

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.: **3381, 3382 & 3383/Chny/2019**
निर्धारण वर्ष / Assessment Years: 2006-07, 2010-11 & 2011-12

Assistant Commissioner of
Income Tax,
Corporate Circle -1(2),
Chennai – 600 034.

M/s. Cornet Technologies
v. (India) Pvt. Ltd.,
"A" Wing, II Floor, New Plot No.
10, A-16, SIPCOT Information
Technology Park,
Padur Post, Siruseri,
Kanchipuram – 603 103.
[PAN: AABCC-5184-B]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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

: Shri. AR V Sreenivasan, Addl. CIT
: Shri. P.V. Krishnamani, CA

सुनवाई की तारीख/Date of Hearing

: 04.01.2023

घोषणा की तारीख/Date of Pronouncement

: 11.01.2023

आदेश /ORDER

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

These three appeals filed by the Revenue are directed against the common order passed by the learned Commissioner of Income-tax (Appeals)-1, Chennai dated 09.10.2019 and pertains to assessment years 2006-07, 2010-11 & 2011-12. Since, facts are identical and issues are

common, for the sake of convenience, these appeals were heard together and are being disposed of by this consolidated order.

2. The Revenue has more or less filed common grounds of appeals for all three assessment years. Therefore, for the sake of brevity, grounds of appeal filed for assessment year 2006-07 are reproduced as under:

1. The order of the learned CIT(A) is contrary to law, facts and circumstances of the case.

2. The Id CIT(A) erred in deleting the disallowance made u/s 10B by holding directors of STPI as competent authority for granting approval u/s . 10B?

3. The Id CIT(A) erred in holding the directors of STPI as competent authority for granting approval u/s 10B by relying on the Hon'ble Jurisdictional High Court Decision in the case of M/s live Connections software Solutions Pvt Ltd [2014] 51 Taxmann.com 454, whereas, the relied upon case, the assessee for claiming deduction /s 10B, was not having registration with STPI for the assessment year involved and Jurisdictional High Court held that having registration with STPI is a pre-condition for claiming deduction u / s 1 OB, hence, the Jurisdictional High Court in the relied upon case has not decided anything regarding - whether, without any delegation of power from the Board of Approval for EOU scheme for sec 10B, Directors of STPI is a competent authority for granting approval u/s 10B or not, as the question was never before the Jurisdictional High Court?

4. The Id. CIT(A) failed to appreciate for claiming exemption u/s 10B approval under STP Scheme may be necessary but not sufficient precondition without any delegation of power from the Board of Approval for EOU scheme?

5. The Id. CIT(A) failed to appreciate the decision of Hon'ble Delhi High Court held that a unit which is not approved by the Board appointed by the Central Govt. in exercise of powers conferred under section 14 of the Industries (Development and Regulation) Act, 1951 is not entitled for exemption under section 10B of the Act?

6. The Id CIT(A) erred in holding the directors of STPI as competent authority for granting approval u/ s 10B whereas the approval of STPI has not been ratified by the Board of Approval for EOU scheme u/s 10B, as required as explained in the CBTD Instruction No. 2/2009 dated 9/3/2009?

7. The Id CIT(A) erred in applying the Apex Court Decision in the case of Yokogawa India Ltd which is regarding computation stage of deduction u/s 10A whereas the in the present case of the assessee the eligibility of the deduction u/ s 1 OB itself is not tenable?

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

3. The brief facts of the case are that, the assessee company is engaged in the business of hardware, software and firmware development. The assessee is having two units i.e., one at STPI, which is claiming 100% tax benefit u/s. 10B of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), and one unit which is located at non-STPI and not claiming exemption u/s. 10B of the Act. The appellant unit situated at STPI is approved by the Development Commissioner, but said approval has not been ratified by the Board of the Approval for EOU scheme as required under the

law. Therefore, AO opined that the assessee is not entitled for deduction u/s. 10B of the Act, in respect of eligible profit and thus, rejected deduction claimed u/s. 10B of the Act for all three assessment years. The AO had also recomputed eligible profit of a unit claiming exemption u/s. 10B of the Act by disallowing set off of losses of other unit. The relevant findings of the AO are as under:

"3. In order to comply with direction of the ITAT the case was posted for hearing and heard on 12.01.2017 & 13.03.2017. The approval obtained is only for 100% EOU and does not have relative approval for the purpose of claiming deduction u/s 10B of the Income-tax Act, 1961. Approval for 100% EOU is issued for setting up the unit, run the unit, adhering to stipulation laid down in the concerned approval. This approval cannot play any role in computation of income and assessment under the Income tax Act. Case law applicable in this case is REGENCY CREATIONS LTD (2012) Delhi High Court it was held that "in the present case there is no modification or official document suggesting that either the Inter Ministerial Committee, or any other officer or agency was nominated to perform the duties of the Board (constituted u/s 14 of the IDR Act), for purposes of approvals u/s 10B ".

