
(2014) 01 GUJ CK 0147
In the Gujarat High Court
Case No : Tax Appeal No. 688 of 2012

Commissioner of Income Tax

APPELLANT

Vs

ACE Software Exports Ltd.

RESPONDENT

Date of Decision : 20-01-2014

Acts Referred:

Income Tax Act, 1961 — Section 10, 10A, 10B, 11, 115JB

Citation : (2015) 370 ITR 21

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

Bench : Division Bench

Advocate : Pranav G. Desai, Advocate for the Appellant; Manish J. Shah, Advocate for the Respondent

Judgement

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Akil Abdul Hamid Kureshi, J.—The Revenue is in appeal against the judgment of the Income-tax Appellate Tribunal, Rajkot ("the Tribunal" for short), dated May 22, 2012. The following questions have been framed in the tax appeal:

"(i) Whether, in the circumstances and the facts of the case and in law, the Appellate Tribunal is right in holding that deduction claimed by the assessee under section 10A of the Income-tax Act in respect of the STP Rajkot unit should be allowed without adjustment of losses of other units and without adjustment of brought forward losses/unabsorbed depreciation of earlier years?

(ii) Whether, in the circumstances and the facts of the case and in law, the Appellate Tribunal is right in deleting the addition of Rs. 83,01,730 made on account of disallowance of the claim of deduction under section 10A of the Income-tax Act?

(iii) Whether, in the circumstances and the facts of the case and in law, the Appellate Tribunal is right in holding that the income and expenditure attributable to eligible undertaking under section 10A of the Income-tax Act has to be allowed in the case of the assessee while computing the book profit under

section 115JB of the Income-tax Act?"

Previously, in our order dated March 25, 2013, we had issued notice to the respondent only with respect to question (iii). In the said order, we had given reasons for not entertaining questions (i) and (ii), even for issuance of notice. Such reasons read as under:

"3. We have heard learned counsel, Shri Pranav Desai, for the Revenue. It is candidly pointed out to us that questions Nos. (i) and (ii) are already considered in the case of this very assessee in earlier assessment years in Tax Appeals Nos. 687 of 2012 and 831 of 2012, whereby this court has not entertained this issue. The relevant findings in Tax Appeal No. 687 of 2012 are as follows:

"2. Short issue is whether deduction claimed by the assessee under section 10A of the Income-tax Act, 1961, should be allowed without adjustment of losses of other units and without adjustment of brought forward losses and/or its depreciation of earlier years.

3. The Tribunal considered such question in the light of a decision of the Bombay High Court in the case of The Commissioner of Income Tax-10 Vs. Black and Veatch Consulting Pvt. Ltd., and decided the issue in favour of the assessee.

4. We have perused the said decision of the Bombay High Court. In the case of CIT v. Black and Veatch Consulting P. Ltd. (supra) the same issue came up for consideration before the High Court which it was decided in the following manner (page 74 of 348 ITR):

"4. Section 10A is a provision which is in the nature of a deduction and not an exemption. This was emphasised in a judgment of a Division Bench of this court, while construing the provisions of section 10B, in Hindustan Unilever Limited Vs. Deputy Commissioner of Income Tax and Union of India (UOI), . The submission of the Revenue placed its reliance on the literal reading of section 10A under which a deduction of such profits and gains as are derived by an undertaking from the export of articles or things or computer software for a period of ten consecutive assessment years is to be allowed from the total income of the assessee. The deduction under section 10A, in our view, has to be given effect to at the stage of computing the profits and gains of business. This is anterior to the application of the provisions of section 72 which deals with the carry forward and set off of business losses. A distinction has been made by the Legislature while incorporating the provisions of Chapter VI-A. Section 80A(1) stipulates that in computing the total income of an assessee, there shall be allowed from his gross total income, in accordance with and subject to the provisions of the Chapter, the deductions specified in sections 80C to 80U. Section 80B(5) defines for the purposes of Chapter VI-A gross total income to mean the total income computed in accordance with the provisions of the Act, before making any deduction under the Chapter. What the Revenue in essence seeks to attain is to telescope the provisions of Chapter VI-A in the context of the deduction which is allowable under section 10A, which would not be permissible unless a specific

