

(2011) 09 DEL CK 0408

In the Delhi High Court

Case No : ITA No. 1072 of 2011 (A.Y. 2007-08)

CIT

APPELLANT

Vs

Enable Exports (P.) Ltd.

RESPONDENT

Date of Decision : 14-09-2011

Acts Referred:

Customs Act, 1962 — Section 58

Income Tax Act, 1961 — Section 10B, 10B(2), 143(2), 143(3)

Industries (Development and Regulation) Act, 1951 — Section 14

Citation : (2012) 204 TAXMAN 134

Hon'ble Judges : M.L. Mehta, J; A.K. Sikri, J

Bench : Division Bench

Advocate : N.P. Sahni, for the Appellant; C.S. Aggarwal and Prakash Kumar, for the Respondent

Final Decision : Dismissed

Judgement

1. The assessee company filed return of income for the Assessment Year 2007-08 declaring income of Rs. 20,23,243. The case of the assessee was selected for scrutiny and notice u/s 143(2) of the Income Tax Act (hereinafter referred to as the Act) was issued and served upon the assessee. Assessment u/s 143(3) of the Act was completed by the Assessing Officer (AO). During the course of assessment proceedings, it was observed by the AO that the assessee had claimed exemption u/s 10B of the Act. During the course of scrutiny proceedings, the AO observed that certain necessary conditions which are required to be fulfilled for claiming exemption under the said Section are not fulfilled by the assessee company. After considering the submissions of the assessee in this regard, the AO denied the exemption u/s 10B of the Act to the assessee company and made disallowance of Rs. 1,00,22,725 in the total income of the assessee. Reasons given by the AO were as under:

(i) That the assessee has been granted 100% EOU status from the board specifically constituted u/s 14 of Industries (Development and Regulation) Act,

1951, which is a requirement under the provisions of the Act.

(ii) That the assessee is using the old machinery/computers which is in contravention of the provisions of 10B(2)(iii) of the Act.

(iii) That the assessee company is not maintaining separate books of accounts as mandated by the provisions of Section 10B(2) of the Act.

In view of the above, the claim of assessee u/s 10B of the I.T. Act is not allowed.

Aggrieved by the order of the AO, the assessee filed appeal before the CIT(A). The CIT(A) allowed the appeal of the assessee. CIT(A) was of the opinion that the assessee fulfilled all the conditions for claiming the benefit of Section 10B of the Act. The CIT(A) found that through power to grant approval to 100% EOUs initially invested in the Board constituted u/s 14 of the Industries (Development and Regulation) Act, the Government in a series of measures aimed at speeding up the approval process, had delegated the power for approval to the assessee.

2. The CIT(A) also turned down the second reason given by the AO observing that the AO did not appreciate that the claim for deduction u/s 10B of the Act was made for the first time in the Assessment Year consequent upon the conversion of DTA to 100% EOU. Thus, it was neither formed by the splitting up or the reconstruction of a business already in existence and was not formed by the transfer to a new business profession used for any purpose.

3. Likewise, the CIT(A) was not convinced that the third reason given by the AO holding that the observations of the AO that the assessee was not maintaining books of accounts was based on a misappreciation of fact. The CIT(A) re-emphasized that the assessee operated as DTA unit till 31-7-2006. With effect from 01-8-2006, it started operating as 100% EOU (SEZ) unit. There was no mention u/s 10B(2) of the Act of any requirement for maintaining separate books of account and it was not necessary to maintain separate books of account for claiming deduction under that provision.

4. The Revenue challenged the aforesaid order by filing appeal before the Income Tax Appellate Tribunal (hereinafter referred to as the Tribunal), which has been dismissed by the Tribunal.

5. Still dissatisfied, the Revenue has come in appeal in this Court. We may record that the entire emphasis of Mr. Sahni, learned counsel appearing for the Revenue, was on the first reason given by the AO while denying the benefit of Section 10B of the Act to the assessee. His submission was that its the Board alone constituted u/s 14 of the Industries (Development & Regulation) Act, which is competent to give the approval and therefore, approval of no other Authority is mandated.

6. After hearing the counsel for the parties, we are of the opinion that the Tribunal has rightly decided the issue and no substantial question of law arises in the matter. Our reasons for the same are given hereunder:

On 05-6-2006, the assessee company had applied for conversion from a Domestic Tariff Area (DTA) to 100% EOU application for setting up EOUs in Special Economic Zone. The aforesaid application of the assessee company was accepted by the Development Commissioner, Noida, SEZ and letter of permission dt. 15-6-2006 was issued to the assessee. Legal agreement dt. 07-7-2006 for EOU Units was entered between the assessee company and the President of India acting through the Development Commissioner. The aforesaid legal agreement was accepted by the Development Commissioner, Noida, SEA and approval under 100% EOU was granted to the assessee respondent on 11-7-2006.

7. Thereafter, the assessee was issued Green Card No. 120 on 11-7-2006 by the Development Commissioner, Noida SEZ. Licence for the Private Bonded Warehouse u/s 58 of the Customs Act, was also granted to the assessee on 31-7-2006.

8. Learned counsel for the assessee is right in his submission that the power to grant approvals to 100% EOUs initially vested with the Board specifically constituted u/s 14 of the Industries (Development & Regulation) Act, 1951.

However, the Government in a series of measures aimed at speeding up the approval process, had delegated the powers for approval to the Development Commissioner. Thus, CBDT in its Circular F.N. 178/19/2008-ITA dt. 09-3-2009 issued clarification regarding deduction u/s 10B of the Act, which reads as under:

The matter regarding validity of approvals given by Development Commissioner has been examined in the Board. It has been decided that an approval granted by the Development Commissioner in the case of an hundred percent export oriented unit will be considered valid, once such an approval is ratified by the Board of Approval for EOU scheme.

9. The aforesaid Circular was issued by the CBDT in view of the request made by the Export Promotion Council for EOUs & SEZs, these EOUs have been approved by the Development Commissioner under delegated powers of the Board of Approval and are entitled for exemption from the Act. In view of the aforesaid, CBDT issued the aforesaid Circular clarifying that the approval granted by the Development Commissioner is valid for claiming deduction u/s 10B of the Act. It is further submitted that the approval granted by the Development Commissioner has also been ratified by Board of Approval for EOU scheme. We are, therefore, of the opinion that the approval granted by the Development Commissioner was valid for the purpose of claiming deduction u/s 10B of the Act. This appeal is dismissed in limine.