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Cit Vs. Technovate E Solutions Pvt Ltd

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Court : Delhi

Decided On : Feb-26-2013

Judge : Badar Durrez Ahmed

Appellant : Cit

Respondent : Technovate E Solutions Pvt Ltd

Judgement :
$~10 THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment delivered on:

26. 02.2013 ITA 100/2012 CIT ..... Appellant versus TECHNOVATE E SOLUTIONS PVT LTD ..... Respondent Advocates who appeared in this case: For the Petitioner : Mr Rohit Madan, Adv. For the Respondent : Mr Salil Kapoor and Mr Vikas Jain, Advs. CORAM:HONBLE MR JUSTICE BADAR DURREZ AHMED HONBLE MR JUSTICE R.V.EASWAR JUDGMENT BADAR DURREZ AHMED, J (ORAL) 1. The revenue is aggrieved by the order dated 20.06.2011 passed by the Income Tax Appellate Tribunal in ITA 135/Del/2011 in respect of the assessment year 2003-04. The revenue has proposed the following questions as substantial questions of law: (A) Whether the Tribunal erred in law in coming to the conclusion that the approval granted by the Director of STPI was sufficient approval so as to satisfy the conditions relating to approvals under section 10A of the Act? (B) Whether the Tribunal erred in law in concluding that the software expenses incurred by the assessee was revenue in nature? (C) Whether Tribunal failed to appreciate that as regards the software it was a case of a sale of copyrighted article and hence the expenditure could not be treated as revenue in nature? 2.

Insofar as proposed questions B and C are concerned, the learned counsel for the respondent-assessee points out that the issues are covered by the decision of this Court in CIT Vs. GE Capital Services Ltd. (2008) 300 ITR 40.(Del.). The learned counsel for the appellant agrees that the issues of software expenses stand covered by that decision of this Court.

3. The issue involved in proposed question A is whether the approval granted by the Director of the Software Parks of India was sufficient approval so as to satisfy the conditions stipulated in Section 10A of the Income Tax Act, 1961. Sub-section (2) of section 10A prescribes the conditions which an undertaking must fulfill in order to get the benefit of Section 10A(1). The said sub-section (2) of Section 10A reads as under :(2) This section applies to any undertaking which fulfils all the following conditions, namely : (i) it has begun or begins to manufacture or produce articles or things or computer software 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; (c) commencing on or after the 1st day of April, 2001 in any special economic zone; (ii) it is not formed by the splitting up, or the reconstruction, of a business already in existence : Provided that this condition shall not apply in respect of any undertaking which is formed as a result of the reestablishment, reconstruction or revival by the assessee of the business of any such undertakings as is referred to in section 33B, in the circumstances and within the period specified in that section; (iii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose. From section 10A(2)(i)(b) it is apparent that one of the conditions is that the respondent-assessee should have started manufacture or production of articles or things or computer software in any electronic hardware technology park or as the case may be a software technology park if the said manufacture commenced after 1.4.1994. The expression Software Technology Park has been defined in clause (vii) of Explanation 2 of section 10A as: software technology park means any park set up in accordance with the Software Technology Park Scheme notified by the Government of India in the Ministry of Commerce and Industry; 4. In this backdrop it would be necessary to note that the respondent- assessee had furnished a registration issued by the

Software Technology Parks of India (STPI) in support of its claim under section 10A amounting to `1,18,05,695/-. The assessing officer had rejected the claim under Section 10A of the said Act on the ground that the approval by a Director of STPI was not a valid approval from a specified authority. The view taken by the assessing officer was that only the inter-ministerial standing committee was competent to grant approval to units functioning within the Software Technology Park for the purposes of deduction under Section 10A of the said Act. However, this issue was considered by the Central Board of Direct Taxes and an instruction (Instruction No.1/06 dated 31.3.2006) was issued clarifying the position with regard to the deduction under Section 10A. The relevant portion of the said instruction is given below:5. Instances have been brought to the notice of the Board that a large number of units registered/approved by the Directors of the STPI are claiming deduction under section 10A whereas the STP scheme requires approval by the InterMinisterial Standing Committee of the Department of Electronics. Accordingly, the cases of such claimants have been reopened by the authorities.

