

(2013) 02 GUJ CK 0095
In the Gujarat High Court
Case No : Tax Appeal No. 599 of 2012

CIT

APPELLANT

Vs

Nova Petrochemicals Ltd.

RESPONDENT

Date of Decision : 25-02-2013

Acts Referred:

Citation : (2013) 02 GUJ CK 0095

Hon'ble Judges : Sonia Gokani, J; Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Mauna M. Bhatt, for the Appellant; B.S. Soparkar, for the Respondent

Judgement

1. The Revenue has preferred this Tax Appeal, challenging the order of the ITAT, Dt. 16-2-2012, raising the following substantial question of law for our consideration,

Whether the Appellate Tribunal has substantially erred in deleting disallowance of exemption u/s 10A of Rs. 2,89,42,468 and treated the same as income u/s 68, without appreciating facts that the assessee had no technical and infrastructure facilities to produce the software?

2. For the assessment year 2003-2004, the assessee filed the return. The question that has been raised in the present appeal is with regard to disallowance u/s 10A of the Income Tax Act, 1961 (herein after referred to as the Act for short), by the Assessing Officer, on the ground that the conditions laid u/s 10A(2)(i) of the Act have not been satisfied, when challenged by the assessee before CIT(Appeals), by passing the detailed order, it sustained the claim of the assessee. Therefore, the Revenue challenged the same before the ITAT and the Tribunal concurred with the CIT(Appeals) and favoured the assessee. Therefore, the present appeal, raising the aforementioned question of law.

3. We have heard learned Sr. Counsels, Ms. Bhatt, for the Revenue and Mr. B.S. Soparkar, for the respondent-assessee and with their assistance examined the material on record.

4. It can be noticed from the evidence and the record that has been produced before us that the assessee in the year 2001-2002 started new venture of software development and claimed gross profit of Rs. 43.6 crores. It claimed sum of Rs. 2,89,42,468 as profit of software division u/s 10A of the Income Tax Act. The Assessing Officer had doubted very professional competence and skill of the assessee-respondent and its employees in developing the software, that too, in a very short duration. He also had questioned the date of registration of certificate approved by the Director, Software Technology Parks of India, Gandhinagar, with respect to the export made through internet. On having failed to be convinced from contemporaneous record that software was developed by the assessee or that the same was transmitted to the foreign countries through internet, he rejected the claim of the assessee u/s 10A of the Act, treating the said transaction as a bogus and sham transaction, and therefore, the entire sum of Rs. 2,89,42,468 had been added as an unexplained cash credit u/s 68 of the Act.

5. It appears from the order of the CIT Appeals that it noted that the Bank Certificate for Export and Realization had indicated the date of invoice, which was 30-3-2000. It further noted that the certificate of STPI had authorized the company to export the software worth \$2,000, which gave the description of the goods sold as Attendance Control System (ACS). With regard to the date of the contract made with the MS Technology which was prior to the date of invoice, the CIT(Appeals) rightly noted that the permission from the Software Technology Parks of India (STPI), an autonomous society under Ministry of Information Technology, Government of India, was received on 29-3-2000 and the date of invoice was, in fact, 30-3-2000. However, getting order on an earlier date i.e. 18-3-2000, may not preclude the assessee to claim benefit under the law as that would not violate requirement of section 10A. It also categorically had held that the Assessing Officer on the basis of the presumption had denied the benefit of section 10A of the Act, which is a special provision in respect of newly established undertakings in free trade zone.

6. It appears that CIT(Appeals) also extensively discussed the report of audit, agreement with STPI, the certificate in respect of the custom boarding arrangement of the assessee-respondent as well as the payment received from various parties through the channel of the banks, to conclude that when the document issued by the STPI, an autonomous society under the Ministry of Information Technology of India, are not challenged by the Assessing Officer or the Department and when there is nothing to infer that these documents or transactions are in any manner bogus or sham and when no controverting evidence has been adduced, it concluded that the Assessing Officer was not justified in making addition u/s 68 of the Act.

7. The tribunal also concurred with all these findings of the CIT(Appeals) and concluded that the assessee had exported the software manufactured by it and was rightly found entitled to the exemption u/s 10A of the Act. Yet, another aspect that weighed with the Tribunal is that the assessee had also offered

demonstration of such software developed by it, at any place of Assessing Officers choice. However, such offer was also not accepted. The fact that the revenue had accepted that the very material was exported by the assessee in the subsequent years, also vindicated the stand of assessee that such software was exported. Totalling of all these facts led the Tribunal to confirm the order of CIT(Appeals).

8. We find from these orders that both the CIT(Appeals) and Tribunal have concurrently held in favour of the assessee-respondent, on the basis of cogent material and clinching evidences adduced before both these authorities and they have elaborately discussed the material evidence and satisfied themselves rightly and they have also recorded their sound reasonings for concluding as to why availability of the benefit to the assessee-respondent in terms of exemption u/s 10A of the Act was wrongly denied by the Assessing Officer. Predominantly, we find that on the basis of the factual matrix, both these authorities have held in favour of assessee. There is nothing contrary either in law or on facts emerge before us to lead us state that any of these findings are perverse and as such give rise to any substantial question of law.

9. In the result, the tax appeal is dismissed.