

(2015) 04 GUJ CK 0056
In the Gujarat High Court
Case No : Tax Appeal No. 203 of 2015

Principal Commissioner of Income Tax	APPELLANT
Vs	
ECI Technologies Pvt. Ltd.	RESPONDENT

Date of Decision : 22-04-2015

Acts Referred:

Income Tax Act, 1961 — Section 10B

Citation : (2015) 375 ITR 595

Hon'ble Judges : M.R. Shah, J;S.H. Vora, J

Bench : Division Bench

Advocate : Sudhir M. Mehta, for the Appellant; B.S. Soparkar, Caveator,
Advocates for the Respondent

Judgement

M.R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Income Tax Appellate Tribunal "C" Bench, Ahmedabad (hereinafter referred to as the "Tribunal") dated 30/09/2014 in ITA No. 1581/Ahd/2011 for the Assessment Year 2007-08 by which the learned Tribunal has dismissed the said appeal preferred by the revenue and has confirmed the order passed by the learned CIT(A) deleting the disallowance of exemption claimed under Section 10B of the Income Tax Act (hereinafter referred to as the "Act"), the revenue has preferred the present Tax Appeal with the following proposed substantial questions of law;

"(A) Whether the appellate tribunal is right in law and on the facts in confirming the order of the CIT(A) deleting the disallowance of deduction under Section 10B of the Income Tax Act made by the Assessing Officer by admitting additional evidence in the form of approval granted by the Board of Approval (BOA) to the alleged export oriented Unit?

(B) Whether the appellate Tribunal is right in law and on the facts in confirming the order of CIT(A) accepting the approval of Board of Approval with

retrospective effect despite the fact that the approval of the BOA was granted after 3 years of filing return of income by the assessee and after completion of assessment?"

2. The facts leading to the present Tax Appeal in a nutshell are as under;

2.1 The assessee filed the return of income for the Assessment Year 2007-08 showing the total income as Rs. 54,12,637/-. The assessee claimed deduction under Section 10B of the Act amounting to Rs. 16,62,80,893/-. The assessee was asked to furnish the details in respect of the claim made for deduction under Section 10B of the Act and was asked to furnish as to whether the approval was accorded by the Board of Approval (BOA) as stipulated in Clause iv of Explanation 2 of Section 10B of the Act. In reply of which the assessee furnished necessary details and submitted the approval granted by the Development Commissioner, Kandla Special Economic Zone. The Assessing Officer was not satisfied with the same and on interpretation of the Circular/instruction issued by the CBDT dated 09/03/2009 the Assessing Officer disallowed the deduction under Section 10B of the Act on the ground that if the approval granted by the Development Commissioner is ratified by the Board of Approval, the assessee shall be entitled to deduction under Section 10B of the Act and the Board's instructions are clarificatory in nature and the same is retrospective in nature. On appeal before the learned CIT(A) on true interpretation of the CBDT instruction dated 09/03/2009, the learned CIT(A) has deleted such disallowance and held that the assessee was entitled to deduction under Section 10B of the Act as not only there was approval given by the Development Commissioner but the same was also subsequently ratified by the Board of Approval. On appeal filed by the revenue before the learned Tribunal, by the impugned judgment and order, the learned Tribunal has dismissed the said appeal confirming the order passed by the learned CIT(A) deleting the disallowance of deduction claimed under Section 10B of the Act. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Tribunal, the revenue has preferred the present Tax Appeal with the aforesaid proposed substantial questions of law.

3. Shri Sudhir Mehta, learned advocate appearing on behalf of the revenue has vehemently submitted that the learned Tribunal has materially erred in relying upon the instruction/circular issued by the CBDT dated 09/03/2009. It is submitted that by the circular/instruction dated 09/03/2009 it was clarified that "now the permission granted by the Development Commissioner approved by the Board of Approval can be considered as valid for the purpose of deduction under Section 10B of the Act". It is submitted that in the present case admittedly permission of the Development Commissioner was ratified by the Board of Approval subsequently and, therefore, it can be said that on the basis of the permission granted by the Development Commissioner alone, at the relevant time, the assessee was not entitled to deduction under Section 10B of the Act as claimed. It is therefore submitted that the learned Tribunal has materially erred

in not properly appreciating and/or interpreting the Circular/Instruction of the CBDT dated 09/03/2009. Making the above submissions, it is requested to admit/allow the present Tax Appeal.

