

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

श्री ए. मोहन अलंकामणी , लेखा सदस्य एवं श्री जी. पवन कुमार, न्यायिक सदस्य के समक्ष

BEFORE SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER
AND SHRI. G. PAVAN KUMAR, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No.466/Mds/2015

& C.O.No.40/Mds/2015 (in ITA No.466/Mds/2015)

निर्धारण वर्ष /Assessment year : 2010-2011.

The Assistant Commissioner
of Income Tax,
Corporate Circle 3(1)
Chennai 600 034.

Vs. M/s. Thinksoft Global Services Ltd,
No.6A, Sixth floor, Prince Infocity II,
No.283/3 & 283/4,
Rajiv Gandhi Salai, Kandanchavadi,
OMR, Chennai 600 096.

(अपीलार्थी/Appellant)

[PAN AABCT 0976G]

(प्रत्यर्थी/Respondent/Cross Objector)

अपीलार्थी की ओर से/ Appellant by

: Shri. Pathlaveth Peerya, IRS, CIT.

प्रत्यर्थी की ओर से /Respondent by

: Shri. R. Vijayaraghavan, Advocate

सुनवाई की तारीख/Date of Hearing

: 19-04-2016

घोषणा की तारीख /Date of Pronouncement

: -05-2016

आदेश / O R D E R

PER G. PAVAN KUMAR, JUDICIAL MEMBER:

The appeal of the Revenue and Cross Objection by the assessee are directed against order of the Commissioner of Income-tax (Appeals)-III, Chennai in ITA No.1946/2013-14/CIT(A)-III, dt 31.10.2014

for the assessment year 2010-2011 passed u/s.143(3) and 250 of the Income Tax Act, 1961 (herein after referred to as 'the Act').

2. The Revenue has raised the following grounds:-

- 2.1 The CIT(A) has erred in directing the Assessing Officer to follow the directions of the order of Hon'ble ITAT for in ITA No.1375/Mds/2014, dated 8.08.2014 for A.Y. 2009-2010.*
- 2.2 The CIT(A) failed to take note that the grounds on which the assessee has went on appeal for A.Y. 2009-2010 is totally different from the issue of hand for A.Y. 2010-2011.*
- 2.3 The CIT(A) failed to consider the fact that the only issue for the A.Y. 2010-2011 is whether the assessee is eligible for deduction u/s.10A beyond 10 years or not. It is submitted that the assessee himself has accepted that the year of commencement of operation is Asst. Year. 2000-01, which is evident from the order for A.Y. 2009-2010 u/s.154 dated 30.10.2012. It is submitted that the assessee has not appealed before the appellate authority on the fact brought out in the said order dated 30.03.2012.*
- 2.4 The assessee having accepted that the 10th year of commencement of manufacturing of software A.Y. 2009-2010 the same cannot be disputed in the next year i.e. A.Y. 2010-11.*
- 2.5 The CIT(A) ought to have dismissed the appeal of the assessee for the A.Y. 2010-2011".*

3. The Brief facts of the case the assessee company is engaged in the business of providing offshore testing and documentation services for Banking, financial services and insurance and filed return of income for the assessment year 2010-2011 with total income of Rs.1,34,14,879/- and

was processed u/s.143(1) of the Act and subsequently, notice u/s.143(2) of the Act was issued. In compliance to notices, the Id. Authorised Representative of assessee appeared from time to time and furnished details. In the assessment proceedings, the Id. Assessing Officer alleged that assessee has claimed deduction u/s.10A of the Act Rs.6,72,91,865/-. On examination and perusal of records pertaining to the assessment year 2009-2010 being the last year of claim covered u/s.10A of the Act, were the company completed ten years of starting of manufacturing computer software. The Id. Assessing Officer based on the factual findings was of the view that Deduction u/s.10A(1) of the Act is no longer available to the assessee and disallowed ₹.6,72,91,865/- and completed assessment vide order u/s.143(3) of the Act dated 28.03.2013. Aggrieved by the order, the assessee filed an appeal before Commissioner of Income Tax (Appeals).

