

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री अब्राहम पी.जॉर्ज, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1094/Mds/2014

निर्धारण वर्ष / Assessment Year : 2006-07

M/s Cenosphere India Pvt. Ltd.,
282, Linghi Chetty Street,
Chennai - 600 001.

v. The Assistant Commissioner of
Income Tax,
Company Circle I(3),
Chennai.

PAN : AACCS 2764 E

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Dr. Anita Sumanth, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri Shiva Srinivas, JCIT

सुनवाई की तारीख/Date of Hearing : 02.08.2016

घोषणा की तारीख/Date of Pronouncement : 30.09.2016

आदेश /O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) – II, Chennai, dated 31.01.2014 and pertains to assessment year 2006-07.

2. The only issue arises for consideration is with regard to disallowance of claim made by the assessee under Section 10B of the Income-tax Act, 1961.

3. Dr. Anita Sumanth, the Ld.counsel for the assessee, submitted that the Assessing Officer disallowed the claim of the assessee under Section 10B of the Act on the ground that the Export Oriented Unit was not approved by the Board appointed by Central Government. In fact, according to the Ld. counsel, the Assessing Officer as well as the CIT(Appeals) placed reliance on the judgment of Delhi High Court in CIT v. Regency Creations Ltd. (2012) 27 taxmann.com 322. According to the Ld. counsel, initially, the approval was granted by the Development Commissioner and subsequently it was rectified by the Board. Therefore, the Ld.counsel submitted that the matter may be remitted back to the file of the Assessing Officer to re-examine the matter in the light of the rectification by the Board.

4. We have heard Shri Shiva Srinivas, the Ld. Departmental Representative also. As rightly submitted by the Ld.counsel for the assessee, the Assessing Officer disallowed the claim of the assessee under Section 10B of the Act. A bare reading of the

assessment order shows that the Assessing Officer found that the assessee converted its existing DTA unit into Export Oriented Unit. The Assessing Officer has also found that the industrial undertaking was in existence since 21.05.1998. However, in the audit report, the assessee indicated that the first year of operation is assessment year 2005-06. In view of this factual situation, the Assessing Officer disallowed the claim of the assessee.

5. On appeal by the assessee, the CIT(Appeals) observed that there was no material to suggest that Inter-Ministerial Committee or other agency nominated to perform the duties of the Board constituted under Section 14 of the IDAR Act granted approval. Therefore, by placing reliance on the judgment of Delhi High Court in Regency Creations Ltd. (supra), the CIT(Appeals) confirmed the order of the Assessing Officer.

6. Now the Ld.counsel for the assessee claims that the Board constituted under IDAR Act rectified the decision of Development Commissioner, therefore, the matter needs to be reconsidered by the Assessing Officer. We find some force in the submission of the Ld.counsel for the assessee. When the assessee claims that the Board constituted under Section 14 of the IDAR Act rectified the

decision of approval granted by the Development Commissioner, the matter needs to be reconsidered by the Assessing Officer. Accordingly, the orders of the authorities below are set aside and the issue deduction under Section 10B of the Act is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the issue afresh in the light of the material that may be filed by the assessee and thereafter decide the same in accordance with law after giving a reasonable opportunity to the assessee.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on 30th September, 2016 at Chennai.

sd/-

(अब्राहम पी.जॉर्ज)

(Abraham P. George)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 30th September, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-II, Chennai
4. आयकर आयुक्त/CIT, Central-1, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.