6. The matter has been examined in consultation with the officers of the Department of Information Technology (earlier, Department of Electronics). In view of the ambiguity in the legal status of the approval by Director of STPs, the Inter-Ministerial Standing Committee will meet to consider the approvals by Director of STPs issued in the past. Therefore, with a view to avoid infructuous demand raised in assessment and reassessment of assessees claiming deduction under section 10A, it has been decided that the claim of deduction under section 10A, shall not be denied to STP units only on the ground that the approval/registration to such units has been granted by the Directors of Software Technology Parks. However, it has to be ensured that all other conditions specified in section 10A are fully satisfied before allowing any such claim.

7. In cases where assessments/reassessments have already been completed, and the claim under section 10A has been disallowed only on the ground that the approval to the STP has not been granted by the Inter-Ministerial Standing Committee in accordance with the Scheme, the demand so arising should be kept in abeyance until further orders. (underlining added) It is apparent from the above

instruction that it had been decided by the Board that the claim of deduction under Section 10A of the said Act should not be denied to the Software Technology Park units only on the ground that the approval/registration to such units had been granted by Directors of the Software Technology Parks. A reference may also be made to the inter-ministerial communication dated 23.3.2006 issued by the Secretary, Ministry of Communications and Technologies to the following effect:1. Software Technology Park of India (STPI) is a society owned and administered by the Govt. of India and therefore is state under Article 12 of the Constitution of India.

2. The STPI Directors are duly authorized and fully empowered to issue approvals as 100% EOUs to the unit under the STP Scheme under delegated powers granted as per para 9.36 of the Handbook of Procedures (Vol.1) 19972002.

3. All the approvals issued by the STPI Directors have the authority of Inter Ministerial Standing Committee (IMSC). The IMSC has periodically reviewed the various approvals granted by the STPI Directors in accordance with the Govt. of India guidelines/notifications. All the current approvals granted by the STPI Directors are therefore, deemed to be valid. (emphasis supplied) The above communication makes it clear that the approvals issued by the Directors of the Software Technology Parks of India have the authority of the Inter-Ministerial Standing Committee and that all approvals granted by the STPI Directors are therefore deemed to be valid. The position is also clear from a letter dated 6.5.2009 issued by the Central Board of Direct Taxes to the Joint Secretary, Ministry of Commerce and Industry wherein a distinction has been drawn between the provisions of section 10A and 10B of the Income Tax Act, 1961 and in which it has been clarified that a unit approved by the Director under the Software Technology Parks scheme will be allowed exemption only under Section 10A as a STPI unit and not under 10B as a 100% export oriented unit. It is therefore, clear from the above instruction and communications that the view of the Central Board of Direct Taxes is that approvals granted by the Directors of Software Technology Parks of India would be deemed to be valid inasmuch as the said directors were functioning under the delegated authority of the Inter-Ministerial Standing Committee.

5. In this view of the matter, question A which has been proposed by the learned counsel for the revenue does not raise any substantial issue of law. The same has been covered by the CBDTs instruction and correspondence. It is therefore, clear that the respondent-assessee would be entitled to the deduction claimed under Section 10A inasmuch as approval granted by a director of the Software Technology Parks of India would be a deemed approval of the Inter-Ministerial Standing Committee and, therefore, the condition stipulated under Section 10A(2) of the said Act would stand complied with.

6. The learned counsel for the appellant sought to raise an argument on the basis of the decision of this Court in CIT Vs. Regency Creations Ltd. in ITA 69/2008 and other connected appeals which was decided on 17.9.2012, however, we feel that the said decision would be of no use to the appellant inasmuch as that decision was concerned specifically with the provisions of Section 10B which stand on an entirely different footing than the provisions of Section 10A.

7. For the following reasons we find that there is no substantial question of law in this appeal which requires determination by this Court. The appeal is dismissed. BADAR DURREZ AHMED, J R.V.EASWAR, J FEBRUARY 26 2013 vld

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