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(2011) 03 KAR CK 0365

In the Karnataka High Court

Case No : ITA No. 323 of 2010

CIT — APPELLANT

Vs

Expert Outsource (P) Ltd. — RESPONDENT

Date of Decision : 01-03-2011

Acts Referred:
Income Tax Act, 1961 — Section 10 (2), 10 A, 10 A (2) (i) (b), 143 (3)

Citation : (2011) 243 CTR 411

Hon'ble Judges : Ravi Malimath, J;N. Kumar, J

Bench : Division Bench

Advocate : K.V. Aravind, for the Appellant; M.V. Seshachala, for the Respondent

Final Decision : Dismissed

Judgement

1. The revenue has preferred this appeal challenging the order passed by the Income Tax Appellate Tribunal, which has upheld that order of the Appellate Authority granting the benefit of tax u/s 10A of the Income Tax Act, 1961 (for short hereinafter referred to as the Act).

2. The assessee is carrying on the business as a software consultant and developing software. It is a private limited company. It was incorporated on 17-12-2003. It entered into an agreement with its parent company on 20-10-2003 for providing software development services. The first invoice was raised by the assessee on 29.12.2003. The assessee secured the STPI registration on 4-8-2004. For the assessment year 2005-06, the assessee claimed deduction u/s 10A of the Act. He had enclosed Form-56F along with the return of income of support of the claim of deduction u/s 10A. Thereafter, scrutiny assessment u/s 143(3) was completed on 28-9-2007. The assessing authority disallowed the deduction claimed u/s 10A on the ground that the company was incorporated and started business activity prior to obtaining approval of STPI. Hence, the conditions laid down u/s 10A(2)(i)(b) and (c) of the Act are not satisfied. The assessee did not choose the available option of conversion of the DTA unit into STP unit. Therefore, when the assessee has used

the machinery previously used, which is more than 20% of the total plant and machinery, the condition laid down u/s 10A(2)(iii) of the Act are not satisfied. Aggrieved by the said order, the assessee preferred an appeal. The Commissioner of Income Tax (Appeals) by a well considered order by placing reliance on the circular issued u/s 10B of the Act and also the several judgments dealing with the above aspects, held that the assessee is entitled to the deduction u/s 10A to the existing unit and consequently, the conditions laid down u/s 10A(2)(i)(b) and 10A(2)(ii) and (iii) are fulfilled and directed the Assessing Authority to allow eligible deductions u/s 10A. Aggrieved by the said order, the revenue preferred an appeal to the Tribunal which has upheld the said order. Aggrieved by the same, the revenue is in appeal before us.

3. From the aforesaid facts, it is clear that section 10A provides for a deduction from the total income of profits derived by an undertaking from the export of articles of things or computer software for a period of ten consecutive assessment years. The tax holiday period commences with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce such articles or things or computer software. section 10(2) prescribes certain conditions on the fulfillment of which the benefit of 10A could be availed.

4. In the instant case, the assessee began operations on 17-12-2003 whereas the STPI was registered on 4-8-2004. The STP authorities could also permit the conversion of an existing unit into a STPI unit. The purpose of the STP scheme is to encourage exports and gain valuable foreign exchange for the country. The STP scheme provides the benefit of converting a DTA unit into a STPI unit and the same should also hold good for tax purposes. CBDT Circular No. 1/2005 dated 6-1-2005 grants certain benefits u/s 10B. Though the circular is in the context of section 10B, the ratio of the circular equally applies to section 10A also. In fact, the Commissioner of Appeals has referred to various judgments on the point and had come to the conclusion that the benefit of section 10A would also be available even when an existing unit gets converted into a STPI unit. In fact, the material on record discloses that no export of computer software was made before 4-8-2004. The export commenced only after 4-8-2004. The invoices produced in the case clearly establish the said fact. In these circumstances, the appellate authority as well as the Tribunal were justified in extending the benefit of section 10A to the unit in question.

5. We do not see any illegality committed by them. The said finding recorded by the appellate authority as well as the Tribunal is also based on evidence and is in accordance with law. We do not see any substantial question of law that arises for consideration in this appeal. Accordingly, the appeal is dismissed.

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