
(2014) 09 MAD CK 0060
In the Madras High Court
Case No : T.C. (A) No. 748 of 2009

Commissioner of Income Tax

APPELLANT

Vs

Soffia Software Ltd.

RESPONDENT

Date of Decision : 03-09-2014

Acts Referred:

Income Tax Act, 1961 — Section 10A, 10A(2), 10B, 115JA, 143(3)
Industries (Development and Regulation) Act, 1951 — Section 14

Citation : (2015) 281 CTR 594 : (2015) 370 ITR 146 : (2015) 234 TAXMAN 749

Hon'ble Judges : R. Sudhakar, J;G.M. Akbar Ali, J

Bench : Division Bench

Advocate : Hema Muralikrishnan for T. Ravikumar, Advocates for the Appellant;
S. Sridhar, Advocates for the Respondent

Judgement

R. Sudhakar, J.—The appeal filed against the order of the Income-tax Appellate Tribunal, Chennai "C" Bench in I.T.A. No. 279/Mds/2005, dated September 5, 2008, for the assessment year 2000-01. The respondent-assessee is engaged in software development and export. In respect of the financial year 1999-2000 and the assessment year 2000-01 the assessee filed the returns. The assessment of the assessee-company for the assessment year 2000-01 was completed under section 143(3) of the Income-tax Act on March 24, 2003, determining the book profit under section 115JA at Rs. 1,91,10,174. The assessee filed a revised return of income on June 27, 2001, claiming deduction under section 10A of the Act at Rs. 1,37,72,884, instead of deduction under section 80HHE claimed in the original return.

2. The Assessing Officer held that the assessee is not eligible for deduction under section 10A. The assessee, in support of the plea for claiming deduction under section 10A, filed a copy of the communication dated March 4, 2000, from the Software Technology Parks of India (STPI) (an autonomous society under the Government of India, Ministry of Information and Technology) according permission for setting up of 100 per cent. EOU to bear the claim of total export

turnover of Rs. 5,46,77,452, and submitted that the profits thereon are entitled to the benefit under section 10A of the Act. According to the Department, the assessee is entitled to the benefit of deduction under section 10A only from March 4, 2000.

3. In so far as the claim for export turnover prior to March 4, 2000, the Department contended that the assessee will be entitled to seek deduction under section 80HHE. The Assessing Officer, considering the total turnover and export turnover total from STPI, allowed the expenditure attributable to STPI unit as enumerated by the appellate authority is as follows:

"The Assessing Officer has taken into consideration the total turnover and the export turnover from STPI as mentioned above and allowed the expenditure attributable to STPI unit as under:

Having arrived at the profit of STPI unit as above the Assessing Officer has restricted the same to the gross total income computed at Rs. 39,89,404.

4. The matter went on appeal before the Commissioner (Appeals) and the issue was considered by the Commissioner (Appeals) in the following manner:

"The dispute is only whether the exemption under section 10A of the Act is available for the profits derived from export of software for the whole year are only the "profits" earned after the unit is approved as a STPI unit.

The appellant company has been enjoying deduction under section 80HHE of the Act in respect of "profits" derived from "export" of computer software. It has chosen to become A STPI unit and applied for the same. The unit has been approved as "SIPI" on March 4, 2000. Hence, it is entitled for exemption under section 10A of the Act only from that date onwards prior to the date of the assessee can claim deduction under section 80HHE of the Act and there is no infirmity in the method of computation under section 10A of the Act by the Assessing Officer.

2. The Assessing Officer has correctly identified the "turnover" of STPI unit, computed the profits there and allowed exemption under section 10A of the Act, as per law.

3. The assessee reference to section 88B (tax rebate for senior citizen for computation of house property) not relevant the issue involved is totally different and there can be no comparison between the two. Even in respect of property income when the property is let and vacant during the whole or part of the previous year rent received or receivable for the period it was let out only is taken as "annual value" Hence, the assessee's contention on this point are misplaced and without merit and deserve to be rejected.

