

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Before Shri Shamim Yahya, Accountant Member

I.T.A. No. 1931/Mum/2020
(Assessment Year 2011-12)

Maxval Technologies Private Limited T-251, ITC, 5 th Floor Belapur Railway Station Complex, CBD Belapur, Navi Mumbai-400 614 PAN : AAECM0983B (Appellant)	Vs.	ACIT, Panvel Circle Trifed Tower, 3 rd Floor, Sector-17, Opp. Khanda Colony Panvel, Dist Raigad Mumbai-410 206 (Respondent)
--	-----	--

Assessee by	Shri Ravindra Naik
Department by	Shri Anil Gupta
Date of Hearing	18.11.2021
Date of Pronouncement	17 .01.2022

O R D E R

Per Shri Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-2 dated 06.08.2020 and pertains to assessment year 2011-12.

2. Grounds of appeal read as under:-

1. The Ld. Assessing Officer denied appellant's claim u/s 10A even though the Revised Return was filed within the stipulated time as prescribed u/s 139(5) of the Income Tax Act, 2020.
2. The Ld. Assessing Officer and Ld. CIT (A) refused to entertain the claim u/s 10 A by stating that the Audit Report in Form 56F was not filed along with the Original Return disregarding the fact that the same can be filed before the A.O. at the time of Scrutiny Proceedings. The filing of the Audit Report along with the Income Tax Return was directory and not mandatory till A.Y. 2014-15.
3. The Ld. CIT(A) did not take into consideration the orders passed by the Hon. ITAT, Mumbai bench for earlier Assessments Years on the same issue.

3. Brief facts of the case are that AO in this case denied the assessee's claim of deduction u/s. 10A by observing as under:-

Assessee's claim of deduction under section 10B was disallowed for A.Y. 2009-10 and 2010-11 as discussed elaborately in the order of the respective assessment years. Assessee filed its original return of income for A.Y 2011-12 on 3-09-2011 wherein it has declared an amount of 49,68,469/ as income . Assessee has not claimed any deduction under section 10A or 10B in its original return of income filed. It clearly shows that assessee has not prepared audit report in Form No 56F along with the return of income. Filing form No 56F is mandatory along with the return of income for claiming deduction under section 10A of the IT Act 1961. While filing the original return of income assessee has not claimed the deduction under section 10A or 10B of the IT Act therefore not filed audit report in form no 56F .

Assessee has filed a revised return of income on 19/3/2013, Assessee has submitted a copy of 56 F dated 3/9/2011 and the date on audit report for A.Y 2011-12 mentioned in the form NO 3CA is 22/7/2010. This clearly shows that assessee had an after thought and filed the audit report in form No 56 F much later than the original return of income and decided to file it when the revised return of income was filed for claiming deduction under section 10A. Therefore assessee has not complied with the provisions of section 10A and it is not entitled to claim deduction under section 10A and the same is disallowed.

4. Upon assessee's appeal, Ld.CIT(A) held as under;-

I am of the considered opinion that though fresh claim can be made in the revised return of income and it should be accepted by the revenue authorities, however, in the present case, the dispute is not regarding the acceptance of claim made in the revised return of income, which the assessee failed to make in the original return of income. Here the question before us is whether the assessee is eligible for claiming deduction u/s. 10A In this regard, I am of the considered view that in order to claim deduction u/s 10A, the necessary conditions prescribed in the section should be fulfilled, one such condition prescribed in the said section is that the appellant should furnish in the prescribed form along with the return of income, the report from an accountant certifying that the deduction has been correctly claimed in accordance with the provisions of this section The relevant portion of sub-section (5) of section 10A is reproduced below.

"The deduction under this section shall not be admissible for any assessment year beginning on or after the 1st day of April, 2001. unless the assessee furnishes in (in the prescribed form, along with the return of income, the report of an accountant, as defined in the Explanation below sub-section (2) of section 288, certifying that the

deduction has been correctly claimed in accordance with the provisions of this section."

5.4 It is seen that the appellant has failed to furnish in prescribed form, the report of an accountant along with the return of income, original as well as revised and thus, the appellant has failed to fulfill the condition prescribed in section 10A and thus, it is held that the appellant is not eligible for claiming deduction u/s 10A.