Further, the CBDT in Instruction No.2/2009 dated 9/3/2009 as stated inter alia, that, "the matter regarding validity of approvals given by Development Commissioners has been examined in the Board it has been decided that an approval granted by the Development Commissioner in the case of hundred per cent export oriented unit will be considered valid once such an approval is ratified by the Board of Approval for EOU scheme".

However, assessee could not produce any proof even now, as to whether; the approval by Director STPI has been further ratified by the Board of Approval for EOU scheme. In view of the discussion as above, the claim of the assessee for deduction U/s. 10B is, rejected. Hence, the assessee is not eligible to claim deduction u/s 10B not only on the fact of

absence of approval from concerned authorities, but also on the circumstances of the case lying parallel with the case law quoted just above. Moreover, the instruction No 2 of 2009 dated 09.03.2009 is squarely applicable in this case. On this score also the assessee fails to be justified in claiming section 10B. Coming to the issue of more of one units, it is reiterated that here this was not an issue at the time of scrutiny. But after being verified with details it is ascertained as evident as the basic criteria for deduction u/s 10B is being not fulfilled in the absence of approval. Hence, consideration of multiple units does not surface from the analysis made on the approval already. In these circumstances the computation of income is made as under in accordance with law as directed with ITAT.

2. SET OFF OF BROUGHT FORWARD LOSSES BEFORE CLAIMING DEDUCTION U/S. 10B:

During the year, assessee has claimed deduction u/s. 10B for a sum of Rs.1,65,23,354/-. Further as per the return of income, assessee has brought forward loss of total of Rs. 1,13,61,460/-. After claiming deduction u/s. 10B, the assessee in the return of income has arrived at a Nil income and has carried forward loss of Rs.2,23,66,284/- (includes current year business loss from domestic division} to subsequent year: However as per the order U/s. 154 dated 28.11.2013 for AV 2010-11, assessee do not have any brought forward loss to be adjusted against the total income of the current year.

Without prejudice to the above, it is stated that, the assessee is not eligible to claim deduction under section 10B before setting off the brought forward losses.

Since as per Section 10B, the deduction from the profits derived from the undertaking is allowable only against the total income of the assessee, the claim made by the assessee is incorrect. The total income of the assessee Is arrived after setting off all the losses as per Section 32 as well as from Section 70 to 74. The provision of the Section 10B of the Act provides deduction from the income and not an exemption of income. Even in the Apex court decision in the case of CIT v. Shirke Construction Equipment Ltd. (2007), it is held that the 'losses of the domestic undertaking have to be compulsorily set off against the profits of the export undertaking.

In the scheme of the Act, the profits of the unit eligible for deduction u/s. 10B of the Act would form part of the income computed under the head 'profits and gains of business

or profession'. However, the same does not suffer tax for which deduction will have to be made in respect thereof while computing the income under the head 'profits and gains of business or profession'. In other words, deduction in respect of profits eligible u/s. 10B of the Act is required to be made at the stage of computing the income under the head 'profits and gains of business or profession'.

In this regard, reliance is placed on the decision of Kerala High Court in the case of Patspin India Ltd. v. CIT Cochin wherein, it is held that the deduction u/s. 10B on export profit of EOU has to be computed after setting off carried forward unabsorbed depreciation as provided u/s. 32(2).

Further, in the case of ²Himatasingike Seide Ltd vs CIT [2006], the Hon'ble Karnataka High Court has held that, unabsorbed depreciation brought forward should be set off against the total income before claiming deduction under section 10B. The same has been confirmed by the Supreme Court, vide order dated 19.09.2013 reported in 2013-T10L-53-SC-IT-LB."