4. The present Tax Appeal is opposed by Shri B.S. Soparkar, learned advocate appearing on behalf of the assessee. He has placed heavy reliance upon the subsequent clarificatory circular/instruction by the Export Promotion Council for Eous and SEZS dated 14/05/2009 by which the Circular/Instruction of the CBDT dated 09/03/2009 came to be further clarified. It is submitted that as so observed in the circular/instruction of the Export Promotion Council for Eous and SEZS dated 14/05/2009 that from 1990 onwards Board of Approval has delegated the power of approval of 100% EOU to the Development Commissioner, it is submitted that therefore at the relevant time when the Development Commissioner granted the permission/approval of 100% EOU, the Development Commissioner exercised the delegated power. It is submitted that therefore the approval granted by the Development Commissioner was not required to be ratified as the Development Commissioner exercised the delegated powers. It is submitted that in any case, in the present case the Board of Approval did ratify the decision of the Development Commissioner. It is submitted that therefore when the Board of Approval ratified the decision of the Development Commissioner granting the approval of 100% EOU to the assessee, the Board of Approval ratified the decision of the Development Commissioner ab initio. It is submitted that therefore in that case also the learned CIT(A) as well as the learned Tribunal have rightly held that on the basis of the approval granted by the Development Commissioner, which was subsequently ratified by the Board of Approval, the assessee was entitled to deduction under Section 10B of the Act as claimed. Making the above submissions, it is requested to dismiss the present Tax Appeal.

5. Heard the learned advocates appearing on behalf of the respective parties at length. At the outset, it is required that the assessee claimed the deduction under Section 10B of the Act claiming 100% EOU. It is an admitted position that there was already a permission/approval granted by the Development Commissioner declaring/approving the assessee as 100% EOU. However, on considering the word, approved by the Board of Approval as mentioned in Section 10B of the Act and at the relevant time there was no ratification of the decision of the Development Commissioner by the Board of Approval, the Assessing Officer denied the deduction under Section 10B of the Act. However, it is required to be noted and it is not in dispute that vide Circular/instruction of the CBDT dated 09/03/2009 it was clarified that the approval granted by the Development Commissioner in the case of Export Oriented Unit set up in an Export Processing Zone will be considered valid, once such an approval is ratified by the Board of Approval for EOU Scheme. In the present case, it is not in dispute that the permission/approval granted by the Development Commissioner has been ratified by the Board of Approval, may be subsequently. The moment the decision/approval of the Development Commissioner is ratified by the Board

of Approval it will relate back to the date on which the approval was granted by the Development Commissioner. If that be so, it cannot be said that the assessee was not a Export Oriented Unit, which was entitled to the deduction under Section 10B of the Act. Incidentally it is to be noted that in the subsequent circular No. 68 issued by the Export Promotion Council for Eous and SEZS dated 14/05/2009 it mentions that from 1990 onwards Board of Approval had delegated the power of approval of 100% to the Development Commissioner and, therefore, it can be very well argued and said that the Development Commissioner while granting the approval of 100% EOU exercises delegated powers. In any case and apart from the above when it is found that at the relevant time the Development Commissioner granted the approval of 100% EOU in favour of the assessee-Company, which came to be subsequently ratified by the Board of Approval and as observed hereinabove as such the ratification shall be from the date on which the Development Commissioner granted the approval, both the learned CIT(A) as well as the learned Tribunal have rightly held that the assessee was entitled to deduction under Section 10B of the Act as claimed. We confirm the view taken by both the authorities below holding that the assessee was entitled to 100% EOU as claimed. No substantial question of law arises in the present Tax Appeal. Hence, the present Tax Appeal deserves to be dismissed and is accordingly dismissed.