

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH: CHENNAI**

श्री महावीर सिंह, माननीय उपाध्यक्ष, एवं  
श्री मनोज कुमार अग्रवाल, माननीय लेखा सदस्य के समक्ष  
**BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND  
SHRI MANOJ KUMAR AGGARWAL, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.2832 & 2833/Chny/2019  
निर्धारण वर्ष /Assessment Years: 2010-11 & 2011-12

&

**Cross-Objection Nos.21 & 22/Chny/2020  
Assessment Years: 2010-11 & 2011-12**

The Income Tax Officer,  
Corporate Ward-4(2),  
Chennai-34.

(अपीलार्थी/**Appellant**)

v. M/s.Nimbeon –  
Intertechnologies Pvt. Ltd.,  
No.37, Second Cross Street,  
East Shenoy Nagar,  
Chennai-600 030.  
[PAN: AABCN 8999 D]  
(प्रत्यर्थी/**Respondent/  
Cross-Objector**)

Department by : Mr.P.Sajit Kumar, JCIT  
Assessee by : Mr.T. Banusekar, CA  
सुनवाई की तारीख/Date of Hearing : 12.04.2022  
घोषणा की तारीख/Dt. of Pronouncement : 18.04.2022

आदेश / **ORDER**

**PER MAHAVIR SINGH, VICE PRESIDENT:**

These two appeals by the Revenue and two Cross Objections by the assessee are arising out of the common order of the Commissioner of Income Tax (Appeals)-8, Chennai, in ITA No.50/17-18 & 386/16-17 dated 29.07.2019. The assessment was framed by the Asst. Commissioner of

Income Tax (OSD), Corporate Ward-4(2), Chennai, for the AYs 2010-11 & 2011-12, u/s.143(3) r.w.s.147 of the Income Tax Act, 1961 (hereinafter "the Act") vide his orders dated 28.12.2017 & 26.12.2016 respectively.

**2.** The only common issue in these two appeals of Revenue are as regards to the order of the Ld.CIT(A) allowing the claim of deduction u/s.10A & 10B of the Act. For this, in both the orders the Revenue has raised identical worded grounds and the facts are exactly identical. Hence, we take the AY 2010-11 in ITA No.2832/Chny/2019 and decide the issue.

The relevant grounds raised by the Revenue are as under:

*2. The Ld. CIT(A) erred in holding that the assessee company is eligible to claim deduction u/s.10B of the IT. Act for A.Y.2010-11.*

*2.1 The Ld. CIT(A) failed to notice that the assessee company had not obtained further approval and ratification from Board in order to avail the exemption of income u/s.10B of the Act,*

*3. The Ld. CIT(A) erred in holding that the assessee is eligible to claim deduction u/s.10A of the IT. Act being a recognized eligible unit under the STPI Scheme.*

*3.1 The Ld. CIT(A) failed to notice that the assessee has not fulfilled the conditions stipulated for claiming exemption u/s.10A of the IT. Act.*

**3.** The brief facts of the case are that the assessee is a software company with an STPI Unit under Software Technology Park of India (in short "STPI") in the Export Oriented Unit (in short "EOU") at AKS Nagar, Coimbatore. The assessee company claimed deduction u/s.10B of the Act, on the export proceeds to the extent of Rs.53,69,598/- and Rs.27,39,591/- for the AYs 2010-11 & 2011-12 respectively. The AO disallowed the claim of deduction holding that the assessee company has not obtained Certificate from the Board i.e. Board of Approval for Export Oriented Unit Scheme as mentioned in the provisions of Sec.10B of the Act.

**4.** Aggrieved, the assessee preferred an appeal before the Ld.CIT(A). The Ld.CIT(A) allowed the claim of deduction u/s.10B of the Act, for both the AYs by following the decisions of the Hon'ble Gujrat High Court in the case of M/s.ECI Technologies Pvt. Ltd., reported in [2015] 375 ITR 595 (Guj.). The Ld.CIT(A) observed in Para No.5, as under:

