Principal Commissioner Of Income Tax 3, Kolkata Vs M/S. Wizard Enterprises Pvt. Ltd.

Court: Calcutta High Court

Date of Decision: Jan. 17, 2022

Acts Referred: Income Tax Act, 1961 â€" Section 10A, 10B, 24, 143(3), 246A, 260A
Industries (Development and Regulation) Act, 1951 â€" Section 14

Hon'ble Judges: T.S. Sivagnanam, J; Hiranmay Bhattacharyya, J

Bench: Division Bench

Advocate: Soumen Bhattacharyya, Pratyush Jhunjhunwala

Final Decision: Dismissed

Judgement

This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the composite order dated 4th March,

2016 passed by the Income Tax Appellate Tribunal Ã¢â‚¬Å“CÃ¢â‚¬ Bench, Kolkata, (Tribunal) in ITA No. 628/Kol/2011 and C.O. No. 134/Kol/2013 for the

assessment year 2007-08 and ITA No.65/Kol/2012 and C.O. No.133/Kol/2013 for the assessment year 2008-09.

The revenue has raised the following substantial questions of law for our consideration :-

1. Whether on the facts and in the circumstances of the case, the Learned Tribunal erred in law in allowing the benefit of exemption under Section 10

B of the Income Tax Act by holding the assessee as 100% Export Oriented Undertaking though the assessee was not approved by the concerned

statutory Board as Export Oriented Undertaking as is required in terms of clause IV of Explanation 2 of section 10 B of the Act.

2. Whether on the facts and in the circumstances of the case, the Learned Tribunal erred in law in allowing the benefit of exemption under section 10

A of the Income Tax Act by holding the assessee as 100% Export Oriented Undertaking though the assessee was not approved by the concerned

statutory Board as Export Oriented Undertaking as is required in terms of clause IV of Explanation 2 of section 10 A of the Act.

3. Whether on the facts and circumstances of the case, the Learned Tribunal erred in law in treating the assessee as 100% Export Oriented

Undertaking particularly when the assessee did not have the Certificate of Approval from the Board appointed in this regard by the Central

Government in the exercise of its power conferred under section 14 of the Industries (Development and Regulation) Act 1951 and rules framed

thereunder.

We have heard Mr. Soumen Bhattacharyya, learned standing Counsel appearing for the appellant/revenue and Mr. Pratyush Jhunjhunwala, learned

Counsel appearing for the respondent/assessee. The assessing officer while completing the assessment under Section 143(3) of the Act by order

dated 24.12.2008 denied the benefit of exemption under Section 10 B of the Act on the ground that the assessee is not a hundred per cent export

oriented undertaking within the meaning of the said Section. In other words, it was held, that the assessee was not approved by the concerned

statutory Board as a hundred per cent export oriented undertaking as required under explanation to Section 10 B of the Act. The assessee carried the

matter in appeal before the Commissioner of Income Tax (Appeals) Ã¢â‚¬" VIII, Kolkata (CIT(A)). The CIT(A) by an elaborate order allowed the

appeal filed by the assessee vide order dated 20.12.2010. Aggrieved by the same, the revenue has preferred the appeal before the Tribunal, in which

the assessee filed cross objection questioning the correctness of the order of the CIT(A) in not allowing the deduction under Section 10A of the Act

and granting relief to the assessee only under Section 10B of the Act. The Tribunal took up the appeals as well as the cross objections together and

noted that the question to be decided in the appeals as well as the cross objections are whether the assessee is entitled for claim of deduction under

Section 10B/10A of the Act, in respect of profits derived from the call centre operations from the unit registered with software technology park of

India (STPI) as hundred per cent export oriented unit (EOU). The Tribunal took note of the entire facts and from paragraph 6 of the order proceeded

to take note of the various approvals which have been granted by the authorities which were all documents filed by the assessee in the paper book.

Tribunal noted that an agreement was entered into between the assessee and the Central Government on 20.01.2006 wherein there is a reference to a

resolution passed by the Ministry of Commerce dated 2.3.1994 granting status of the hundred per cent export oriented unit to the assessee. The

Tribunal has also referred to the copy of the green card issued by the designated officer, Government of India, Department of Information Technology

and Chairman, Inter-Ministerial standing committee on software technology park scheme vide green card dated 16.02.2006. Further the Tribunal took

note of a letter dated 2.9.2011 addressed to the assessee by the STPI regarding registration for setting up STP Unit. After noting these facts the

Tribunal also considered the submission on behalf of the assessee that CBDT has issued a clarification dated 9.3.2009 to the effect that power to

grant approval under Section 14 of the Industrial (Development & Regulation) Act, 1951 has been delegated to the Development Commissioner and

the approval granted by the Development Commissioner shall be considered valid for the purpose of exemption under Section 10B of the Act. With

the above factual finding the Tribunal granted relief to the assessee under Section 10B of the Act by affirming the order passed by the CIT(A). Next

the Tribunal took up for consideration the issue as to whether the assessee would be entitled to relief under Section 10A of the Act. The Tribunal

pointed out the similarities between Section 10A and Section 10B of the Act and held that assessee is entitled for the benefit of deduction under

Section 10A that the assessee has not claimed the same under that provision on law in the return of income. Further, the Tribunal rightly took note of

the judgement of the HonÃ¢â‚¬â„¢ble Supreme Court in the case of CIT VS. Mahalaxmi Sugar Mills Co. Ltd. reported in (1986) 160 ITR 920 (SC)

wherein it was held that the duty cast on the Income Tax Officer to apply relevant provisions of the Act for the purpose of determining the true figure

of the assesseeÃ¢â‚¬â„¢s taxable income and the consequential tax liability. That the assessee failed to claim the benefit of a set off cannot relieve the

income tax officer of his duty to apply Section 24 in an appropriate case. It is settled legal principle that the department cannot take advantage of the

assesseeÃ¢â‚¬â„¢s mistake in not claiming the exemption in the return of income, thereby denying the exemption. This is so, because the object of

administration of the provisions of the Income Tax Act is to ensure that the revenue is generated for the development of the nation at the same time

the assessee cannot be taxed for something more than what is due and liable to be paid to the revenue. As rightly pointed out by the learned Counsel

appearing for the respondent/assessee powers of the CIT(A) under Section 246A are wide enough to consider as to whether the assessee was

entitled for the claim of deduction under Section 10A as well. Thus we find that a thorough factual exercise has been done by the CIT(A) which has

been re-examined for its correctness by the Tribunal while affirming the findings of the CIT(A) qua, the relief granted under Section 10B of the Act.

That apart we find with regard to the relief granted to the assessee under Section 10A of the act, the Tribunal rightly took note of the legal position

and granted relief. Hence, we are satisfied that the order passed by the Tribunal is perfectly valid and does not call for any interference. In the result,

the appeal filed by the revenue is dismissed and substantial questions of law are accordingly answered against the revenue.

Consequently, the stay application stands dismissed.