

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

"D" BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.480/Mds/2015

निर्धारण वर्ष / Assessment Year : 2008-09

The Deputy Commissioner of
Income Tax,
Corporate Circle – 2,
63-A, Race Course Road,
Coimbatore.

(अपीलार्थी/Appellant)

v. M/s ABT Infor Systems Pvt. Ltd.,
2nd floor, Kalidas Road,
Ramnagar, Coimbatore – 641 009.

PAN : AACCA 4475 G

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Dr. B. Nischal, JCIT

प्रत्यर्थी की ओर से/Respondent by : None

आयकर अपील सं./ITA No.481/Mds/2015

निर्धारण वर्ष / Assessment Year : 2008-09

The Deputy Commissioner of
Income Tax,
Corporate Circle – 2,
63-A, Race Course Road,
Coimbatore.

(अपीलार्थी/Appellant)

v. M/s RJN Software Pvt. Ltd.,
78, Om Sakthi Nagar, Trichy Road,
Coimbatore – 641 045.

PAN : AADCR 0268 F

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Dr. B. Nischal, JCIT

प्रत्यर्थी की ओर से/Respondent by : Sh. R. Vijayaraghavan, Advocate

सुनवाई की तारीख/Date of Hearing : 14.10.2015

घोषणा की तारीख/Date of Pronouncement : 13.11.2015

आदेश / O R D E R

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

Both the appeals of the Revenue are directed against the respective orders of the Commissioner of Income Tax (Appeals)-1, Coimbatore, dated 12.12.2014, relating to two individual assesseees. Since common issue arises for consideration in both the appeals, we heard both the appeals together and disposing of the same by this common order.

2. Dr. B. Nischal, the Ld. Departmental Representative, submitted that the assessee claimed deduction under Section 10B of the Income-tax Act, 1961 (in short 'the Act') before the Assessing Officer. The same was rejected since the assessee has not obtained necessary approval from the Board, as required under the provisions of the Income-tax Act. However, the CIT(Appeals) has allowed the claim of the assessee under Section 10A of the Act without giving any opportunity to the Assessing Officer. According to the Ld. D.R., the assessee has not made any claim under Section 10A of the Act before the Assessing Officer. Therefore, the Assessing Officer had no occasion to examine the claim of the assessee under Section 10A of the Act. In fact, it was an alternative

claim made by the assessee before the CIT(Appeals). Therefore, the CIT(Appeals) ought to have given opportunity to the Assessing Officer to examine the claim of the assessee. Since such an opportunity was not given, the Ld. D.R. submitted that the matter may be remitted back to the file of the Assessing Officer.

3. Sh. R. Vijayaraghavan, the Ld.counsel for the assessee in I.T.A. No.481/Mds/2015, submitted that the alternative claim under Section 10A of the Act was made before the CIT(Appeals). In fact, the CIT(Appeals) rejected the claim of the assessee under Section 10B of the Act. After considering various decisions on the issue, including the decision of the Special Bench of this Tribunal in *Scientific Atlanta India Technology (P) Ltd. v. ACIT (38 SOT 252)*, the CIT(Appeals) directed the Assessing Officer to calculate deduction under Section 10A of the Act. On a query from the Bench whether any opportunity was given to the Assessing Officer to examine the claim of the assessee under Section 10A of the Act, The Ld.counsel for the assessee had fairly submitted that no opportunity was given to the Assessing Officer and no remand report was called for.

4. We have considered the rival submissions on either side and perused the relevant material on record. The assessee claimed deduction under Section 10B of the Act before the Assessing Officer. The Assessing Officer rejected the claim of the assessee. In fact, the CIT(Appeals) concurred with the order of the Assessing Officer in respect of rejection of claim under Section 10B of the Act. However, by considering alternative claim of the assessee under Section 10A of the Act, the CIT(Appeals) directed the Assessing Officer to compute deduction under Section 10A of the Act. When a new claim was made before the CIT(Appeals), this Tribunal is of the considered opinion that an opportunity should be given to the Assessing Officer to examine the correctness of the claim. Otherwise, the CIT(Appeals) being an authority coterminous with that of the Assessing Officer, has to examine the eligibility of the assessee for deduction under Section 10A of the Act. The CIT(Appeals), by placing reliance on certain case laws, directed the Assessing Officer to compute deduction under Section 10A of the Act. The CIT(Appeals) admittedly has not given any opportunity to the Assessing Officer. Therefore, this Tribunal is of the considered opinion that the alternative claim of the assessee under Section 10A of the Act has to be re-examined by the Assessing Officer in the

light of the material available on record. Accordingly, the order of the lower authority is set aside and the issue of deduction under Section 10A 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 available on record and thereafter decide the claim of the assessee under Section 10A of the Act, in accordance with law, after giving reasonable opportunity to the assessee.

5. In the result, both the appeals of the Revenue are allowed for statistical purposes.

Order pronounced on 13th November, 2015 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 13th November, 2015.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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