(2015) 08 BOM CK 0313

In the Bombay High Court

Case No : Income Tax Appeal Nos. 1731, 1735, 1974 of 2013

The Commissioner of Income Tax-8 APPELLANT

Vs

Solix Technologies Pvt. Ltd. RESPONDENT

Date of Decision : 10-08-2015

Acts Referred:

Citation : (2015) 08 BOM CK 0313

Hon'ble Judges : M.S. Sanklecha and N.M. Jamdar, JJ.

Bench : Division Bench

Advocate : Arvind Pinto, for the Appellant; K. Gopal, Jitendra Singh and Neha Paranjpe, for the Respondent

Judgement

1. ITXA No. 1974 of 2013 is not on board, upon mentioning taken up for hearing along with ITXA No. 1735 and ITXA No. 1731 of 2013.

2. These Appeals by the Revenue challenge the order dated 20 March 2013 passed by the Income Tax Appellate Tribunal(Tribunal). By the impugned order the Tribunal has disposed of the Appeals for Assessment year 2006-2007, Assessment year 2008-2009 and Assessment year 2004-2005.

3. The following common questions of law have been urged by the Revenue in all the three appeals for our consideration -

"1. Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in relying on its own decision in the assessee''s case for AY 2002-03 without appreciating that the facts of AY 2002-03 are completely distinguishable from the facts of AY 2004-05, AY 2006-07 and AY 2008-09 and therefore the ratio of the decision of the Hon''ble Bombay High Court in the case of Commissioner of Income Tax Vs. Western Outdoor Interactive P. Ltd., relied upon by the ITAT is not applicable to the case of the assessee?

2. Whether on the facts and in the circumstances of the case and in law, the ITAT is justified in dismissing the revenue''s appeal without appreciating the fact that

the AO in the Assessment order for AY 2004-05 had clearly established that the assessee had failed to prove that it had purchased new plant and machinery and hence was ineligible for claim of deduction u/s. 10A within the provisions of section 10A(2)(iii) read with Explanation thereof?"

4. In the assessment year 2002-2003 the Respondent had claimed the benefit of Section 10A of the Act. The Tribunal by its order dated 22 May 2009 in respect of A.Y. 2002-2003 held the Respondent is entitled to the benefit of Section 10A of the Act. The Miscellaneous application filed by the Revenue before the Tribunal was dismissed. The Revenue accepted the verdict of the Tribunal and did not carry the issue in further appeal to this Court.

5. For the subsequent Assessment years including the Assessment years 2004-2005, 2006-2007 and 2008-2009 the Tribunal by the impugned order held that when the deduction was allowed in the first year of its claim i.e. 2002-2003 under section 10A of the Act and the Revenue has accepted the same, no occasion to disallow benefit in the subsequent assessment years can arise unless the benefit granted in the first year is withdrawn. The impugned order while dismissing the Revenue''s appeal followed the decision of this Court in Commissioner of Income Tax Vs. Western Outdoor Interactive P. Ltd., and Commissioner of Income Tax Vs. Paul Brothers, wherein it was held that once a benefit of deduction was extended in respect of the provision for a particular number of years then unless the benefit is withdrawn for the first year it cannot be withdrawn for the subsequent years. This is more so, particularly, when there is no change of facts.

6. In the present case Mr. Pinto, learned counsel for the Revenue urges that the Revenue could not file an appeal in respect of Assessment Year 2002-2003 from the order of the Tribunal in view of low tax effect. In the above view, he submits that the decision of this Court in CIT v. Western Outdoor would not apply. Mr. Gopal, learned counsel appearing for the Respondent submits a copy of the order of the Tribunal dated 21/09/2012 passed on the Revenue''s Miscellaneous Application with regard to the order dated 22/5/2009 passed by the Tribunal in respect of Respondent-assessee for the A.Y. 2002-2003. In the above order it is clearly recorded that the deduction sought under Section 10A of the Act and allowed by the Assessing officer was to the extent of Rs. 7.69 crores.

7. In view of the above, the contention by Mr. Pinto that the order of the Tribunal for the A.Y. 2002-2003 could not be challenged in appeal before the Court in view of low tax effect is not factually correct as pointed out by the Respondent-assessee. In any case even in terms of the Circulars/Instructions issued by the Central Board of Direct Taxes (CBDT) under Section 268A of the Act the benefit under Section 10A of the Act would have an impact in the subsequent Assessment years i.e. cascading effect and appeal could be filed to this Court by the Revenue. Thus it must follow that the Revenue has accepted the order of the Tribunal for the A.Y. 2002-2003 in respect of claim under Section 10A of the Act.

8. We find that the impugned order has merely followed the order of this Court in Commissioner of Income Tax Vs. Western Outdoor Interactive P. Ltd., and Commissioner of Income Tax Vs. Paul Brothers, in holding that in the absence of withdrawal of benefit of the first year, the benefit cannot be disallowed in subsequent Assessment years. Therefore no fault can be found with the impugned order.

9. Therefore the questions as formulated by the Revenue does not give rise to any substantial questions of law. Accordingly, all three Appeals are dismissed. No order as to costs.