

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

' C' BENCH : CHENNAI

श्री जॉर्ज माथन, न्यायिक सदस्य के समक्ष

एवं एस जयरामन, लेखा सदस्य

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER & SHRI
S.JAYARAMAN, ACCOUNTANT MEMBER

I.T.A.Nos.1066,1067,1068,1069, &1070/CHNY/2017

Assessment years : 2007-08, 2008-09, 2009-10, 2010-11 & 2011-12

M/s.APA Engineering Pvt Ltd., Vs. The Income Tax officer,
(in which M/s.RPC Power India Pvt
Ltd., has merged) E-7, 8, 9 & 10
GEM & Jewellery Complex,MEPZ-
SEZ, Tambaram, Chennai-600 045.

Corporate Ward 5(3),
Chennai-34.

[PAN AACCR 2577 E]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Mrs.C.Sumithra, F.C.A

प्रत्यर्थी की ओर से /Respondent by

: Mr.N.Madhavan,ACIT,D.R

सुनवाई की तारीख/Date of Hearing

: 11-04-2018

घोषणा की तारीख /Date of Pronouncement

: 11-04-2018

आदेश / ORDER

PER GEORGE MATHAN, JUDICIAL MEMBER

These are appeals filed by the assessee against the common order of the Commissioner of Income-tax (Appeals)-3, Chennai in I.T.A No.76/2013-14/CIT(A)-3 for assessment year 2011-12 & ITA Nos.92 to 95 of 2015-16/CIT(A)-3 dated 31.01.2017 for assessment years 92 to 95 of 2015-16/CIT(A)-3.

2. Mrs. C.Sumithra represented on behalf of assessee and Mr.N.Madhavan represented on behalf of Revenue.

3. It was submitted by the Id.A.R that the assessee is a company, which is doing the business of manufacturing and export of cylindrical kits. It was a submission that the assessee is a 100% Export Oriented Undertaking (EOU) located in Madras Export Processing Zone (MEPZ), Chennai and Special Economic Zone (SEZ). The assessee had filed its return of income claiming deduction u/s.10B of the Income Tax Act, 1961 (in short 'Act'). It was a submission that claim of deduction u/s.10B of the Act had been denied to the assessee on the ground that assessee had not been proved as 100% EOU by the Board appointed in this behalf by the Central Government in exercise the powers conferred by Section-14 of the Industries (Development and Regulation) Act, 1951 and Rules made there under. It was a submission that on appeal assessee had made an alternate prayer in regard to the claim of deduction u/s.10A of the Act before the Ld.CIT(A). It was a submission that on the ground that the assessee had not filed the Form No.56F required u/s.10A(5) of the Act, the Ld.CIT(A) had rejected the assessee's claim u/s.10A also. It was a submission that assessee had before the Ld.CIT(A) filed the requisite Form No.56F along with application u/s.46A of the Act. It was the prayer that the requisite Form No.56F having been filed, the assessee

was entitled to the claim of deduction u/s.10A of the Act. Ld.A.R placed reliance on the decision of the Co-ordinate Bench of Hyderabad Tribunal in the case of I.T.O Vs. Com Lab India reported in [2015] 41 ITR (Trib) 641(Hyd.) wherein Co-ordinate Bench of this Tribunal has taken the same on record, viz. the report of the auditor in Form No.56F and restored the issue to the file of the Id. Assessing Officer with a direction to consider and decide the alternative claim of the assessee for deduction u/s.10A of the Act. Ld.A.R also placed reliance on the decision of the Hon'ble Jurisdictional High Court in the case of C.I.T vs. Western KG Information Ltd., reported in [2013] 359 ITR 01(Mad.) wherein also under similar circumstances, the alternate claim u/s.10A of the Act had been restored to the file of Id. Assessing Officer for re-adjudication. It was prayed that the assessee's claim u/s.10A of the Act may be considered favourably.

4. In reply, Id.D.R vehemently supported the orders of Id. Assessing Officer and the Ld.CIT(A). It was a submission that provisions of the section 10A(5) of the Act used the word 'shall' and as the assessee had not filed the Form No.56F along with the return filed u/s.139(1) of the Act, assessee was not entitled to deduction u/s.10A of the Act.

5. We have heard the rival submissions and perused the material on record. Perusal of the facts in the present case clearly

show that the assessee has filed the requisite Form No.56F along with the petition under Rule-46A for admission of the evidence in the form of Form No.56F before the Ld.CIT(A) for all the relevant to assessment years. Perusal of the order of Ld.CIT(A) shows that in page No.28, Ld.CIT(A) has admitted the Form No.56F. He has also brought on record that the said Form No.56F was not filed before the Id. Assessing Officer. Further, Ld.CIT(A) had on ground that the said Form No.56F along with claim of deduction u/s.10A of the Act had not been made in the return filed u/s.139(1) of the Act, rejected the assessee's claim. This being so, as it is noticed that the claim of deduction u/s.10A of the Act has not been considered on merits, though the Form No.56F has been admitted by the Ld.CIT(A) in the form of additional evidence, we exercise our powers in view of the decision of the Hon'ble Supreme Court in the case of Goetze (India) Ltd., reported in 284 ITR 323 and restore the issue of claim of deduction u/s.10A of the Act to the file of Id. Assessing Officer for re-adjudication. The Id. Assessing Officer shall consider the alternate claim of deduction u/s.10A of the Act by treating the Form No.56F as having been filed along with the return filed u/s.139(1) of the Act.

6. In the result, grounds raised by the assessee in respect of claiming deduction u/s.10A of the Act stands partly allowed for statistical purposes.

7. At the time of hearing, the Id.A.R withdrew the grounds raised in respect of re-opening of assessment, as also the grounds in respect of notice issued u/s.143(2) of the Act. Consequently the said grounds in respect of re-opening of assessment, and the issue of notice u/s.143(2) of the Act stand dismissed as withdrawn.

8. No argument has specifically been raised in respect of grounds relating to claim of deduction u/s.10B of the Act. Consequently, the grounds against disallowance of deduction claimed u/s.10B of the Act stands dismissed.

9. In the result, all the appeals of the assessee are partly allowed for statistical purposes.

Order pronounced in the open court after conclusion of hearing on 11th April, 2018, at Chennai.

Sd/-

(एस जयरामन)

(S. JAYARAMAN)

लेखा सदस्य/Accountant Member

Sd/-

(जॉर्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated: 11th April, 2018.

K S Sundaram

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

3. आयकर आयुक्त (अपील)/CIT(A)

5. विभागीय प्रतिनिधि/DR

2. प्रत्यर्थी/Respondent

4. आयकर आयुक्त/CIT

6. गार्ड फाईल/GF