

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT  
AND  
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.422 & 423/PUN/2016  
निर्धारण वर्ष / Assessment Years : 2010-11 & 2011-12

Dy. Commissioner of Income Tax,  
Circle – 1(1), Pune

.....अपीलार्थी / Appellant

बनाम / V/s.

Clarion Technologies Pvt. Ltd.,  
4<sup>th</sup> Floor, Cybercity, Tower S-4,  
Magarpatta City, Hadapsar,  
Pune – 411028

PAN : AABCC8321Q

.....प्रत्यर्थी / Respondent

Assessee by : Shri Shridhar  
Revenue by : Shri Deepak Garg

सुनवाई की तारीख / Date of Hearing : 04-03-2022  
घोषणा की तारीख / Date of Pronouncement : 09-03-2022

**आदेश / ORDER**

**PER S.S. VISWANETHRA RAVI, JM :**

These two appeals by the Revenue against the common order dated 11-12-2015 passed by the Commissioner of Income Tax (Appeals)-1, Pune [‘CIT(A)’] for assessment years 2010-11 and 2011-12.

2. Since, the issues raised in both the appeals are similar basing on the same identical facts. Therefore, with the consent of both the parties, we

proceed to hear both the appeals together and to pass a consolidated order for the sake of convenience.

**3. First, we shall take up appeal in ITA No.422/PUN/2016 for A.Y. 2010-11.**

4. The appellant-revenue raised 7 grounds of appeal amongst which the only issue emanates for our consideration is as to whether the CIT(A) is justified in allowing alternate claim of the assessee u/s. 10A of the Act ignoring the provisions of section 80A(5) of the Act in the facts and circumstances of the case.

5. Heard both the parties and perused the material available on record. We note that this Tribunal in the first round of litigation, in its consolidated order for A.Ys. 2009-10 and 2010-11 in assessee's own case which is at Page No. 153 of the paper book which are reproduced here-under for ready reference :

*"16. We have carefully considered the rival submissions. In the present case, in the past years assessee has been allowed the claim of deduction u/s 10B of the Act. In the return of income filed for the assessment year under consideration i.e. 2010-11 also assessee claimed deduction u/s 10B of the Act in relation to the profits derived from its STPI unit. This claim of deduction came to be denied on the ground that the approval from Director, STPI was insufficient and that the assessee was required to take approval from the Board appointed for this purpose by the Central Government, following the judgement of the Hon'ble Delhi High Court in the case of Regency Creations Ltd. (supra). In the aforesaid situation, at the time of filing of return of income for the instant assessment year, assessee could not have envisaged the denial of its claim of deduction u/s 10B of the Act, which was being allowed in the past. The aforesaid circumstance clearly establishes the bonafides of the reasons prevailing with the assessee for not having made a claim for deduction u/s 10A of the Act in the return of income. Having regard to the peculiar facts and circumstances of the instant case, in our view, the stand of the Revenue that assessee cannot be allowed the benefits of section 10A of the Act merely because the prescribed Audit Report in Form No.56F was not filed in the return of income, is quite erroneous. Pertinently, after denial of deduction u/s 10B of the Act in the assessment order, the earliest opportunity for the assessee to stake claim for deduction u/s 10A of the Act was before the CIT(A); and, the assessee made the claim before the CIT(A) along with the prescribed Audit Report in Form No.56F. The Hon'ble Delhi High Court in the case of Valiant Communications (supra) in similar*

circumstances held that the claim of the assessee for deduction u/s 10A of the Act is required to be examined in accordance with law. Pertinently, even in that case assessee had claimed deduction u/s 10B of the Act in the return of income, which was not allowed ultimately in the absence of the unit being approved by the Board appointed by the Central Government, whereas the unit was only registered with the STPI. The Hon'ble Delhi High Court directed the lower authorities to consider the claim of deduction u/s 10A of the Act in accordance with law. In the present case also, we find no reason to deny the assessee an opportunity to put-forth its claim for deduction u/s 10A of the Act with regard the profits of its STPI unit, subject of-course to the fulfillment of the prescribed conditions.

