

(2012) 03 AHC CK 0231

Allahabad High Court

Case No: Income Tax Appeal No. 487 of 2009

Commissioner of Income Tax

APPELLANT

Vs

Bullet International

RESPONDENT

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**Date of Decision:** March 21, 2012**Acts Referred:**

- Income Tax Act, 1961 - Section 10A, 119, 260A

**Citation:** (2012) 349 ITR 267**Hon'ble Judges:** Prakash Krishna, J; Ashok Bhushan, J**Bench:** Division Bench**Advocate:** Dhananjay Awasthi, for the Appellant; D.M. Sinha, for the Respondent**Final Decision:** Dismissed

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### Judgement

1. The present appeal has been filed u/s 260A of the income tax Act, 1961 (hereinafter called "the Act, 1961") against the order dated May 25, 2009, passed by the income tax Appellate Tribunal Delhi Bench "A", New Delhi (hereinafter called "the Tribunal") in I.T.A. No. 1085/Del/2008. The matter relates to the assessment year 2004-05. During the course of the assessment year 2004-05, the assessee claimed exemption u/s 10A of the Act, 1961. The said exemption was denied by the Assessing Officer by the order dated December 29, 2006, on the ground that the assessee was earlier a proprietorship concern, but during the previous year, it has been converted into a partnership firm. The matter was carried in appeal before the Commissioner of income tax (Appeals), who confirmed the order passed by the Assessing Officer, vide order dated December 31, 2007. Thereafter, both the assessee as well as the Department preferred an appeal before the Tribunal. It has been stated at the Bar that the appeal filed by the assessee was allowed by the Tribunal holding that the assessee is entitled to claim exemption u/s 10A of the Act, 1961. Against the order of the Tribunal, it appears that a defective appeal was preferred before this court being I.T.A. No. 269 of 2008. The said appeal has been dismissed as barred by time. Subsequently, the appeal preferred by the Department

came up for consideration before the Tribunal and the Tribunal by the order under appeal has dismissed the appeal preferred by the Department by following its earlier order passed in the case of the assessee's appeal.

2. Heard Shri Dhananjay Awasthi, learned counsel for the appellant and Shri D.M. Sinha, learned counsel for the assessee-respondent.

3. Learned counsel for the Department submits that in view of section 10A sub-sections (9) and (9A) of the Act, 1961, the order of the Tribunal is incorrect and a substantial question of law with regard to interpretation of section 10A of the Act, 1961, is involved in the appeal.

4. On the other hand, learned counsel for the assessee supports the order of the Tribunal.

5. Considered the respective submissions of the learned counsel for the parties.

6. It may not be out of place to mention that sub-sections (9) and (9A) of section 10A of the Act, 1961, are omitted by the Finance Act, 2003, with effect from April 1, 2004. For the sake of convenience sub-sections (9) and (9A) of section 10A of the Act, 1961, as they were existing prior to omission, are reproduced below:

(9) Where during any previous year, the ownership or the beneficial interest in the undertaking is transferred by any means, the deduction under sub-section (1) shall not be allowed to the assessee for the assessment year relevant to such previous year and the subsequent years.

(9A) Notwithstanding anything contained in sub-section (9), where as a result of reorganisation of business, a firm or a sole proprietary concern is succeeded by a company and the ownership or beneficial interest in the undertaking of the firm or the sole proprietary concern is transferred to the company, the deduction under sub-section (1) in respect of such undertaking shall be allowed to the company, as the same would have been allowed to such firm or sole proprietary concern, as the same would have been allowed to such firm or sole proprietary concern, as the case may be, if the reorganisation had not taken place:

Provided that,--

(a) in the case of a firm the aggregate of the shareholding in the company of the partners of the firm is not less than fifty-one per cent. of the total voting power in the company and their shareholding continues to be as such for the period for which the company is eligible for deduction under this section;

(b) in the case of a sole proprietary concern, the shareholding of the sole proprietor in the company is not less than fifty-one per cent. of the total voting power in the company and his shareholding continues to remain as such for the period for which the company is eligible for deduction under this section.

7. Obviously, the aforesaid sub-sections (9) and (9A) were no longer in existence with effect from April 1, 2004, i.e., for the assessment year 2004-05. There is no other provision for disallowance of the benefit to the assessee u/s 10A of the Act. The Commissioner of income tax (Appeals) in his order has quoted the relevant extract from the Board's Circular No. 7 of 2003, dated September 5, 2003 (see [Commissioner of Income Tax Vs. B. Narasimha Rao](#) ), and has come to the conclusion that the Board agrees that the benefit is attached to the undertaking and not to the owner thereof. It is an acknowledged legal position that beneficial circular issued by Central Board of Direct Taxes is binding on the Department. Reference can be made in this regard to a recent judgment of Supreme Court in [Catholic Syrian Bank Ltd. Vs. Commissioner of Income Tax, Thrissur](#) . Paragraph 21 is reproduced below (page 282 of 343 ITR):

Now, we shall proceed to examine the effect of the circulars which are in force and are issued by the Central Board of Direct Taxes (for short, "the Board") in exercise of the power vested in it u/s 119 of the Act. Circulars can be issued by the Board to explain or tone down the rigours of law and to ensure fair enforcement of its provisions. These circulars have the force of law and are binding on the income tax authorities, though they cannot be enforced adversely against the assessee. Normally, these circulars cannot be ignored. A circular may not override or detract from the provisions of the Act but it can seek to mitigate the rigour of a particular provision for the benefit of the assessee in certain specified circumstances. So long as the circular is in force, it aids the uniform and proper administration and application of the provisions of the Act (Refer to [UCO Bank, Calcutta Vs. Commissioner of Income Tax, West Bengal](#) ).

8. Reliance placed by the learned counsel for the appellant on [TARUN BHAI Vs. COMMISSIONER OF Income Tax.](#), is misplaced one. Altogether a different controversy was involved therein. There construction of exemption provision granting incentive to particular income was not in issue. It was rendered in the context of development rebate and is, therefore, distinguishable.

9. It is not disputed before us that for the earlier assessment years exemptions have been granted to the undertaking. In this view of the matter, the Tribunal was justified in holding that the assessee is entitled to get exemption u/s 10A of the Act, 1961. The argument of the learned counsel for the Department that since the proprietorship has been converted into partnership, therefore, this disentitles the assessee to claim benefits u/s 10A of the Act, 1961 does not borne out either from the plain language of sub-sections (9) and (9A) of section 10A of the Act, 1961, or in view of the Circular of the Central Board of Direct Taxes referred to above. No substantial question of law is involved in the appeal. The appeal is dismissed.