4. The Board has issued a Circular No. 1 of 2005 272 ITR (St.) 6), dated January 6, 2005 , regarding the allowance of tax holiday under section 10B of the Act. In this circular it is clarified that an undertaking set up in domestic tariff

area (DTA) and deriving profit from export of articles or things or computer software manufactured or produced by it which is subsequently converted into a EOU shall be eligible for declaration under section 10B of the Income-tax Act on getting approval as 100 per cent. EOU in such a case the deduction shall be available only from the year in which it has got the approval as 100 per cent. EOU and shall be available only for the remaining period of ten consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begin to manufacture or produce articles or things or computer software as a DTA unit. Further, in the year of approval the deduction shall be restricted by the profits derived from exports from and after the date of approval of the DTA units as 100 per cent. EOU.

Though the circular was issued in the context of section 10B of the Act it is applicable to section 10A of the Act as well as both the sections provide for exemption of income in respect of newly established undertakings in any free trade zone or electronic hardware technology park or software technology park or special economic zone commencing activities on or after the dates specified in sections 10A(2) and 10B of the Act applies to newly established hundred per cent export oriented undertakings. Both the sections provide exemption or deduction in respect of profits derived from export of articles or things or computer software. The conditions prescribed are also similar under both the sections. Hence, the above circular of the Board is clearly applicable to the applicant case.

Hence, the assessee would be entitled for exemption under section 10A of the Act only in respect of profits earned after it had been registered as a STPI unit and not for the earlier period. Hence, the computation of exemption under section 10A of the Act by the Assessing Officer restricting the exemption in respect of profits derived from "export" after the unit is approved as STPI, i.e., on March 4, 2000, is correct and confirmed. Hence, this ground of appeal is rejected."

5. The Commissioner (Appeals) placed reliance on a circular issued in the context of section 10B of the Act and came to the conclusion that the assessee will be entitled to the benefit derived from "export" after the unit is approved as STPI, i.e., on March 4, 2000, and to that extent the appeal was rejected. Against which, the assessee went on appeal before the Tribunal.

6. The Tribunal, by referring to the provisions of section 10A and also distinguishing the view of the Commissioner (Appeals), held that the Circular issued under section 10B is not applicable to restrict the deduction under section 10A and in any event, the Circular, which was issued on January 6, 2005, cannot be made applicable to the assessment year 2000-01. Against which, the Revenue has preferred the present appeal.

7. While admitting the appeal, the following substantial question of law was formulated:

"1. Whether, on the facts and in the circumstances of the case, the Appellate

Tribunal was right in holding that the assessee-company was entitled to deduction under section 10A in respect of the profits attributable to the export turnover for the entire previous year relevant to the assessment year 2000-01 even though registration from the Software Technology Parks of India (STPI), as an STPI unit was obtained only on March 4, 2000, and the Assessing Officer was not correct in restricting the deduction to the export profits relating to the turnover of the period after the date of registration as certified by the STPI?"

8. It was contended that section 10A provides that any profits or gains derived by an assessee from an industrial undertaking to which this section applies shall not be included in the total income of the assessee and this section applies to any industrial undertaking which fulfils all the following conditions and the section reads as follows:

"10A. (1) Subject to the provisions of this section, any profits and gains derived by an assessee from an industrial undertaking to which this section applies shall not be included in the total income of the assessee.

(2) This section applies to any industrial undertaking which fulfils all the following conditions, namely:--

(i) it has begun or begins to manufacture or produce articles or things during the previous year relevant to the assessment year--

(a) commencing on or after the 1st day of April, 1981, in any free trade zone; or

(b) commencing on or after the 1st day of April, 1994, in any electronic hardware technology park, or, as the case may be, software technology park; . . .

(3) The profits and gains referred to in sub-section (1) shall not be included in the total income of the assessee in respect of any ten consecutive assessment years, beginning with the assessment year relevant to the previous year in which the industrial undertaking begins to manufacture or produce articles or things. . . .

Explanation.--For the purposes of this section,--

(i) "free trade zone" means the Kandla Free Trade Zone and the Santacruz Electronics Export Processing Zone and includes any other free trade zone which the Central Government may, by notification in the Official Gazette, specify for the purposes of this section.

(ii) "relevant assessment year" means the ten consecutive assessment years referred to in sub-section (3)

(iii) "manufacture" includes any--

(a) process or

(b) assembling or

(c) recording of programmes on any disc, tape, perforated media or other information storage device.

(iv) "electronic hardware technology park" means any park set up in accordance with the Electronic Hardware Technology Park (EHTP) Scheme notified by the Government of India in the Ministry of Commerce.