Further, the appellant has submitted that Hon'ble ITAT has decided the appeal in favour of appellant for AY 2008-09 and 2010 11 and thus, the deduction should be allowed to appellant for the present year also.

5.5 On perusal of order of Hon'ble ITAT, it is seen that in AY 2008-09, the appellant has claimed deduction u/s 10B but as per the condition prescribed for allowing deduction u/s 10B, the appellant has failed to obtain approval from Board or get ratified the approval granted by the Director, STPI, by the Board as prescribed under Explanation -2(iv) to section 10B and thus, the AO disallowed the deduction claimed u/s 10B. On filing appeal before the first appellate authority, the Ld. CIT(A) also confirmed the decision of assessing officer. The Hon'ble ITAT, Mumbai also held that the assessee has not satisfied the condition prescribed in section 10B and thus, upheld the decision of Ld. CIT(A) The appellant has made an alternative plea before the Hon'ble ITAT that he should be allowed the deduction u/s 10A if the deduction u/s 10B is not allowed to the appellant. The Hon'ble I TAT, Mumbai has accepted the alternative plea of appellant and has directed the Ld. AO to allow the deduction u/s 10A after verifying that the appellant is fulfilling all the conditions prescribed under said section.

5.6 Hence, it is seen that appellant's deduction u/s 10B was denied by Hon'ble ITAT since the appellant had not fulfilled the conditions prescribed under that section. However, the file was restored to AO with direction to allow deduction u/s 10A only after fulfillment of conditions prescribed under that section.

Thus, for the present year also, it needs to be seen that whether the appellant is fulfilling the conditions prescribed u/s 10A Here we observe that the appellant has failed to fulfil the condition of filing along with return of income, the report of an accountant in the prescribed form.

5.7 Thus, after considering the facts of present case of appellant and the decision of Hon'ble ITAT, Mumbai, the undersigned is of the view that the appellant is not eligible for claiming deduction u/s 10A of the Income Tax Act, 1961 and thus, the present appeal of appellant is dismissed.

5. Against the above order, assessee is in appeal before ITAT.

6. I have heard both the parties and perused the record. Ld. Counsel of the assessee placed reliance upon several case laws for the proposition that when the required report is provided during the course of hearing, adverse inference should not be levied and deduction claimed cannot be denied that this was not filed along with the return.

7. Per contra, Ld. DR relied upon the order of revenue authorities.

8. I note that the issue here is whether the audit report in form 56F supplied during the course of hearing can be treated as sufficient compliances for claim of deduction u/s. 10A. Hon'ble Delhi High court in the case of CIT Vs Axis computers (India) Pvt.Ltd 178 taxman 143 has held as under:-

1. In the present appeal the appellant seeks to raise the question of interpretation with regard to the provisions of Section 10A (5) of the [Income Tax Act](#), 1961 (hereinafter referred to as the 'said Act'). The said provision is virtually identical to the provisions of [Section 80IA](#) (7) as also 80HHB (3) (ia). It is also identical to the erstwhile provisions of [Section 80J\(6A\)](#) of the said Act.

2. This Court has already interpreted the latter provisions and has held the same to be directory and not mandatory. The contention of the revenue was that unless and until the audit report is filed along with the return, the benefit of [Section 10A](#) cannot be available to the assessee. Recently, we have considered the identical provisions of [Section 80IA](#) (7) in the case of [CIT v. Contimeters Electricals Private Limited](#): ITA 1366/2008 decided on 02.12.2008 and held that as long as the audit report is filed before the framing of the assessment, the provisions of [Section 80IA](#) (7) would be complied with inasmuch as the same are directory and not mandatory. A similar view would have to be taken in the present case also inasmuch as the provisions are the same. Consequently, we do not find any fault with the conclusions arrived at by the Tribunal. No substantial question of law arises for our consideration.

9. No contrary decision from Hon'ble Bombay High court has been brought to my notice.. Hence, on the touchstone of above said decision, I direct the AO to examine the assessee claim of deduction u/s. 10A on merits and pass an order as per law.

10. Needless to add, assessee should be granted adequate opportunity of being heard.

11. In the result, appeal is allowed for statistical purpose.

Pronounced in the open court on 17.01.2022

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 17.01.2022

Thirumalesh, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai