

\$~119

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

+ ITA 735/2016

PR. COMMISSIONER OF INCOME TAX-10 Appellant

Through: Ms.Lakshmi Gurung, Advocate

versus

EARTH STONE GROUP

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

% **25.10.2016**

1. The question of law urged by the revenue in this appeal under Section 260A of the Income Tax Act is whether in the circumstances of the case, the export income reported by the assessee for AY 2008-2009, and brought to tax to the extent of ₹1,52,51,935/- by the AO on the basis that the terms of Section 10B were not applied, is correct.

2. The assessee had reported export turnover and claimed deduction under Section 10B to the tune of ₹9,64,64,001/-. In scrutiny assessment the AO determined that the assessee had made only local sales to sister concern M/s Stone world to the tune of ₹4,03,66,362/-. It was held that Section 10B deduction available to 100% export oriented undertakings. The assessee's claim rejected on three counts; firstly that the assessee itself never exported the manufactured goods; secondly, M/s Stone world was not status holder or an exporter in terms of the Exim Policy and was not entitled to benefit and therefore the income derived by it could not be treated as

assessee's income and thirdly, that the export proceeds were not received by M/s Stone world in the first instance. The CIT (A) accepted the revenue's contentions and rejected the assessee's on two counts.

3. The CIT (A) accepted the revenue's contention and rejected the assessee's appeal adding further that the amounts were not received by the assessee in the first instance but by M/s Stone world i.e. a third party and therefore, contrary to the mandate of Section 10B (3). The ITAT, however, accepted the assessee's appeal in the impugned order. The ITAT relied upon the ruling of Karnataka High Court in *Tata Elxsi Ltd., Bangalore vs. ACIT* decided on 20.10.2014.

4. Ms.Gurung, learned counsel for the revenue argues that ITAT's fell into error in ignoring the statutory mandate of Section 10B which requires the assessee to itself undertake the export. Stressing that in terms of Exim Policy it is the exporter alone or at best the status holder i.e. authorised representative to enter into international transaction and agreement for exporting products, which qualifies for deduction under Section 10B. Learned counsel also emphasised that in fact the receipt of consideration and foreign exchange should also be by the assessee in terms of Section 10B (3).

5. In *Tata Elxsi Ltd's* case (supra), the issue involved was domestic sales but treated as deemed export within STP zone. Undoubtedly, the sale transaction was between two authorised STP entities – the purchaser apparently was “status holder” itself entitled to export. However, the ratio in this court's opinion is not based only upon those facts alone. The court, in fact, concluded that Section 10B

and its various sub-sections which spelt out the conditions are to be construed liberally rather than a grammatical liberal sense. The court held in the context of facts of the case (since that claim for deduction there was under Section 10A) that:

“20. From the aforesaid provisions, it is clear that if a assessee wants to claim the benefit of section 10A, firstly he must export articles or things of computer software. Secondly, the said export may be done directly by him or through other exporter after fulfilling the conditions mentioned therein. Thirdly, such an export should yield foreign exchange which should be brought in to the country. If all these three conditions are fulfilled, then the object of enacting Section 10A is fulfilled and the assessee would be entitled to the benefit of exemption from payment of Income Tax Act on the profits and gains derived by the Undertaking from the export.”

6. This court is of the opinion that the ITAT's findings cannot be faulted. The submissions of the revenue with respect to Section 10B (3) in the context further is that the “sale proceeds of articles of things or computer software” export it out of India and received in or brought into India by the assessee into the converted foreign exchange – the condition spelt out in Section 10B (3), cannot be limited or restricted to only actual receipts by the assessee. There can be basis where the assessee might export through a third party which might in the first instance received the foreign exchange and in turn transmit it. Rather than a *per se* rejection of such transaction what is essential for the AO in each case to decide whether the third party was beneficiary to the transaction and received any amount all out of such proceeds. To expand the instance further there might be cases where on account

of circumstances, beyond control of the assessee such as attachment order and exercise of banks lien etc. amount may not be actually received into the assessee's account or received by it at all. In such cases too, it cannot be claimed that unless the amounts actually are received by the assessee would not qualify for benefit under Section 10B.

7. It was lastly argued that unlike under Section 80HHC where the benefit of deduction is available even to a third party but one who facilitates the manufacturer by an exporter from which earnings are reported, (termed as “supporting manufacturer”) Section 10B makes no similar provision. It is argued that this ipso fact excluded in its application amounts that could be received or receivable by third party or even status holders, of the kind envisioned in *Tata Elxsi Ltd.’s* case (*supra*). This court is of the opinion that such argument too cannot be countenanced. Section 80HHC was undoubtedly brought at a prior point in time – for the first time in 1984. The emphasis of Section 80HHC is the grant of qualify the deduction to business exporters of goods or merchandise. Section 10B so introduced at a later point in time i.e. in 2000 by Finance Act of 2000 with effect from 01.04.2001. Likewise the existing Section 10A was substituted with effect from 01.04.2001. The original provision of Section 10A was enacted in 1981. The commonality to substitute 10A and 10B is apparent by the fact that both refer to profits and gains derived by undertaking by export of articles or things or computer software for 10 consecutive years. Previous ruling of this court in *CIT vs. Tei Technologies Pvt. Ltd. (2014) 361 1 ITR 36*

(Delhi) & CIT vs. Kei Industries Ltd. (2015) 373 ITR 574 (Delhi)

exphasized the distinction between Section 10A and 10B on the one hand and Section 80HHC on the other characterising the category of former exemption even though they are termed deductions and the latter i.e. Section 80HHC as a deduction. This reasoning has to be kept in mind even while rejecting the revenue's contention on this score.

8. For the foregoing reasons, no substantial question of law arises. The appeal is dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

OCTOBER 25, 2016

rb