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% 08.03.2011

Present: Ms. Prem Lata Bansal, Sr. Advocate with Mr. Deepak Anand, Advocate for the appellant.
None for the respondent.

+ ITA No. 470/2011

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The ITAT has relied upon its own order being 3915/Del/04 for the assessment year 2001-02 while holding that the assessee had fulfilled all the conditions for exemption under Section 10A of the Income Tax Act.

The Revenue had filed an appeal against the order of the ITAT in respect of the assessment year 2001-02. That appeal being ITA No. 1233/2007 was dismissed by this Court on 21st October, 2010, Following that judgment, we find that no substantial question of law arise for consideration. Accordingly, the present appeal is dismissed.

A.K. SIKRI, J.**M.L. MEHTA, J.****MARCH 08, 2011**

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 1233/2007

COMMISSIONER OF INCOME TAX Appellant
Through Ms. Prem Lata Bansal, Advocate.

versus.

DAMCO SOLUTIONS P.LTD. Respondent
Through Mr. Rakesh Munjal Sr. Advocate with
Mr. Ankur Arora, Advocate.

CORAM:
HON'BLE MR. JUSTICE A.K.SIKRI
HON'BLE MR. JUSTICE SURESH KAIT

ORDER
21.10.2010

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High Court of Delhi

The assessee herein had taken the benefit of provision of Section 80HHE of the Income Tax Act in the preceding Assessment Years. However, for the Assessment Year 2001-2002, the assessee had claimed benefit under Section 10A of the Act instead of Section 80HHE of the Act. This was denied to the assessee on the ground that since the assessee had started claiming the benefit of Section 80HHE of the Act which was allowed in the previous year such a switch over was not permitted and impermissible in view sub Section (5) of Section 80 HHE of the Act. The only course of action permissible for the assessee to continue to get the benefit of Section 80HHE alone.

This stand of the Assessing Officer was repelled by the CIT (A) holding that the purpose of Sub Section (5) of Section 80HHE was to avoid double benefit and that would not mean that if the assessee for a



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particular Assessment Year wanted relief only under Section 10A of the Act that would be denied to the assessee. The only embargo was not to give relief under both the provisions.

The Department filed appeal there against before the Income Tax Appellate Tribunal which had been dismissed by the Tribunal confirming the order of the CIT(A). In its judgment, the Tribunal has relied upon its earlier decision in the case of **CIT v. Legato Systems India (P) Limited** wherein the provisions of Section 80HHE and Section 10A of the Act are elaborately discussed and dealt with and the aforesaid interpretation given to sub Section 5 of Section 80HHE.

The Department had filed appeal against the judgment of the Tribunal in the case of **Legato Systems India Pvt. Ltd., ITA No. 1400/2005**. This appeal was dismissed in limine by passing the following order on 12.07.2005.

"The Tribunal has recorded a finding of fact that the respondent assessee was not an old unit already in existence so as to be disentitled to the benefit of exemption under S.10A of the IT Act, 1961. It has, on that finding, remitted the matter back to the AO with the following directions.

We, therefore, set aside the orders of the authorities below on this point and restore the matter back to the file of the AO with a direction to allow exemption under S.10A in both the years in case of the assessee is found to have satisfied all other requisites envisaged in the scheme of S.10A of the Act. In case the exemption under Section 10A cannot be allowed for the reasons of not satisfying the requisites, the claim of deduction under Section 80HHE shall be allowed after providing opportunity to meet the requisite.

The above direction is, in our view, just and proper hence does not call for any interference



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 High Court of Delhi



-3-

especially when the question (whether the assessee) satisfies the prerequisites stipulated for the purpose of getting benefit under S.10A is a matter left to be determined by the AO. So also the entitlement of the assessee to seek deduction under S.80HHE having been left to be determined by the AO, subject to assessee's satisfying the pre-requisites stipulated for the grant of such a benefit under the said provision. No question of law much less a substantial question of law arises for our consideration in this appeal to warrant its admission.

The appeal is accordingly dismissed in limine.

It is thus clear that this Court has accepted the interpretation given by the Tribunal to the aforesaid provisions and held that the benefit on exemption under Section 10A of the ITAT Act, 1961 would be admissible to the assessee in that particular year. Of course, at the same time, the Court made it clear that it would be permissible for the Assessing Officer, before granting benefit under Section 10A of the Act, to the Department as to whether the assessee is fulfilling all the eligibilities conditions prescribed for grant of benefit under Section 10A of the Act or not.

We may note that in the present case, the Income Tax Appellate Tribunal has observed that CIT(A) has recorded its findings holding that conditions prescribed under Section 10A of the Act have been duly complied with by the assessee and therefore, there was no reason for denying the directions given in the said case. These findings are affirmed by the Tribunal as well.



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 High Court



-4-

In view of the aforesaid decision of this Court, we are of the opinion that no substantial question of law arises. The appeal is dismissed.

A.K. SIKRI, J.

SURESH KAIT, J.

OCTOBER 21, 2010
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Sharma
Examiner Judicial Department
High Court of Delhi
Authorised Under Section 70
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