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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ITA 956/2015

THE PR.COMMISSIONER OF INCOME TAX-21 Appellant
Through: Mr Dileep Shivpuri, Senior Standing
Counsel and Mr Sanjay Kumar, Junior Standing
Counsel.
versus

SHRI AKSHAY BHARADWAJ Respondent
Through
WITH

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ITA 957/2015

THE PR.COMMISSIONER OF INCOME TAX-21 Appellant
Through: Mr Dileep Shivpuri, Senior Standing
Counsel and Mr Sanjay Kumar, Junior Standing
Counsel.
versus

SHRI AKSHAY BHARADWAJ Respondent
Through
AND

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ITA 958/2015

THE PR.COMMISSIONER OF INCOME
TAX-21 Appellant
Through: Mr Dileep Shivpuri, Senior Standing
Counsel and Mr Sanjay Kumar, Junior Standing
Counsel.
versus

SHRI AKSHAY BHARADWAJ Respondent
Through

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VIBHU BAKHRU

ORDER

% **15.12.2015**

CM No.30810/2015 in ITA No.956/2015
CM No.30811/2015 in ITA No.957/2015

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

ITA Nos.956/2015, 957/2015 & 958/2015

3. These three appeals by the Revenue are directed against the common order dated 21st May, 2015 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA Nos.3028, 3029, 3030/Del/2013 for the Assessment Years ('AY') 2005-06, 2006-07 and 2009-10.

4. At the outset Mr Shivpuri, learned Senior Standing Counsel for the Revenue, points out that although the tax effect as far as AY 2005-06 is less than the minimum monetary limit of Rs.20 lakhs as stipulated in the latest Circular No.21/2015 dated 10th December, 2015 of the Central Board of Direct Taxes (CBDT), since the impugned order of the ITAT is common to three AYs, and the aggregate tax effect for the three AYs exceeds Rs. 20 lakhs, these three appeals are nevertheless maintainable.

5. The Court has examined the appeals on merits. The ground urged is that the ITAT erred in affirming the order of the Commissioner of Income Tax (Appeals) [CIT(A)] which deleted the addition made by the Assessing Officer (AO) on account of the disallowance of the exemption claimed by the Assessee under Section 10B of the Act.

6. The Assessee is a doctor by profession. He also claimed to have earned income through export of computer software from a unit registered in the

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Software Technology Parks of India ('STPI') as an export oriented unit (EOU). He was also been granted a Green Card for that purpose. In the initial return filed for the AYs in question, the Assessee sought exemption under Section 10B of the Act in respect of the aforementioned export income. The AO, however, rejected the claim on the ground that the registration certificate of the EOU was not issued by the Board appointed by the Central Government under Section 14 of the Industrial (Development and Regulation) Act, 1951.

7. Before the CIT(A), the Assessee raised an additional ground that the exemption ought to have been granted under Section 10A of the Act. The Assessee also furnished an audit report in Form No.56F to revise his claim to one under Section 10 A. The CIT(A) then called for a remand report from the AO. The AO objected that in order to avail the exemption under Section 10 A, an Assessee had to file the report in Form No.56F along with the return in terms of Rule 16B of the Income Tax Rules, 1962. Referring to the decision of the Supreme Court in *Goetze (India) Ltd. v. CIT (2006) 284 ITR 323 (SC)* the AO took the stand that since the Assessee had not claimed the exemption when he filed the original return, he could not claim it at a subsequent stage.

8. The CIT(A), however, relied on the decision of the Delhi Bench of the ITAT in *ITO v. Efextra Esolutions Pvt. Ltd.* (ITA No.313/Del/2012) where such a plea had been entertained at the appellate stage. The CIT(A) noted that the Assessee had produced the software in the unit which was registered at the STPI. He had been issued a Green card and registration by the

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Director STPI. The Assessee had also filed the audit report in Form No.56F.

9. The ITAT has, while dismissing the Revenue's appeal by the impugned order, followed its earlier decisions in *Efextra Esolutions Pvt. Ltd (supra)* and *ITO v. M/s J.C. Infosoft Technologies Ltd.* (order dated 25th July, 2014 in ITA No.1135/Del/2011).

10. Mr Shivpuri referred to Section 80A (5) and submitted that in terms thereof, the claim for exemption under Section 10 A had to be made in the first instance while filing the return of income, failing which no deduction thereunder could be allowed to an Assessee.

11. It is seen that Section 80 A (5) refers to both Sections 10 A and 10 B. It is not as if in the present case the Assessee did not, at the time of filing his return, make a claim for exemption in respect of the export income. He however invoked the wrong provision i.e. Section 10 B instead of Section 10 A. At the appellate stage he sought to rectify this error and revise the claim to one under Section 10 A by submitting an audit report in Form 56 F. While in terms of the decision in *Goetze (India) Ltd.(supra)* the AO may have been precluded from entertaining that plea, the CIT (A) at the appellate stage was not. Further, the CIT(A) did obtain a remand report from the AO.

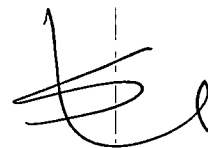
12. It was then urged by Mr. Shivpuri that there is a difference in the language of Section 10A and Section 10B and that in any event the CIT(A) should have remanded the matters to the AO to examine if in fact the Assessee had exported computer software from the STPI unit as claimed by

him.

13. As already noted, the CIT (A) proceeded in the matter only after seeking a remand report from the AO. The only objection raised by the AO was that the audit report in Form 56 F ought to have been submitted with the original return. It was not the case of the AO at this stage that the Assessee did not satisfy any of the other the eligibility requirements under Section 10 A. Therefore, the factual determination by the CIT(A) that the Assessee was otherwise entitled to exemption under Section 10 A was not controverted by the Revenue.

14. In its appeals before the ITAT the Revenue urged two grounds which were about the Assessee not filing the audit report in Form No.56F along with the return. No ground was urged that the Assessee was ineligible to claim exemption under Section 10A of the Act.

15. In the circumstances, no substantial question of law arises from the impugned common order of the ITAT. The appeals are, accordingly, dismissed.



S.MURALIDHAR, J



VIBHU BAKHRU, J

DECEMBER 15, 2015/MK