4. Being aggrieved by the assessment order, assessee preferred an appeal before the Ld. CIT(A). Before the Ld. CIT(A), the assessee has submitted approval granted by competent authority i.e., Development Commissioner, STPI and also furnished letter from Director, STPI of India, STPI dated 30.12.2011, to prove that Director, STPI has taken up the issue of approval for ratification from the Board in the subsequent IMSC meetings. The assessee had also agitated the findings of the AO, with regard to the computation of deduction u/s. 10B of the Act, without setting up losses of other units, in light of the decision of Hon'ble Apex Court in the

case of CIT vs Yokogawa India Ltd [2017] 77 Taxmann.com 41 (SC), and argued that deduction u/s. 10B of the Act, to eligible unit should be allowed without setting off of losses of other units. The CIT(A), after considering relevant submissions of the assessee and also by following the decision of Jurisdictional High Court of Madras in the case of Live Connections Software Solutions P. Ltd vs CIT [2014] 51 Taxmann.com 454, deleted addition made by the AO towards disallowance of deduction u/s. 10B of the Act, by holding that once the facility has been approved by the Director, STPI and further, the same has been ratified by the Board as required under the law in subsequent meeting, then merely for the reason that the Board has not issued ratification certificate, deduction cannot be denied.

5. The Ld. DR, referring to the decision of the Hon'ble Supreme Court in the case of PCIT vs M/s. Wipro Limited in Civil Appeal No. 1449 of 2022, more particularly para 11 of the judgment submitted that, in order to get the benefit of exemption, the assessee should satisfy the conditions prescribed therein and further, as per the settled position of law, the assessee claiming exemption has to strictly and literally comply with the exemption provisions. In this case,

although the assessee has got approval from Director, STPI, but said approval has not been ratified by the Board as required under the law. Therefore, the AO has rightly disallowed deduction claimed u/s. 10B of the Act. However, the Ld. CIT(A) by following the decision of the Hon'ble Madras High Court in the case of Live Connections Software Solutions P. Ltd vs CIT (supra), allowed the relief without appreciating fact that the question of law in the said judgment is on approval with STPI, however, it does not deal with delegation of power from the Board of Approval for EOU scheme as per section 10B of the Act. As regards manner and method of computation, he fairly agreed that the issue is settled by Hon'ble Supreme Court in the case of CIT vs Yokogawa India Ltd (supra), and therefore, he fairly conceded the issue.

6. The Id. Counsel for the assessee, referring to the decision of the Hon'ble Madras High Court in the case of Indus Teqsite (P) Ltd vs DCIT (supra), submitted that deduction u/s. 10B of the Act, could not be denied to 100% EOU, where approval was granted by Development Commissioner, but on such approval ratification certificate was not yet given by Board of Approval. He further referring to a letter from Director, STPI

dated 30.12.2011, submitted that as per said letter, the Development Commissioner has placed necessary papers before the Board of Approval in the subsequent meeting, and it is sufficient proof that approval has been ratified by the Board. Therefore, the Id. CIT(A) has rightly appraised facts and deleted additions made by the AO. In this regard, he relied upon the decision of the Hon'ble High Court of Madras in the case of Indus Teqsite (P) Ltd vs DCIT [2021] 133 Taxmann.com 134 (Mad).

7. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. There is no dispute with regard to the fact that STPI unit which is providing software development services was approved by Director, STPI. In fact, the AO is not disputing fact that the unit has been approved by STPI. The only reason for the AO to deny benefit of deduction u/s. 10B of the Act, was ratification of approval given by the Director from the Board of Approval. According to the AO, unless the facility is approved by the Central Government through appropriate authority constituted u/s. 14 of Industries (Development and Regulation) Act, and if the 100% EOU is only approved by

Director, STPI, it would not be a valid approval as per the law. Therefore, rejected deduction claimed u/s. 10B of the Act.

8. We find that, there is no dispute with regard to the observations of the AO that unless approval given by Director, STPI is ratified by the Board of Approval, it cannot be said that the unit claiming benefit of deduction is having a valid approval. But, in the present case, there is no dispute with regard to the fact that, the unit has been approved by the Director, STPI and further, Director in their letter dated 30.12.2011 informed the Assessing Officer, i.e., the Assistant Commissioner of Income-tax, Company Circle -1(3), Chennai, that the unit approved as 100% EOU from a Software Technology Parks of India (STPI) and further, the procedure followed thus far at Ministry of Communication and Information Technology has been that, all approvals by the Director STPI, Designated Officer, Department of IT, Govt. of India, are taken up for ratification in the subsequent IMSC meetings. Further, the Minutes of the IMSC do not reflect the names of the individual units. From the above, it is very clear that the assessee has satisfied the conditions prescribed therein for claiming deduction u/s. 10B of the Act, by getting

