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

\+ **INCOME TAX APPEAL NO. 750/2014 & CM NO. 20412/2014**

Date of decision: 15th December, 2014

THE COMMISSIONER OF INCOME TAX-IV ..... Appellant

Through Mr. Ruchir Bhatia, Advocate.

versus

M/S OKS SPAN TECH PVT. LTD. ..... Respondent

Through Nemo.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE V. KAMESWAR RAO

SANJIV KHANNA, J. (ORAL):

There is delay of 400 days in re-filing of the present appeal. However, before issuing notice on the application for condonation of delay, we deem it appropriate to examine the merits.

2. This appeal by the Revenue pertains to Assessment Year 2007-08 and impugns order dated 16th November, 2012 passed by the Income Tax Appellate Tribunal (Tribunal, for short).

3. The assessee company filed its e-return, declaring income of Rs. 5,18,353, on 25.10.2007. The assessee claimed deduction amounting to Rs.3,03,94,780/- under section 10B of the Income Tax Act,1961 (Act, for short) in respect of income derived from its 100% export oriented units, situated at Chennai and Gurgaon. The said two units were engaged in business of export of computer software.

4. The Assessing Officer disallowed the claims under section 10B f the two reasons. Firstly, he held that development and export of computer software was not eligible under Section 10B as the assessee had not produced or manufactured any good, articles or thing. The aforesaid reasoning of the Assessing Officer has been rightly rejected by the Commissioner of Income Tax (Appeals) as well as the Tribunal in view of the circular No. 794 dated 9.8.2000 issued by the Central Board of Direct Taxes and amendment in Section 10B w.e.f 1.4.2001. In fact, the Revenue has not raised the said issue in the present appeal.

5. The second ground given by the Assessing Officer was that the assessee having two separate units eligible under section 10B was required to file two separate reports in form 56G in respect of each unit, whereas assessee had submitted only one auditor report in form 56G for both of its two units, i.e., the unit located at Chennai and Gurgaon.

6. Section 10B(5) of the Act reads :-

> 10B.
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> XXXXXXX
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> (5) The deduction under sub-section (1) shall not be admissible for any assessment year beginning on or after the 1st day of April, 2001, unless the assessee furnishes in the prescribed form, along with the return of income, the report of an accountant, as defined in the Explanation below sub-section (2) of section 288, certifying that the deduction has been correctly claimed in accordance with the provisions of this section.

The Commissioner of Income Tax (Appeals) [(C.I.T(A), for short], reversing the findings of the Assessing Officer, has referred to Form 56G

as filed and had recorded that the Chartered Accountant in form No. 56 had bifurcated and computed the income derived from exports of software for the Gurgaon and Chennai Unit, separately. The requisite information and details for each unit as per the mandate of section 10B were duly furnished and filed. Thus full particulars and details had been separately provided in respect of both units. It was immaterial whether the assessee furnished a separate form for each unit or full and complete details of each unit were furnished separately but in a single form. ITAT has affirmed the said reasoning given by the C.I.T (A).

7. It is apparent that the bifurcation of the exempt income for each unit was clearly stated and given. It is not the case of the revenue that certain aspects were not clear or concealed or eligible profits of each unit could not be ascertained. No such assertion and contention is raised. Copy of the form has also not been filed. The view taken by the Revenue is hypertechnical and does not merit issue of notice in the present appeal.

8. In view of the aforesaid, we are not inclined to issue notice on the application for condonation of delay in re-filing and as a sequitur, the appeal itself will be treated as dismissed.

SANJIV KHANNA, J.

V. KAMESWAR RAO, J.

DECEMBER 15, 2014
VKR