4. In the appellate proceedings, the Id. Authorised Representative of assessee argued on the grounds and submitted that the company was established in the financial year 1998-1999 and commenced operations only from assessment year 2000-2001 and claimed exemption u/s.10A of the Act from assessment year 2001-02 onward as per prevailing law, were the assessee was allowed option of claiming deduction u/s.10A of the Act for five assessment years out of eight assessment years. The period of eight years shall be considered from the commencement of operations. In the assessment year 2001-02 there was amendment to the

provisions and tax holiday period was extended to ten years and the assessee company has for the first time claimed exemption u/s.10A from the assessment year 2001-02 and rightly worked out deduction u/s.10A of the Act for the assessment year 2010-2011. The Id. Commissioner of Income Tax (Appeals) considered the submissions and facts. The only debatable and disputed issue is claim of exemption u/s.10A of the Act from assessment year 2001-2002 or from commencement of operations i.e assessment year 2000-2001. The assessee submitted that it has claimed tax holiday period from assessment year 2001-02 and 10th year or last year will be the assessment year 2010-2011. The Id. Authorised Representative further relied on the order of ITAT in assessee's own case in ITA No.1375/Mds/2014 dated 08.08.2014 for the assessment year 2009-2010 where the matter was remanded back for fresh consideration and observed at page 3 of his order as under:-

'6. We have heard both parties and perused the case file. Facts of the case stand narrated in the preceding paragraphs. It emerges that though the Assessing Officer had accepted the assessee's claim of deduction u/s.10A in rectification, he did not allow its ground pertaining to export of manpower, foreign tax credit, MAX credit etc (supra). The assessee produced before us a copy of the Commissioner of Income Tax (Appeals)'s order dated 24.03.2013 pertaining to the preceding assessment year 2008-09 and submits that the very issues stand decided in its favour resulting in conflicting views. The Revenue support the Commissioner of Income Tax (Appeals)'s order. In these circumstances and particularly in view of the fact that the CIT(A) has not gone into merits of these issues raised at all, we deem it appropriate to remit the assessee's grounds back to the assessing authority who shall pass a fresh order as per law. Needless to say, he shall take into account the Commissioner of Income Tax (Appeals)'s order pertaining to assessment year 2008-09(supra).

*The assessee would be granted sufficient opportunity of hearing.
The assessee's grounds are accepted for statistical purposes".*

The Id. Commissioner of Income Tax (Appeals) relied on the decision of ITAT and directed the Assessing Officer to verify assessee claim for the assessment year 2010-2011 and partly allowed the appeal. Aggrieved by the of Commissioner of Income Tax (Appeals) order, the Revenue has assailed an appeal before Tribunal.

5. Before us, the Id. Departmental Representative argued that Commissioner of Income Tax (Appeals) has erred in directing the Assessing Officer to follow the earlier years order of ITAT i.e the assessment year 2009-2010. The grounds raised in the assessment year 2009-2010 was entirely different and the crux of the issue being claim of exemption u/sec.10A of the Act. That was already claimed in assessment year 2009-2010 as last year and substantiated his submissions on the findings of the Assessing Officer and prayed for allowing the appeal.

6. Contra, the Id. Authorised Representative of assessee relied on the basic facts of first year of claim of exemption in the assessment year 2001-02. Hence, the assessee has rightly claimed in 10th year exemption i.e. assessment year 2010-2011 and there is no ambiguity on facts and relied on the order of Commissioner of Income Tax (Appeals) and prayed for dismissal of appeal.

7. We heard rival submissions and perused the material on record. The Id. Departmental Representative submitted that Commissioner of Income Tax (Appeals) has not considered the facts of 2009-2010 which is on a different aspect of claim u/s.10A of the Act and it pertains to other issues. The assessee has claimed to have commenced its operations in the assessment year 2000-2001 and claimed exemption u/s.10A of the Act for the first time in assessment year 2001-02 even though obtained registration with STPI before 31st March, 2000. The Id. Authorised Representative contentions being though the assessee has commenced its operations in the financial year 1999-2000 but did not claim deduction u/s.10A in assessment year 2000-2001. We considering the apparent facts, assessment records and submissions of the Id. Departmental Representative and the assessee is unable to explain with evidence whether deduction u/s.10A of the Act claimed for the first time in 2001-02 or otherwise as alleged by the Revenue in assessment year 2000-2001. Neither of the parties could substantiate their arguments with any realistic evidence of assessment year 2001-2002. We are of the opinion that the matter has to be re-examined on the aspects of claim of deduction based on earlier records by the Assessing Officer. We set aside the order of Commissioner of Income Tax (Appeals) and direct the Assessing Officer to verify the first year's claim of the assessee and the assessee shall be

provided with adequate opportunity of being heard before passing the order. The appeal of the Revenue is allowed for statistical purpose.

8. Since the entire issue is remitted back to the file of Assessing Officer for verification.

9. The Cross-objection filed by the assessee is dismissed as infructuous.

10. In the result, the appeal of the Revenue is allowed for statistical purpose and Cross objection by the assessee is dismissed.

Order pronounced on Wednesday, the 11th day of May, 2016 at Chennai.

Sd/-

(ए. मोहन अलंकामणी)

(A. MOHAN ALANKAMONY)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(जी. पवन कुमार)

(G. PAVAN KUMAR)

न्यायिक सदस्य /JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated:11th May, 2016.

venu

आदेश की प्रतिलिपि अग्रेषित/Copy 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