17. Section 10A of the Act provides a deduction of such profits and gains derived by an undertaking from export of articles or things or computer software manufactured or produced by it. The assessee claimed that it has undertaken export of computer software manufactured by it and its unit is registered with Director, STPI. The approval granted by Director, STPI has been held to be a sufficient compliance with requirements of section 10A(2)(i)(b) of the Act even as per the CBDT vide Instruction No.1 of 2006 dated 31.03.2006. Therefore, prima-facie the 100% EOU of the assessee, being registered with STPI, is eligible to stake claim for deduction u/s 10A of the Act, provided the other conditions laid down in section 10A of the Act are satisfied. Therefore, in conformity with the judgement of the Hon'ble Delhi High Court in the case of Valiant Communications (supra), we deem it fit and proper to remand the matter back to the file of the Assessing Officer for verifying the claim of the assessee for deduction u/s 10A of the Act as per law. The Assessing Officer shall consider the Form No.56F furnished by the assessee before the CIT(A) and such other material and submissions that the assessee may put-forth in order to justify its claim of deduction u/s 10A of the Act. Needless to say, the Assessing Officer shall allow a reasonable opportunity of being heard to the assessee before adjudicating on the claim of the assessee for deduction u/s 10A of the Act in accordance with law. Thus, on the alternate plea assessee succeeds.”

6. The Tribunal observed in its order at Para No. 16 “Having regard to the peculiar facts and circumstances of the instant case, the stand of the Revenue that assessee cannot be allowed the benefits of section 10A of the Act merely because the prescribed Audit Report in Form No.56F was not filed in the return of income, is quite erroneous. The Tribunal by placing reliance in the case of CIT vs. Valiant Communication Ltd. in ITA Nos.440 – 441/2012 dated 04.01.2013 of Hon'ble High Court of Delhi held find no reason to deny the assessee an opportunity to put-forth its claim for deduction u/s 10A of the Act with regard the profits of its STPI unit, subject of-course to the fulfillment of the prescribed conditions.” Further, vide Para No. 17 the Tribunal observed that “Section 10A of the Act provides a

*deduction of such profits and gains derived by an undertaking from export of articles or things or computer software manufactured or produced by it. The assessee claimed that it has undertaken export of computer software manufactured by it and its unit is registered with Director, STPI. The approval granted by Director, STPI has been held to be a sufficient compliance with requirements of section 10A(2)(i)(b) of the Act even as per the CBDT vide Instruction No.1 of 2006 dated 31.03.2006. Therefore, prima-facie the 100% EOU of the assessee, being registered with STPI, is eligible to stake claim for deduction u/s 10A of the Act, provided the other conditions laid down in section 10A of the Act are satisfied.”* Having observed so in Para Nos. 16 and 17 in consolidated order dated 30-10-2014 in assessee’s own case for A.Ys. 2009-10 and 2010-11 the Tribunal by placing reliance in the case of Valiant Communications (supra) of Hon’ble High court of Delhi remanded the matter to the file of AO for verifying the claim of the assessee for deduction u/s. 10A of the Act as per law by observing clearly the AO shall consider the Form No.56F furnished by the assessee before the CIT(A) and such other material and submissions that the assessee may put-forth in order to justify its claim of deduction u/s 10A of the Act.

7. We note that the AO passed order giving effect to Tribunal’s order vide its order dated 12-06-2015 u/s. 143(3) r.w.s. 254 of the Act. On perusal of the same, we note that the AO denied the alternate claim u/s. 10A of the Act only on the ground that in the absence of claim in the return of income cannot be allowed in view of the mandate of section 80A(5) of the Act. We find nowhere in the assessment order that the AO held the assessee did not satisfy the other conditions laid down in section 10A of the Act. We note that the Tribunal clearly held the approval granted by the Director, STPI has been held to be a sufficient compliance with

