

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : B : NEW DELHI

BEFORE SHRI R.S. SYAL, AM & SHRI N.K. CHOUDHRY, JM

ITA No.2512/Del/2014
Assessment Year : 2007-08

Cklear Software Pvt. Ltd.,
IC/13, New Rohtak Road,
Karol Bagh,
New Delhi.

Vs. ITO,
Ward-3(2),
New Delhi.

PAN: AACCC5051A

Assessee By : Shri Rajesh Malhotra, CA
Deptt. By : Shri Anil Kumar Sharma, Sr. DR

Date of Hearing : 18.08.2016
Date of Pronouncement : 18.08.2016

ORDER

PER R.S. SYAL, AM:

This appeal by the assessee is directed against the order passed by the CIT(A) on 25.02.2014 upholding the denial of exemption u/s 10A in relation to the assessment year 2007-08

2. Succinctly, the facts of the case are that the assessee is engaged in the business of development and sales of computer software. Exemption u/s 10A amounting to Rs.9,30,205/- was claimed on the basis of audit report in Form No.56F. The AO observed that various conditions prescribed for claiming exemption u/s 10A were not satisfied as the industrial undertaking was old one and also in operation since 23.10.2003. On being called upon to explain as to why the exemption be not denied, the assessee submitted that it started its business of maintenance of software and obtained STPI registration on 6.7.2006. New assets in the form of computers and software were purchased for the technical staff and the old computers were used for administrative staff. The assessee claimed that since STPI is a Competent authority for granting certificate of 100% EOU and such certificate was granted to the assessee, the benefit of exemption u/s 10A could not be denied. Not convinced with the assessee's contentions, the AO held that conditions as envisaged in sub-section (1) of section 10A were not fulfilled

inasmuch as the business was already in existence since the A.Y. 2004-05. That is how, the benefit of section 10A was not granted. The Id. CIT(A) echoed the assessment order on this point.

3. We have heard the rival submissions and perused the relevant material on record. It is an admitted position that the assessee set up a new undertaking on 23.10.2003 and started its business of maintenance of software. The undertaking obtained its STPI registration on 6.7.2006, a copy of which is available on pages 24 to 26 of the paper book. The Competent authority, namely, Software Technology Parks of India, issued Green card to the assessee as 100% EOU under the STP Scheme. This Green card was initially valid for one year upto 5.7.2007 and, thereafter, it was renewed from time to time. The assessee was not set up in the area designated as STP Complex. However, on the basis of Instruction No.1 dated 31.3.2006 issued by the CBDT providing that an STP may be a new unit by itself, the assessee applied for the registration, which was duly granted by treating

the assessee as 100% EOU. Though the assessee was set up on 23.10.2003, it did not claim any benefit of section 10A for the assessment years 2004-05 onwards because it was not having STP registration. It was only pursuant to the clarification issued by the CBDT vide its Instruction No.1 dated 31.3.2006 that the assessee applied for registration and it was granted approval as 100% EOU under the STP Scheme. When the assessee was set up on 23.10.2003, the benefit of exemption u/s 10A was otherwise available to the qualifying units. Since the assessee did not get registration from the date of its setting up, it did not claim the benefit of exemption u/s 10A and paid tax on its regular income. The mere fact that the assessee was granted STPI registration on 6.7.2006 would not disqualify it for benefit of section 10A for the period commencing from such date if other requisite conditions stand satisfied. The case of the Revenue is that the assessee should have claimed the benefit of section 10A from the assessment year 2004-05 itself as it was set up in the previous year relevant to that assessment year and since no such claim was

made, it cannot be considered as eligible for the benefit in the year under consideration. We are not convinced with this logic. There can be no denial of the fact that the assessee otherwise fulfilled all the requisite conditions for availing benefit u/s 10A from the date it was set up in Financial year 2003-04. It was only due to lack of STPI registration that the assessee did not get the benefit of section 10A for the intervening period terminating on the date it was granted certificate of STPI registration as 100% EOU on the basis of Instruction No.1 dated 31.3.2006. By not claiming exemption u/s 10A for the earlier years, the assessee simply lost benefit for those years. As the assessee was not eligible for the benefit of section 10A for earlier years for lack of registration, it cannot be said that the benefit of section 10A, which is otherwise rightly due to the assessee, should also be denied on getting the requisite registration for the remaining period of *“ten consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce..... computer*

software.....”. The Hon’ble Delhi High Court in *Praveen Soni vs. CIT (2011) 333 ITR 324 (Del)* has held that special deduction u/s 80IB cannot be denied for the remaining years if it was not claimed for initial years subject to the fulfillment of the requisite conditions. The Delhi Bench of the Tribunal in *ITO vs. Vidya Tech Solutions (P) Ltd. (2010) 35 SOT 25 (Del)*, has allowed the benefit of section 10A under similar circumstances as are prevailing instantly.

4. The authorities below have also canvassed a view that since the assessee purchased some old computers, it was a case of reconstruction of business. We are not satisfied with this proposition in so far as the facts of the instant case are concerned. The fact that the assessee used some old computers for administrative purposes would not make the assessee ineligible for the benefit of section 10A, when the computers and software used by the assessee in the industrial undertaking were new. We have seen the balance sheets of the assessee starting with its first closing on 31.3.2014 and thereafter. It is observed

that in the first closing on 31.3.2014, there were no fixed assets. The assessee started purchasing computers and software etc. from the second year onwards. The assessee simply purchased some second hand computers for administrative purposes. It does not make it a case of reconstructed business.

5. In view of the foregoing discussion, we are satisfied that the ld. CIT(A) was not justified in confirming the denial of section 10A benefit to the assessee. The impugned order is set aside to this extent.

6. In the result, the appeal is allowed.

Order Pronounced in the open Court on 18.08.2016.

Sd/-

[N.K. CHOUDHRY]
JUDICIAL MEMBER

Sd/-

[R.S. SYAL]
ACCOUNTANT MEMBER

Dated, August, 2016.

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

AR, ITAT, NEW DELHI.