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

% **DECIDED ON: 04.02.2014**

\+ ITA 542/2013

THE COMMISSIONER OF INCOME TAX-V ..... Appellant
Through: Ms. Suruchi Aggarwal,
Sr. Standing Counsel.

versus

M/S QUANTUM CODERS LTD ..... Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.V. EASWAR

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

1. The question of law sought to be urged in this case is whether the interpretation given to Section 10A, particularly, sub-section (2) by the Tribunal is correct and justified.

2. The assessee/respondent reported NIL income for the AY 2007-08 relying upon the approval for setting up Software Technology Parks in India by virtue of a certificate dated 8.12.2006 issued to it.

3. It claimed deduction of ₹38,98,220/- in respect of the income from software exports for the entire previous year, i.e., 1.4.2006 to 31.3.2007. The AO relied upon the condition in the letter of permission which stated that it was valid for three years *from the date of issue*. He accordingly restricted the deduction, granting it for the

period 8.12.2006 to 31.3.2007 for the income of ₹12,17,520/- relatable to that period. The Commissioner (Appeals), however, enhanced the taxable income by disallowing the entire claim of ₹38,98,220/-, on the ground that the assessee commenced the production of the software in the previous year relevant to the AY 2001-02 and not in the previous year relevant to the AY 2007-08 as required by Section 10A (2) (i).

4. The ITAT by its order allowed the assessee's appeal relying upon the previous order of the Chennai Bench, i.e., (*Nagesh Chundur v. Assistant Commissioner of Income Tax* - ITA 83/Mds/2011 dated 1.6.2011). The Chennai Bench had held as follows: -

> *"From the aforesaid facts, it is clear that section 10A provides for deduction from the total income of profits derived by an undertaking from the export of articles or things or computer software for a period of ten consecutive years. The tax holiday period commences from the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce such article or thing or computer software. Section 10 (2) prescribes certain conditions on the fulfillment of which the benefit of 10A could be availed."*

5. Relying on Section 10A and Section 10 (A) (2), learned counsel for the Revenue urges that since the assessee had commenced commercial production in the present instance from 23.05.2000, but was granted the approval only in 2006, the benefit could not have been allowed at all. Learned counsel stressed upon the conditions specified in Section 10A (2) (i), particularly, stating that the benefit was restricted to the relevant years mentioned in the provision itself in view of the controlling phrase "begins to manufacture or produce such article or thing or computer software during the previous years

relevant to the assessment years". Learned counsel also relied upon the second proviso to Section 10 (A) (1).

6. We have considered the submissions. The benefit under Section 10A (1) - as the provision itself declares is subject to other conditions. It extends to deduction of profits and gains derived from the export of articles or things or computer software for a period of ten years. The second proviso visualizes a situation where an undertaking initially located in a Free Trade Zone which is subsequently located in Special Economic Zone becomes entitled to claim the benefit. The Parliament stated that in such an eventuality, the period of ten consequent years would be reckoned from the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce articles or things or computer software etc. This proviso in our opinion in fact flies on the face of the Revenue's submissions as the Parliament restricted the benefit only in respect of the contingency, i.e., in the event of conversion of one kind of zone to the other. Therefore, Section 10A (1) cannot be read in the restrictive manner as is being suggested. As far as Section 10A (2) goes, this Court cannot accept the Revenue's submission as that would be giving undue stress and entirely dependent upon the expression "during the previous years relevant to the assessment years" according to Section 10A (2) (i). The other aspect relevant to "commencement on or after" requires equal emphasis. During the course of hearing, this Court was apprised of the judgment of the Karnataka High Court in ITA 323/2010 (Commissioner of Income Tax v. M/s Expert Outsource Pvt. Ltd.).

7. In that case, the Court had to deal with a somewhat analogous situation though not entirely identical to the facts of this case. The benefit in question was Section 10B and the High Court had in that instance relied upon the Circular No.1/2005.

8. In view of the above discussion, this Court is of the opinion that the impugned order does not disclose any error of law by following its previous decision in *Nagesh Chundur (supra)*.

9. The appeal is accordingly dismissed.

S. RAVINDRA BHAT
(JUDGE)

R.V. EASWAR
(JUDGE)

FEBRUARY 04, 2014
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