(2015) 02 KAR CK 0164

In the Karnataka High Court

Case No : Income Tax Appeal No. 828/2009

The Commissioner of Income Tax and Others APPELLANT

Vs

E 4 E Application Services P. Ltd. RESPONDENT

Date of Decision : 16-02-2015

Acts Referred:
Income Tax Act, 1961 — Section 10A, 10A(2), 10B, 271(1)(c)

Citation : (2015) 02 KAR CK 0164

Hon'ble Judges : N. Kumar and B. Veerappa, JJ.

Bench : Division Bench

Advocate : K.V. Aravind, Advocate, for the Appellant; Chaithanya K.K., Advocate, for the Respondent

Judgement

B. Veerappa, J.—The revenue has preferred this appeal against the order dated 31st July, 2009 passed in ITA No. 471/BNG/2009 by the Tribunal upholding the order passed by the Appellate Authority granting the benefit of tax under the provisions of Section 10A of the Income Tax Act, 1961 (for short ''hereinafter referred to as ''the Act'').

2. The brief facts of the case are:

"That the assessee is engaged in the business of software development and filed return of income for the assessment year 2004-05 and claimed deduction under the provisions of Section 10A of the Act."

3. After considering the entire material on record, the Assessing Authority by its order dated 28.12.2006 has held that the assessee/company was an existing company. The assessee''s STP unit which came to be registered on 16.10.2002 was working as non-STP unit earlier to it. As the assessee was an existing unit, the new unit under which the claim was made would be formed out of splitting up or reconstruction of the business by using the old plant and machinery and therefore, the assessee by furnishing incorrect particulars of income has claimed deduction which is not allowable under Section 10A of the Act. Accordingly, as

the claim was not liable to be allowed, initiated penalty proceedings under the provisions of Section 271(1)(c) of the Act against which the assessee preferred an appeal before the Commissioner of Income Tax (Appeals)-I, Bangalore, who after hearing both the parties, by order dated 11.3.2009, has allowed the appeal in part holding that in view of CBDT Circular No. 1 of 2005 dated 6.1.2005, the deduction claimed by the assessee which is contrary to the provisions of Section 10A of the Act is still allowable against which the revenue preferred an appeal - ITA 471/Bang/2009 before the Income Tax Appellate Tribunal. The Tribunal after hearing both the parties, by its order dated 31.7.2009 placing reliance on its earlier order in the case of ITO v. M/s. Foresee Information Systems P. Ltd., (ITA Nos. 3014/Bang.2004 and connected cases D.D. 16.3.2007) upholding the findings of the Appellate Commissioner that the assessee is entitled to claim deduction under Section 10A of the Act, dismissed the appeal filed by the revenue. Aggrieved by the same, the present appeal is filed by the revenue.

4. From the aforesaid facts, it is clear that provisions of Section 10A of the Act provides for deduction from the total income of the profits derived by an undertaking from the export of articles or things or computer software for a period of ten consecutive assessment years. The tax holiday period commences with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce such articles or things or computer software. Section 10A(2) of the Act prescribes certain conditions on the fulfillment of which the benefit of Section 10A could be availed.

5. In the instant case, the assessee began operation in the existing company whereas the STP unit was registered on 16.10.2002. The STP authorities could also permit the conversion of an existing unit into a STP unit. The purpose of the STP scheme is to encourage exports and gain valuable foreign exchange for the country. The STP scheme provides the benefit of converting a DTA unit into a STPI unit and the same should also hold good for tax purposes. CBDT Circular No. 1 of 2005 dated 6th January, 2005 grants certain benefits under the provisions of Section 10B of the Act. Though the circular is in the context of Section 10B , the ratio of the circular equally applies to Section 10A also. In fact, the Commissioner of Income Tax (Appeals) has referred to various judgments on the point and has come to the conclusion that the benefit of Section 10A of the Act would also be available even when an existing unit gets converted into a STPI unit. In fact, the material on record discloses that no export of computer software was made before 16.10.2002. The export commenced only after 16.10.2002. The invoices produced in the case clearly establish the said fact. In those circumstances, the Appellate Authority as well as the Tribunal are justified in extending the benefit of Section 10A of the Act to the unit of the assessee in question.

6. The very identical issues had come up before this Court in the case of CIT Vs. Expert Outsource (P) Ltd., . The Division Bench of this Court by an order dated 1st March, 2011 has held that granting of benefit under Section 10A of the Act is

permissible.

7. In view of the same, we do so see any illegality committed by both the Appellate Authority -Commissioner of Income Tax (Appeals) as well as Tribunal and the finding of fact recorded by them is also based on legal evidence and in accordance with law laid down by this Court as stated supra. We do not see any substantial question of law that arises for consideration in the present appeal.

Accordingly, the appeal is dismissed.