

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

**माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON'BLE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**  
**HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ ITA Nos.1915, 1916 & 1917/Chny/2018  
(निर्धारण वर्ष / **Assessment Years: 2006-07, 2008-09 & 2011-12**)

<b>M/s. Aryan Granites &amp; Monuments Pvt. Ltd.</b> Subhgraha, Flat No.1, Ground Floor, 24/13, Balaraman Street, Adyar, Chennai – 600 020.	<b>बनाम/ Vs.</b>	<b>DCIT,</b> Corporate Circle-1(1), Chennai.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. <b>AADCA-0862-E</b>		
(□ पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थी की ओरसे/ <b>Appellant by</b>	:	Shri T. Banusekar (C.A) – Ld. AR
प्रत्यर्थी की ओरसे/ <b>Respondent by</b>	:	Shri V. Justin (Addl.CIT) – Ld. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	21-06-2022
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	06-07-2022

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeals by assessee for Assessment Years (AY) 2006-07, 2008-09 & 2011-12 arises out of the common order of learned Commissioner of Income Tax (Appeals)-1, Chennai [CIT(A)] dated 28-03-2018. First, we take up appeal for AY 2006-07 wherein the grounds taken by the assessee read as under: -

1. For that the order of the Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case to the extent prejudicial to the interests of the appellant and is opposed to the principles of equity, natural justice and fair play.

2. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the order of the Assessing Officer is without jurisdiction.
3. For that the Commissioner of Income Tax (Appeals) erred in disallowing the deduction claimed u/s.10B by the appellant.
4. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the disallowance u/s 10B is not invocable in the facts and circumstances of the case.

**PRAYER**

For these grounds and such other grounds that may be urged before or during the hearing of the appeal it is most humbly prayed that the Hon'ble Tribunal may be pleased to

- a) Allow the claim of deduction u/s.10B
- b) Pass such other orders as the Hon'ble Tribunal may deem fit.

As evident the sole subject matter of appeal is disallowance u/s 10B. Having heard rival submissions, our adjudication would be as under.

2. The assessee being resident corporate assessee is stated to be engaged in manufacturing of granite monuments. It was assessed for the year u/s 143(3) on 28.11.2008. In the return of income, the assessee claimed deduction u/s 10B for Rs.46.93 Lacs. It had two manufacturing units i.e., Unit-1 and Unit-II. Unit-1 was 100% EOU manufacturing units and registered with MEPZ which was established in Financial Year 2004-05 whereas Unit-II is non-10B unit. The assessee computed business income after claiming deduction u/s 10B and thereafter, it adjusted brought forward business losses / unabsorbed depreciation. However, Ld. AO held that business losses and unabsorbed depreciation was to be adjusted first before granting any deduction u/s 10A / 10B. The action of Ld. AO reduced deduction claimed u/s 10A whereas no deduction was granted u/s 10B.

3. The Ld. CIT(A) denied the deduction on the ground that the copy of approval from Board was not produced by assessee before Ld. AO. As per the decision of Hon'ble High Court of Madras in **CIT V/s Live**

**Connection Software Solutions Pvt. Ltd. (51 Taxmann.com 454)**, the Board approval was a mandatory requirement. In the assessee's case, the Board gave approval only on 15.04.2010 and therefore, the benefit of Sec.10B would be available only from AY 2011-12. The other grounds raised by the assessee were allowed. Aggrieved, the assessee is in further appeal before us.

### **Our findings and Adjudication**

4. It is discernible that Unit-1 is entitled for deduction since Financial Year 2004-05 onwards. The approval was granted to assessee's unit by Asstt. Development Commissioner (ADC), MEPZ-SEZ vide letter F.No.A/2003 (080)EOU-TN dated 03.12.2003. The same has been ratified by the Board of Approval as intimated by ADC vide letter dated 03.07.2013 which read as under: -

With reference to your letter dated 27.03.2013, it is informed that LOP No.A/2003/080/EOU-TN dt. 03.12.2003 issued to your unit for setting up a new undertaking at Mangalam Village Madhuranthakam Taluk, Kancheepuram District by Development Commissioner, MEPZ-SEZ, Tambaram, Chennai-45 has been ratified by the Board of Approval in its meeting held on 15.04.2010 (copy enclosed).