statutory provision to that effect were to be made. In the absence thereof, such an approach cannot be accepted. In the circumstances, the decision of the Tribunal would have to be affirmed since it is plain and evident that the deduction under section 10A has to be given at the stage when the profits and gains of business are computed in the first instance. So construed, the appeal by the Revenue would not give rise to any substantial question of law and shall accordingly stand dismissed. There shall be no order as to costs."

5. We notice that this judgment is followed by the same High Court in the case of Commissioner of Income Tax Vs. Schmetz India (P) Ltd., .

6. Having perused the statutory provision contained in section 10A of the Act as well as section 80A, we see no reason to take a view different from the Bombay High Court as in the present case. Resultantly, tax appeal is dismissed."

2. The sole surviving question is with respect to computation of book profit for the purpose of section 115JB of the Act. The issue is whether expenditure attributable to undertaking of the assessee, which is eligible for deduction under section 10A of the Act, to be allowed while computing the book profit under section 115JB of the Act. The Commissioner of Income-tax (Appeals) considered the issue in the following manner:

"5. Next ground is on non-consideration of income and expenditure attributable to eligible undertaking under section 10A while computing the book profits under section 115JB. As held in paragraph 4.3 above, the undertaking STP Rajkot has to be treated as a separate undertaking eligible for deduction under section 10A. Therefore, the amount of expenditure relatable to eligible to which section 10A applies should be first added back to the profit and then the amount of income of this unit has to be deducted for working out the book profit for the purpose of section 115JB of the Income-tax Act. The Assessing Officer has not worked out the book profits as is required to be done. The Assessing Officer is directed to do the needful as directed above."

3. The Tribunal rejected the Revenue's appeal. Hence, this appeal. Having heard learned counsel for the parties, we notice that under sub-section (1) of section 115JB of the Act, in case of certain companies, the tax has to be levied on the basis of its book profit. For such purpose, the original Explanation contained the definition of "book profits" and included several clauses which specified the amounts by which the net profit of a company shown in the profit and loss account would either be increased or decreased. We are concerned with the assessment year 2006-07. At the relevant time, as the provision stood, clause (f) of the Explanation provided that such net profit would be increased by the amount or amounts of expenditure relatable to any income to which section 10 other than the provisions contained in clause (23G) thereof or section 10A or section 10B or section 11 or section 12 apply. Clause (ii) provided that such book profit would be reduced by the amount of income to which any of the provisions of section 10 other than the provisions contained in clause (23G) thereof or

section 10A or section 10B or section 11 or section 12 apply, if any such amount is credited to the profit or loss account. The said Explanation is renumbered as Explanation (i) and clause (f) thereof was amended by the Finance Act, 2007, with effect from April 1, 2008, by virtue of which the words, "section 10A or section 10B or" were omitted. Corresponding changes were also made in clause (ii) by the same Act where also, the words "section 10A or section 10B or" were omitted. Thus, prior to April 1, 2007, the Explanation to section 115JB referring to the term "book profit" included the expenditure and income relatable to any income to which section 10A or section 10B applied for the purpose of increase in the book profit and the income itself for the purpose of decreasing the book profit. It is precisely, therefore, that the Commissioner of Income-tax (Appeals) has given a direction for working out the book profit of the assessee by applying the said formula. This is in consonance with the provisions of section 115JB and in particular the Explanation thereof, as it stood at the relevant time. The said provision was materially changed, however, later on. Since the Commissioner of Income-tax (Appeals) has given direction, as were confirmed by the Tribunal which were in consonance with the statutory provisions prevalent at the relevant time, we see no reason to consider this question also.

In the result, the tax appeal is dismissed.