has granted s. 10A of the Act by observing that the assessee has substantiated the statutory conditions prescribed u/s. 10A of the Act are fulfilled. In view of the above facts and circumstances of the case, we find that when the assessee has not filed any details in respect of the claim of deduction u/s. 10A of the Act before the A.O and the necessary documents which are filed only before Ld. CIT(A), the Ld. CIT(A) ought to have been called the remand report and thereafter, the eligibility for the assessee u/s. 10A of the Act has to be considered. The Ld. CIT(A) without calling remand report and

without giving an opportunity to the A.O a claim which is substantiated first time before the Ld. CIT(A) considered and allowed. In our opinion, the order passed by the Ld. CIT(A) is not correct. Therefore, we set aside the order passed by the Ld. CIT(A) and remit the issue back to the A.O to consider the eligibility of the assessee for deduction u/s. 10A of the Act afresh, *denovo* in accordance with law. Hence, the appeal filed by the Revenue is allowed for statistical purposes.

16. Even in ITA No.1169/Chny/2019 for A.Y 2010-11, the facts and claim of the assessee are similar therefore, no separate adjudication is required in view of our decision in ITA No.1320/Chny/2019 for A.Y 2009-10, the year under consideration also remit the matter back to the A.O to consider the eligibility of the assessee for deduction u/s. 10A of the Act, afresh, *denovo* in accordance with law. Hence, the appeal filed by the Revenue is allowed for statistical purposes.

17. In the result, both the appeals filed by the Revenue are allowed for statistical purposes.

*Order pronounced on 08<sup>th</sup> October, 2021 in Chennai.*

Sd/-  
(श्री जी मंजूनाथ)  
(G. MANJUNATHA)

लेखक सदस्य/ACCOUNTANT MEMBER

Sd/-  
(वी दुर्गा राव)  
(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai, दिनांक/Dated: 08<sup>th</sup> October, 2021.

EDN/-

**:- 10 -:**

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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