approval from Director of STPI and further, the Director of STPI has also clarified that approval has been placed before the Board for ratification. In our considered view, the assessee has furnished necessary evidence to prove that it has all necessary approvals for claiming deduction u/s. 10B of the Act. Therefore, the AO ought to have allowed deduction u/s. 10B of the Act as claimed by the assessee. In this regard, it is relevant to refer the decision of Hon'ble Jurisdictional High Court of Madras in Indus Teqsite (P) Ltd vs DCIT (supra), where it has been clearly held that deduction u/s. 10B of the Act could not be denied to 100% EOU, where approval was granted by Development Commissioner, but on said approval ratification certificate was not yet given by Board of Approval. Therefore, we are of the considered view that, the assessee is entitled for deduction u/s. 10B of the Act and the Ld. CIT(A) has rightly allowed the claim. As regards, the arguments of the Ld. DR, in light of the decision of Hon'ble Supreme Court in the case of PCIT vs M/s. Wipro Limited (Supra), we find that the ratio laid down by the Hon'ble Supreme Court in the said judgment is on rule of interruption of law. However, it does not render any ratio of deduction u/s. 10B of the Act. As we already noted in earlier part of this judgment, there is no

dispute with regard to the strict interruption of law in order to claim benefit/exemption. In the present case, even if you go by the decision of the Hon'ble Supreme Court on interruption of law, in our considered view, the assessee has satisfied the conditions prescribed u/s. 10B of the Act, for claiming deduction towards eligible profit. Therefore, we do not find any merit in the arguments of the Ld. DR present for the Revenue. In so far as the decision relied upon by the Ld. Dr in the case of CIT Vs Regency Creations Ltd [2012] 27 Taxmann.com 322 (Del), we find that the Hon'ble Delhi High Court categorically held that eligibility of 100% EOU for deduction u/s. 10B of the Act is that, it should be approved by Central Government, through appropriate authority constituted u/s. 14 of Industries (Development and Regulation) Act, and if the 100% EOU is only approved by Director, STPI it would not be a valid approval. We, once again do not find any merit in the arguments of the Id. DR in light of above judgment, because in the present case, assessee has placed all evidences to prove that steps have been taken by the Director, STPI to get ratification from the Board of Approval.

9. In this view of the matter and by following the decision of Hon'ble Madras High Court in the case of Indus Teqsite (P) Ltd vs DCIT (supra), we are of the considered view that, the assessee is entitled for deduction u/s. 10B of the Act, towards profit derived from STPI unit. The Ld. CIT(A) after considering the relevant facts has rightly allowed deduction as claimed by the assessee and thus, we are inclined to uphold the findings of the Id. CIT(A) and reject ground taken by the Revenue.

10. In so far as, method of computation of deduction u/s. 10B of the Act, although the Revenue is not disputing the ratio laid down by Hon'ble Apex Court in the case of CIT vs Yokogawa India Ltd (supra), with regard to the computation of eligible profit before allowing set off of losses of other units, but disputed the present case in light of different sections under which said deduction has been claimed. According to the Revenue, the Hon'ble Supreme Court has considered the provisions of section 10A, whereas in the present case, the assessee has claimed deduction u/s. 10B of the Act. In our considered view, the arguments of the Revenue is fallacious for the simple reason that provisions of section 10A & 10B of the Act both are deduction provisions which operates under

same set of terms and conditions and thus, the ratio laid down by the Hon'ble Supreme Court in the case of CIT vs Yokogawa India Ltd (supra), squarely applies for computation of eligible profit in terms of provisions of section 10B of the Act also. Therefore, we are of the considered view that, there is no error in the reasons given by the Id. CIT(A) to direct the AO to compute eligible profit of unit claiming deduction u/s. 10B of the Act, without allowing set off of losses of other unit or brought forward losses of earlier years, and thus, we reject ground taken by the revenue on this issue also.

11. In the result, appeals filed by the revenue for all three assessment years are dismissed.

Order pronounced in the court on 11th January, 2023 at Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /Vice President

Sd/-
(जी. मंजुनाथ)
(G. MANJUNATHA)
लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 11th January, 2023

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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