*5. The submission of the assessee is examined. The specific wording in section 10B requires the assessee to obtain approval of the EOU/EPZ scheme as well as from a board constituted by the Government for this purpose. The assessee company has obtained certificate under EOU scheme for being eligible to claim deduction u/s 10B as well as under STPI scheme for claiming deduction u/s 10A of the IT Act. The CBDT has also clarified vide its instruction dt.09.03.2019 that once an assessee obtains approval under EOU scheme, the same can be ratified by the board of approval subsequently. The Government of India, through export promotion council for EOUs and SEZs, had clarified that the Development Commissioners of EOUs /SEZs are delegated the power to approve units on behalf of the board of approval. To this extent, the assessee company has also obtained a deemed approval from central government in accordance with the provisions of the scheme. The assessee company has fulfilled all other conditions required for claiming deduction u/s 10B. This issue has also been discussed the Hon'ble Gujarat High Court in M/s. ECI Technologies Pvt. Ltd. (375 ITR 595) which has held that the approval obtained from Development Commissioner is sufficient for claiming deduction u/s.10B. Considering the facts and circumstances as above, it is held that the assessee company is eligible to claim deduction u/s 10B of the IT Act for Assessment Year 2010-11 and 2011-12.*

**5.** Aggrieved, the Revenue is in appeal for both the AYs. Before us, the Id.Sr.Dr. raised the issue vide CBDT Circular F.No. 178/19/2008-ITA-I dated 09.03.2009 requiring an approval granted by the Development Commissioner ratified by the Board of Approval for Export Oriented Unit Scheme. The Central Board of Direct Taxes (in short "CBDT") has issued instruction dated 09.03.2009 in F.No.178/19/2008-ITA-I clarifying that "an approval granted by the Development Commissioner in the case of hundred percent export oriented unit will be considered valid once such an approval is ratified by the Board of Approval for EOU scheme". The Sr.DR argued that there is no ratification of approval given to the Certificate issued by Development Commissioner by the Board of Approval for Export Oriented

Unit Scheme. Hence, according to him, the primary condition is not fulfilled. Apart from that the Id.Sr.DR stated that the other conditions as mentioned in approval granted by Software Technology Park of India vide reference No.STPIC/G/324/2005-06/478 dated 08.06.2005 that as regards to export jobs, the benefits will be granted after entering into a formal export contract with the clients as well as with STPI, Chennai. The conditions mentioned in this letter was referred to by Id.Sr.Dr, which reads as under:

*You will be entitled to get the benefits under the STP Scheme, only after entering into the legal agreement with STPI-Chennai. You are expected to do export jobs only after entering into an formal export contract with the client in the client's letter head and duly signed by both the parties. Submission of Softex Forms with export contract to STPI is mandatory.*

**6.** The Ld.Counsel for the assessee Mr.T.Banusekar, argued that the assessee has fulfilled all the conditions and stated that the "Export Promotion Council for EOUs & SEZs" issued Circular No.68 on 14.05.2009 i.e. subsequent to the Circular issued by the CBDT in F.No. 178/19/2008-ITA-I dated 09.03.2009 and therefore, the Circular No.68 issued on 14.05.2009 becomes more relevant as it provides further clarification on the same subject. Therefore, once it has been clarified by "Export Promotion, Council for EOUs & SEZs" that the Development Commissioners have been granting approval under delegated power of the Board of Approval, the approvals granted by the Development Commissioner are deemed to be valid approvals for the purpose of Section 10B. Consequentially, the Circular dated 09.03.2009 issued by CBDT requiring an approval granted by Development Commissioner to be ratified by the Board of Approval for EOU Scheme becomes redundant. It is further

stated that the Circulars issued by the Department are not binding on the assessee and hence, the condition for ratification imposed in Circular dated 09.03.2009 issued by CBDT is also not binding on the assessee. The Ld.Counsel for the assessee also argued that for this proposition relied upon the decision of the Hon'ble Supreme Court in the case of Commissioner of Customs etc. v. Indian Oil Corporation Ltd. & Anr. Reported in [2004] 267 ITR 0272 (SC) and also in the case of UCO Bank v. CIT reported in [1999] 237 ITR 0889 (SC).

**7.** As regards the objection of the Department that the assessee has not provided copies of legal agreement with STPI, Chennai and with the clients for formal export contracts, the Ld.Counsel for the assessee placed the relevant agreement before us and we have gone through the same.

**8.** We have heard the rival contentions and gone through the facts and circumstances of the cases. We noted that the assessee is a 100% export oriented company engaged in manufacture and export of Computer software. The unit of the assessee company has been approved under the STP scheme of the Government of India as a 100% Export Oriented Unit (EOU) for Computer software. The assessee has also been allotted the green card by the Software Technology Park of India.