Thus, it could be seen that the approval granted to the assessee vide letter dated 03.12.2003 has subsequently been ratified by the Board of Approval in meeting held on 15.04.2010. The act of ratification, in our considered opinion, would relate back to the date of original approval i.e., 03.12.2003 and not merely to period falling after 15.04.2010. Considering all these facts only, the assessee has been granted deduction u/s 10B by Ld. CIT(A) in appellate order for AY 2010-11, the copy of which is on record. The CBDT instruction dated 09.03.2009 has examined the validity of approvals given by development

commissioner. It has been instructed by CBDT that an approval granted by the development commissioner would be considered valid, once such approval is ratified by the Board of Approval for EOU scheme. The case law of Hon'ble Gujarat High Court in **Pr. CIT V/s ECI Technologies Pvt. Ltd. (375 ITR 595)** also support the view that ratification by Board would relate back to the date on which the approval was granted by development commissioner. Similar is the view of Hon'ble Delhi High Court in **CIT V/s Enable Exports Pvt. Ltd. (ITA No.1072 of 2011 dated 14.09.2011)**. The decision of Hon'ble High Court of Madras in **CIT V/s Live Connection Software Solutions Pvt. Ltd. (51 taxmann.com 454)** deal with a situation wherein the assessee had no approval, at all, from the appropriate authority which is not the case here. Therefore, we direct Ld. AO to grant the applicable deduction to the assessee. The appeal stand allowed in terms of our above order.

**Assessment Year: 2008-09**

5. The facts in AY 2008-09 are quite similar and the appellate order is common order. The deduction as claimed by the assessee was denied by Ld. CIT(A) on similar reasoning as for AY 2006-07. Aggrieved, the assessee is in further appeal before us. Facts being pari-materia the same, applying our adjudication for AY 2006-07, we direct Ld. AO to grant the applicable deduction. The appeal stands similarly allowed.

**Assessment Year: 2011-12**

6. In this year, the dispute is with respect to quantum of deduction u/s 10B. The deduction claimed by the assessee was reduced in view of the fact that export proceeds of Rs.48.22 Lacs were not received in

India within a period of 6 months as per the provisions of Sec.10B(3). The assessee submitted that it had already sought extension of time from authorized dealer SBI commercial branch. However, since no approval extending time was shown, the said amount was not considered by Ld. AO to compute the deduction.

7. The Id. CIT(A), noted that though the assessee made various applications to SBI seeking extension of time, however, no such extension was ever granted by SBI. Accordingly, the action of Ld. AO was upheld. Aggrieved the assessee is in further appeal before us

8. Upon perusal of impugned order, it is undisputed fact that the assessee could not bring export proceeds within a stipulated period of 6 months and sought extension of time from authorized dealer i.e., SBI on various occasions. The assessee made extension application on various dates viz. 23.11.2011, 25.01.2012, 27.04.2012, 23.07.2012 and 23.08.2012, however, the applications were neither rejected nor any approval was communicated to the assessee. This being so, a presumption would arise in assessee's favor that the extension was deemed to have been granted by SBI. This is further fortified by the fact that no action or penalty is shown to have been imposed for violation of any provisions of FEMA. No deficiency has been communicated by SBI in assessee's applications. Upon perusal of details as filed before us, it could be gathered that sale proceeds of Rs.48.22 Lacs as contained in 6 invoices have fully been realized by the assessee up-to 22.02.2013. Under these circumstances, the assessee, in our considered opinion, would be entitled for deduction on such realizations. The case law of Delhi Tribunal in **M/s Tecnotree Convergence Ltd. V/s ITO (ITA No.2830 & 2831/Del/2013 dated**

22.07.2021) supports our view. Accordingly, we direct Ld. AO to grant benefit of deduction on belated export realization of Rs.48.22 Lacs. The appeal stands allowed.

**Conclusion**

9. All the appeals stand allowed in terms of our above order.

Order pronounced on 06<sup>th</sup> July, 2022.

Sd/-  
(V. DURGA RAO)  
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-  
(MANOJ KUMAR AGGARWAL)  
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 06-07-2022  
EDN/-

**आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded 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