

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 1943 & 1944/Mds/2016

निर्धारण वर्ष / Assessment Year : 2010-11 & 2011-12

The Deputy Commissioner of Income Tax,
Corporate Circle – 4(1),
Chennai.

v. M/s. Mahati Infotech Pvt. Ltd.,
No.52, First Main Road,
Nanganallur,
Chennai – 600 061.

(अपीलार्थी/Appellant) PAN: AAFCM5458G
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri V. Nandakumar, JCIT
प्रत्यर्थी की ओर से/Respondent by : Shri T. Banusekar, CA

सुनवाई की तारीख/Date of Hearing : 29.12.2016

घोषणा की तारीख/Date of Pronouncement : 31.01.2017

आदेश / O R D E R

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

Both the appeals of the Revenue are directed against the respective order of Commissioner of Income Tax (Appeals) – 8 dated 31.03.2016 and pertain to the assessment year 2010-11 & 2011-12. Since, common issue arises for consideration in both appeals we heard the same together and disposing off the same by this common order.

2. Shri V. Nandakumar, the Ld. Departmental Representative submitted that the assessee claimed exemption under Section 10A of the Income Tax Act, 1961 (in short "the Act"), on the ground that it was developing software. According to the Ld. D.R., the assessee has not developed any software. In fact, the software was developed by M/s. Easy Design Systems. The assessee purchased the software from M/s. Easy Design Systems and exported the same. The Ld. D.R., further submitted that the source code for the software remains with M/s. Easy Design Systems. Therefore, the assessee is not entitled for exemption under Section 10A of the Act. Referring to Section 10A of the Act, the Ld. D.R., submitted that Section 10(A) is applicable only in respect of the assessee who manufacture or produce computer software and not for purchasers of the computer software. Referring to the judgment of the Madras High Court in Elgi Ultra Industries Limited (2012) 25 taxmann.com 561 (Mad), the Ld. D.R., submitted that the Revenue has filed a Special Leave Petition before the Supreme Court and the same is pending. The Ld. D.R., placed his reliance on the judgment in the Gujarat High Court in the case of Deepkiran Foods (P) Ltd v ACIT (2014) 46 taxmann.com 415 and submitted that when the computer

software were manufactured by other companies, the assessee is not entitled for exemption under Section 10A of the Act. According to the Ld. D.R., the CIT (Appeals) ought not to have followed the judgment of the Madras High Court in M/s. Elgi Ultra Industries Limited (*supra*).

3. On the contrary, Shri T. Banusekar, the Ld. representative for the assessee submitted that the software developed by the assessee is the product of the assessee company. The software was developed under the instruction, control and supervision of the assessee. Merely because the assessee outsourced the development of software it does not disentitle the assessee for claiming exemption under Section 10A of the Act. M/s. Easy Design Systems also has not made any claim as supporting manufacturer. According to the Ld. representative the source code remains with the assessee and the assessee remains to be the owner of the software. On an identical state of facts, the Madras High Court in M/s. Elgi Ultra Industries Limited (*supra*) examined the issue and found that as long as the effective involvement of the assessee is there in the form of quality control, supply of material, etc., even if it was outsourced the assessee is entitled for exemption under

Section 10A of the Act. Therefore the CIT (Appeals) by rightly placing his reliance in the order of the Madras High Court in M/s. Elgi Ultra Industries Limited allowed the claim of the assessee.

4. We have considered the rival submissions on either side and perused the material available on record. It appears the coding and programming is done through M/s. Easy Design Systems. The assessee claims that the coding was done under its supervisory control. The question arises for consideration, when the software was developed by M/s. Easy Design Systems under the supervisory control of the assessee, whether it would amount to manufacture of software for claiming deduction under Section 10A of the Act. We have carefully gone through the judgment of the Madras High Court in M/s. Elgi Ultra Industries Limited. In the case before Madras High Court, the assessee claimed deduction under Section 80IA of the Act in respect of a new division called 'Ultra Division' which engaged in the manufacture and sale of grinders. The assessee claimed that the process of assembly was done through two job workers. The assessee has also claimed that manufacturing activity starting from planning, procuring of raw materials, inspection, testing and quality control norms are decided by the assessee.

Though the assembly was done through job workers, the finance, planning, advertisement, inspection etc., are undertaken by the assessee. In these factual circumstances, the Madras High Court found that the question as to whether the assessee was engaged in the manufacturing process or not has to be seen in the context of control exercised by the assessee. The High Court found that since the assessee was exercising control in the development of the product, the assessee is entitled for deduction under Section 80IA of the Act.

5. We have carefully gone the provision of Section 80IA of the Act. The Section 80IA of the Act provides for deduction of the profits derived from any business of manufacturing or producing any article or thing. Since the High Court found that on the identical set of facts that the manufacturing of goods under the direct supervisory control would amount to manufacturing activity of the assessee itself, this Tribunal is of the considered opinion that the CIT (Appeals) has rightly found that the assessee is manufacturing computer software by placing his reliance on the judgment of the Madras High Court in M/s. Elgi Ultra Industries Limited (*Supra*).

6. In this case also, the assessee engaged M/s. Easy Design Systems for coding or writing program. The finance, supervisory control remains with the assessee. Therefore, this Tribunal is of the considered opinion, when the software was developed under the direct supervision of the assessee by investing its own funds, it has to be construed as the assessee is developing the software. Therefore, the assessee is eligible for exemption under Section 10A of the Act. In view of the above, this Tribunal do not find any reason to interfere with the order of the lower authority. Accordingly, the same is confirmed.

7. In the result, both the appeals of the Revenue stands dismissed.

Order pronounced on 31st January, 2017 at Chennai.

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S. Sunder Singh)

लेखा सदस्य/Accountant Member

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 31st January, 2017.

JR.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-8, Chennai
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.