**9.** While completing assessment for the assessment year 2010-11 the Assessing Officer has denied the assessee's claim of deduction u/s.10B by referring to instruction No.2/2009 dated 09.03.2009 ratified by

[F.No.178/19/2008-ITA-I] dated 08.05.2009 which states that an approval granted by Development Commissioner in the case of an 100% EOU will be considered valid, once such approval is ratified by the Board of approval for the EOU scheme. The Assessing Officer has also relied on the judgment of the Delhi High Court in CIT v Regency Creations Ltd. [2013] 353 ITR 0326 (Del) where the Delhi High Court held that unless there is express authorization, in terms of a statute, and an actual delegation of power, a statutory authority in whom jurisdiction or power is reposed, is alone vested with it, to the exclusion of others. The Delhi High Court in that case disallowed the claim of deduction u/s.10B on the ground that specific procedure enacted for that purpose has to be followed and that there was nothing in any of the Circulars or instructions implying that approval for purposes of an STP also entitled the unit to a benefit u/s.10B.

**10.** In this connection, it is relevant to note that the Explanation 2(iv) to Section 10B defines a 100% export-oriented undertaking as under:

*"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;"*

**11.** In this connection, it is to be noted that Circular No.68 dated 14.05.2009 issued by the "Export Promotion Council for EOUs & SEZs" states that from 1990 onwards Board of Approval has delegated the power of approval of 100% EOU to the Development Commissioners and

accordingly, most of the 100% EOUs are approved by Development Commissioners.

**12.** Hence, in the case of the assessee, the green card by the Software Technology Park of India has been granted on 26.08.2005 recognizing the unit of the assessee as 100% EOU for Computer software. Therefore, the approval is in accordance with the provisions of section 10B. Hence, the assessee cannot be denied deduction u/s.10B on the ground that assessee has not got approval from Board appointed by the Central Government under Section 14 of Industrial (Development and Regulation) Act, 1951. Further, we noted from the arguments of the Ld.Counsel for the assessee that the assessee is a 100% export oriented company engaged in manufacture and export of Computer software. The unit of the assessee company has been approved under the STP scheme of the Government of India as a 100% Export Oriented Unit (EOU) for Computer software. The assessee has also been allotted the green card by the Software Technology Park of India.

**13.** In view of the above, we are of the view that the Ld.CIT(A) has rightly allowed the claim of deduction u/s.10B of the Act as the alleged approval by Board, the powers have been delegated in regard to approval of 100% EOU to the Development Commissioner and accordingly, the assessee being a 100% EOU is approved by the Development Commissioner. We confirm the order of the Ld.CIT(A) and this issue of Revenue is dismissed.

**14.** As regards to alternate claim allowed by the Ld.CIT(A) on the claim of deduction u/s.10A of the Act. Since, the claim of deduction u/s.10B of the Act is allowed, we need not to adjudicate the alternate claim as adjudicated by the Ld.CIT(A), because, that has become academic. Thus, these two appeals filed by the Revenue are dismissed.

**15.** Coming to Cross-Objections of the assessee, we noted that the Cross-Objections raised by the assessee are supportive of the order of the Ld.CIT(A). Since, we have adjudicated the issue of the claim of deduction u/s.10B of the Act, on merits and allowed in favour of the assessee by dismissing the appeals of the Revenue and we need not adjudicate the issue of re-opening, which is left open and accordingly, dismissed as infructuous. The Ld.Counsel for the assessee also stated that he is not pressing the grounds raised in the Cross-Objections in the eventuality of relief allowed by the Tribunal in dismissing the Revenue appeals allowing the claim of deduction u/s.10B of the Act. Hence, the Cross-Objections filed by the assessee are also dismissed as infructuous.

**16.** In the result, the appeals filed by the Revenue and Cross-Objections filed by the assessee are dismissed.

Order pronounced on the 18<sup>th</sup> day of April, 2022, in Chennai.

**Sd/-**  
**(मनोज कुमार अग्रवाल)**  
**(MANOJ KUMAR AGGARWAL)**  
**लेखा सदस्य /ACCOUNTANT MEMBER**

**Sd/-**  
**(महावीर सिंह)**  
**(MAHAVIR SINGH)**  
**उपाध्यक्ष /VICE PRESIDENT**

चेन्नई/Chennai,  
दिनांक/Dated: 18<sup>th</sup> April, 2022.  
**TLN**

आदेश की प्रतिलिपि □ ग्रेषित/**Copy to:**

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