(v) "software technology park" means any part set up in accordance with the Software Technology Park Scheme notified by the Government of India in the Ministry of Commerce.

(vi) "produce" in relation to articles or things referred to in clause (i) of sub-section (2) includes production of computer programmes."

9. The Explanation provides that for the purpose of extending the benefit as above, the Technology Park should be notified by the Government of India, Ministry of Commerce.

10. Software Technology Parks Scheme ISO 388(E), dated April 30, 1995, provides as follows (see [1995] 216 ITR (St.) 2):

2.2. A Software Technology Park (STP) may be set up by the Central Government, State Governments, public or private sector undertakings or any combination thereof. An STP may be an individual unit by itself or it may be one of such units located in an area designated as STP complex by the Department of Electronics....

2.8 The STP unit shall be eligible for the following benefits.

2.8.1 Tax holiday:

The STP will be exempted from payment of corporate income-tax for a block of five years in the first eight years of its operation."

11. From the reading of section 10A(2), it is clear that this section applies to any industrial undertaking which fulfils the conditions, viz., it should begun or begins to manufacture or produce articles or things or computer software during the previous year relevant to the assessment year and it should be notified by the Government of India, Ministry of Commerce.

12. In the present case, we find that the assessee, Soffia Software Ltd., has been notified on March 4, 2000, and the assessee has commenced its software production during the previous year related to the assessment year. From the date of notification, the assessee would be entitled to the benefit of section 10A if other conditions have been fulfilled.

13. The Tribunal, in paragraph 7 of the order, came to the conclusion that in section 10A, nowhere there is a restriction provided that deduction may be applicable only after registration with STPI or only for the amounts earned after such registration.

14. The Commissioner (Appeals) as well as the assessing authority fell into error by holding that registration as an STPI unit is a requirement for the assessee to claim the benefit of section 10A. Section 10A applies if any industrial undertaking has begun or begins to manufacture or produce articles or things during the previous year relevant to the assessment year.

15. In this case, the date of Notification is March 4, 2000. We, therefore, hold that if the assessee has to derive the benefits of the special provisions of section 10A, the assessee has begun or begins to manufacture or produce articles or things during the previous year relevant to the assessment year in the STPI unit and it will be entitled to deduction under section 10A in respect of profits attributed to export turnover.

16. We, therefore, uphold the view of the Tribunal that the Circular issued under section 10B cannot be made applicable to the case falling under section 10A as we find that Explanation 2 to section 10B of the Act defines 100 per cent export oriented unit, which reads as follows:

Explanation 2.--For the purposes of this section,-- . . .

(iv) "hundred per cent export-oriented undertaking" means an undertaking which has been approved as a hundred per cent export-oriented undertaking by the Board appointed in this behalf by the Central Government in exercise of the powers conferred by section 14 of the Industries (Development and Regulation) Act, 1951 (65 of 1951), and the rules made under that Act."

Furthermore, the Circular which has been relied upon by the Commissioner (Appeals) dated January 6, 2005, has no relevance to the assessment year 2000-01.

17. There is a clear distinction between the establishment of section 10A and the special provisions of section 10B of the Act which defines 100 per cent export oriented undertakings.

18. There is no scope for drawing inference from the provisions of section 10B as we find that so long as the assessee satisfies the requirement of section 10A, it will be entitled to such benefit.

19. The learned counsel for the assessee appropriately pointed out the decision of this court reported in Commissioner of Income Tax - LTU Vs. Wheels India Limited, , wherein it has been held that the benefit of clause (1) of sub-section (2AB) of section 35 will ensure to the assessee for the whole assessment year and cannot be restricted only to the period after the publication of the Notification dated September 21, 2004.

20. In the present case also, we find that the Assessing Officer has restricted the deduction based on an artificial cut-off date (i.e.) March 4, 2000, which we hold is not the correct method of computation for benefit flowing under section 10A.

21. Therefore, we find that the Tribunal has not committed any error. We answer

the question of law in favour of the assessee and against the Revenue. In the result, the income tax appeal is dismissed and the order passed by the Income-tax Appellate Tribunal, Chennai "C" Bench in I.T.A. No. 279/Mds/2005 dated September 5, 2008, for the assessment year 2000-01 is confirmed. No costs.