(2008) 07 P&H CK 0068

In the Punjab And Haryana At Chandigarh

Commissioner of Income Tax APPELLANT

Vs

Excel Softech Ltd. RESPONDENT

Date of Decision : 24-07-2008

Acts Referred:
Income Tax Act, 1961 — Section 10B, 260A, 80HHE

Citation : (2008) 219 CTR 405 : (2008) 175 TAXMAN 257

Hon'ble Judges : Satish Kumar Mittal, J;Augustine George Masih, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Satish Kumar Mittal, J.—The Revenue has filed this appeal u/s 260A of the IT Act, 1961 against the order dt. 25th July, 2006 passed by the Income Tax Appellate Tribunal, Chandigarh Bench ''B'', Chandigarh (hereinafter referred to as ''the Tribunal'') in ITA No. 319/Chd/2005 for the asst. yr. 2001-02, raising the following substantial question of law:

Whether on the facts and in the circumstances of the case, the Tribunal is right in law in affirming the order of the CIT(A) in directing the AO to allow deduction u/s 10B of the IT Act, 1961 in spite of the fact that the assessee company has not fulfilled the conditions laid down u/s 10B of the IT Act, 1961 as it was not a newly established undertaking?

2. The brief facts of the case are that the assessee, who is 100 per cent export oriented undertaking, is engaged in the business of export of computer software. It started production during the year relevant to asst. yr. 1998-99. In the year under consideration i.e., 2001-02, the assessee claimed exemption u/s 10B of the Act. The AO asked the assessee to justify its claim of exemption u/s 10B of the Act, as it was not a new unit. The assessee claimed that it is a 100 per cent export oriented undertaking and started production in the asst. yr. 1998-99 and was registered with the Software Technology Park on 23rd March, 2000. Since the assessee fulfills all the requirements and conditions for claiming exemption u/

s 10B of the Act in relation to its profit derived from export of computer software, therefore, it claimed the said exemption. It was further submitted that u/s 10B of the Act, the exemption is available to an assessee for a period of 10 years. The assessee submitted that merely because in the asst. yrs. 1998-99, upto 2000-01, it claimed deduction u/s 80HHE of the Act, it is not debarred from claiming exemption u/s 10B of the Act, in the assessment year under consideration, if it fulfills all the conditions mentioned in the said provision. The AO did not allow the plea of the assessee for exemption u/s 10B of the Act on the ground that export undertaking of the assessee was not newly established in the year under consideration and the exemption u/s 10B of the Act is available to the undertakings, which are newly established.

3. Feeling aggrieved against the said order, the assessee filed appeal before the CIT(A), who vide his order dt. 7th Jan., 2005 allowed the claim of the assessee, while observing that the assessee satisfies all the conditions necessary for claiming exemption u/s 10B of the Act. It was held that the claim u/s 10B of the Act is available for a period of 10 years starting with the assessment year in which the unit starts to manufacture. Therefore, the assessee was entitled for the said benefit upto the year 2007-08. It was further held that it was optional for the assessee to either claim the exemption u/s 10B or deduction u/s 80HHE of the Act in relation to its export profits. Since in the year under consideration, the assessee has not claimed deduction u/s 80HHE of the Act, therefore, it was entitled to claim exemption u/s 10B of the Act, as it fulfilled all the conditions.

4. Feeling aggrieved against the said order, the Revenue filed appeal before the Tribunal, which was dismissed vide the impugned order.

5. Against the aforesaid order of the Tribunal, the Revenue has filed the instant appeal.

6. Counsel for the Revenue submits that Section 10B of the Act is a special provision and under this provision, the deduction is available only to newly established hundred per cent export oriented undertakings. Since the assessee had started production in the asst. yr. 1998-99, therefore, in the assessment year in question i.e., 2001-02, the assessee unit cannot be taken to be a newly established undertaking. Therefore, the assessee is not entitled to the benefit u/s 10B of the Act.

7. In our opinion, the contention raised by the Revenue is liable to be rejected. Section 10B of the Act reads as under:

10B. Special provisions in respect of newly established hundred per cent export-oriented undertakings-(1) Subject to the provisions of this section, a deduction of such profits and gains as are derived by a, hundred per cent export-oriented undertaking from the export of articles or things or computer software for a period of ten consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce articles or things or computer software, as the case may be, shall be allowed from the total income of the assessee.

The aforesaid provision provides that subject to the provisions of this section, a deduction of such profits and gains as are derived by a hundred per cent export-oriented undertaking from the export of articles or things or computer software for a period of ten consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce articles or things or computer software, as the case may be, shall be allowed from the total income of the assessee. Sub-section (2) provides that this section applies to any undertaking which fulfils certain conditions, mentioned in this sub-section itself. The exemption under this section is available for 10 years. The initial year is the year in which the eligible undertaking begins to manufacture or produce articles or things or computer software. It is not disputed that the assessee unit fulfills all the conditions, as mentioned in Sub-section (2). In the present case, the assessee had started the development of computer software in the asst. yr. 1998-99 and was registered with the Software Technology Park w.e.f. 24th March, 2000, therefore, the 10 years period has to be reckoned from the asst. yr. 1998-99. The assessee has claimed exemption for the first time in the asst. yr. 2001-02, which is well within 10 years. Therefore, the unit of the assessee cannot be denied the said exemption on the ground that it is not the newly established undertaking in the assessment year in question. In our view, the words "newly established undertaking" are only to identify the initial year of the period of 10 years for which the assessee is eligible for claim of exemption u/s 10B of the Act. Section 10B(1) of the Act does not use the words "newly established undertaking". Only in the heading, the words "newly established hundred per cent export-oriented undertakings" have been mentioned. It is well-settled law that headings or titles prefixed to sections or group of sections can be referred to in construing an Act of the legislation, only when the enacting words are ambiguous, but when the language of the section is clear, then the heading cannot be used to give a different effect to clear words in the section. In our view, there is no ambiguity in Section 10B of the Act, which provides exemption to certain newly established hundred per cent export oriented undertakings, on fulfilling certain conditions, for a period of ten consecutive assessment years. The initial year is the year in which the eligible undertaking begins to manufacture or produce articles or things or computer software. Section 10B of the Act does not provide any restriction that in each of the years of claim, the export-oriented undertaking should be newly established. Indeed, relevance of "newly established undertaking" is only to identify the initial year of the period of ten years for which the assessee is eligible for claim of exemption u/s 10B of the Act. Since in the present case, undisputedly, the initial year is the asst. yr. 1998-99, therefore, the assessee was rightly held to be fully eligible for exemption u/s 10B of the Act for the assessment year under consideration i.e., 2001-02, as it was the fourth year, out of ten years beginning with the initial assessment year, in which it began to develop and export the computer software.

8. In view of the above, in our opinion, there is no merit in this appeal, as no substantial question of law arises from the impugned order.

Dismissed.