requirements of section 10A(2)(i)(b) of the Act even as per the CBDT vide Instruction No. 1 of 2006 dated 31-03-2006 and held the assessee is eligible to claim deduction u/s. 10A of the Act, but, however, the AO without disputing the same, went out to discuss the provisions u/s. 80A(5) of the Act and denied the claim u/s. 10A of the Act vide Para No. 5 of the assessment order. We note that the Tribunal as discussed above in Para No. 16 held the stand of Revenue is quite erroneous in allowing the benefits of section 10A of the Act merely because the prescribed Audit Report in Form No. 56F was not filed in the return of income which clearly establishes that the Tribunal considered the issue in its peculiar facts and circumstances by taking into consideration the provisions of section 80A(5) of the Act. Therefore, in our opinion, the only step is available for the AO is to examine whether the assessee fulfilled the other conditions to the satisfaction provision u/s. 10A of the Act. As discussed above, the AO did not dispute the same. The CIT(A) in the impugned order at Page No. 25 vide Para No. 7 allowed alternate claim u/s. 10A of the Act by placing reliance on the order of ITAT as against the submissions made by the assessee in Page No. 6 vide Para No. 5 of the impugned order. Therefore, we find no reason to interfere with the order CIT(A) and it is justified. Thus, the grounds raised by the appellant-revenue are dismissed.

8. In the result, the appeal of Revenue is dismissed.

**ITA No. 423/PUN/2016 for A.Y. 2011-12**

9. In this appeal also appellant-revenue raised 7 grounds of appeal amongst which the only issue emanates for our consideration is as to whether the CIT(A) is justified in allowing alternate claim of the assessee

u/s. 10A of the Act ignoring the provisions of section 80A(5) of the Act in the facts and circumstances of the case.

10. Heard both the parties and perused the material available on record. The ld. DR placed on record the chronology of events regarding the proceedings in various stages from AO to ITAT for A.Y. 2011-12 along with decisions. On perusal of the same, we note that the AO denied the claim u/s. 10B of the Act vide order dated 18-03-2014 u/s. 143(3) of the Act. Having aggrieved, the assessee filed an appeal before the CIT(A) wherein it is noted that the claim u/s. 10B of the Act was confirmed and the AO is directed to verify the alternate claim u/s. 10A of the Act vide its order dated 28-11-2014. The AO in its giving effect proceedings rejected the claim u/s. 10A of the Act vide its order dated 15-06-2015. Against which in first appeal, the CIT(A) allowed alternate claim u/s. 10A of the Act by placing reliance on the order for A.Y. 2009-10. The assessee and revenue filed cross appeals before the ITAT against the said order dated 11-12-2015 passed by the CIT(A). This Tribunal in assessee's appeal in ITA No. 510/PUN/2015 directed the CIT(A) to decide the issue in fresh regarding the claim u/s. 10B of the Act. In Revenue's appeal the Tribunal held that the assessee is not entitled to claim alternate deduction u/s. 10A of the Act vide its order dated 20-09-2017 vide Para No. 5 of its order. On perusal of Para No. 5 we note that the Co-ordinate Bench of Tribunal observed since the issue relating to section 10B of the Act is remanded to the file of CIT(A) for its fresh consideration, the alternate claim for deduction u/s. 10A of the Act does not arise and held that the assessee is not entitled alternate claim u/s. 10A of the Act. We find there was no order brought to our notice by both the parties contrary to the findings of this Tribunal in assessee's own case for A.Y. 2011-12 in ITA No. 1646/PUN/2015. In view

of the same, we find merit in the arguments of ld. DR that the present appeal of Revenue is to be allowed. Accordingly, the order of CIT(A) in allowing alternate claim u/s. 10A of the Act to the assessee is set aside. Thus, the grounds raised by the Revenue are allowed.

11. In the result, the appeal of Revenue is allowed.

12. To sum up, the appeal of Revenue in ITA No. 422/PUN/2016 is dismissed and the appeal of Revenue in ITA No. 423/PUN/2016 is allowed.

Order pronounced in the open court on 09<sup>th</sup> March, 2022.

Sd/-  
(R.S. Syal)  
VICE PRESIDENT

Sd/-  
(S.S. Viswanethra Ravi)  
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 09<sup>th</sup> March, 2022.  
रवि

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

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

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

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