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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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+ **ITA No. 652/2016**

PR. COMMISSIONER OF INCOME TAX-06 ..... Appellant
Through: Mr. Rahul Chaudhary, Senior Standing Counsel

versus

NETSITY SYSTEMS PVT. LTD.
..... Respondent
Through: Mr. Sanat Kapoor, Mr. Sumit Lalchandani, Ms. Soumya Singh and Ms Ananya Kapoor, Advocates

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE PRATHIBA M. SINGH

ORDER

% **04.09.2017**

1. This is an appeal by the Revenue against an order dated 1st January 2016 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 5093/Del/2011 for the Assessment Year ('AY') 2008-09.

2. The question urged by the Revenue before this Court reads thus:

> "Whether in facts and circumstances of the case Tribunal is legally justified in ignoring ratio decidendi of the Delhi High Court in case of *CIT v Regency Creations Ltd. 353 ITR 326 (2013)* that STPI is not a board/competent authority as defined in clause (iv) of Explanation 2 below section 10B (8) of Income Tax Act 1961 (the Act)?"

3. Learned counsel for the Assessee does not dispute that, in ***CIT v. Regency Creations Ltd. [2013] 353 ITR 326 (Del)***, this Court held that, for the purposes of availing the benefit of Section 10B of the Act, the certification by the Board/Competent Authority was mandatory and that deduction under

Section 10 B of the Act such exemption could not be granted on the basis of the certificate issued by the Joint Director.

4. However, Mr. Sanat Kapoor, learned counsel for the Respondent, has drawn the attention of the Court to the order dated 2nd September 2015 passed by this Court in ***Fast Booking (I) Pvt. Ltd. v. Dy. Commissioner of Income Tax–11(1) [2015] 378 ITR 693 (Del)*** where, after noticing the aforementioned decision in ***Regency Creations Ltd.*** *(supra)* and the order of the ITAT at New Delhi dated 23rd April 2010 passed in ***Valiant Communication Ltd. v. DCIT*** [ITA No. 2706/Del/2008], this Court, in para 11, has observed as under:

> "11. The Respondent Assessees in the above cases, including Valiant Communications Ltd. and Regency Creations Ltd. filed applications before this Court for clarification that even though they may not be entitled to the benefit under Section 10B, they should not be denied the benefit under Section 10A as they satisfied the requirements for availing the benefit under Section 10A. On these applications, this Court passed the following order on 4th January 2013:
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>> "Issue notice. Sh. Kiran Babu, Sr. Standing Counsel accepts notice on behalf of the Revenue.
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>> The applicant assessee had succeeded before the Tribunal in the contention that it was entitled to the benefit of Section 10B of the Income Tax Act. It had urged that the supporting materials disclose that there was STP clearance/approval under Section 10A and that such approval was sufficient to entitle it to the benefit of Section 10B. But judgment, this Court negatives the plea with regard to the approval vis-vis Section 10B and has ruled that separate regime exists.
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>> The applicant contends that the CIT(A) and the Tribunal had, in the present case, not gone into the merits of the alternative

claim for entitlement under Section 10A. This fact is apparent from a reading of the order of CIT (A) as well as that of the Tribunal in the order impugned. In the circumstances, the Tribunal shall consider the relevant documents on the basis of the claims and ascertain whether the applicant is entitled to the benefit of Section 10A, as claimed. The judgment and order of this Court dated 17.09.2012 is accordingly modified; the Tribunal shall proceed to pass appropriate orders after hearing both parties."

5. Thereafter, in para 17 of the same order, the Court held as under:

> "17. The basis of this Court remanding the matters in Valiant Communications Ltd. cases to the ITAT was precisely to consider whether the benefit under Section 10A could be granted to those Assessees notwithstanding that they may not be entitled to the benefit under Section 10B. It was, therefore, open to the Appellant Assessee herein to seek support of the order of the CIT (A) on the ground which was not urged before the CIT (A) as long as it was not going to be adverse to the case of the Appellant i.e. the Revenue before the ITAT. The ITAT in considering such plea was not going to be persuaded to come to a different conclusion as far as the appeal of the Revenue pertaining to the benefit under Section 10B of the Act was concerned. Particularly in the light of the order passed by this Court on 4th January 2013 in the applications filed by Valiant Communications Ltd., there should have been no difficulty for the ITAT to have examined the Appellant Assessee's cross objections."

6. Learned counsel for the Assessee pointed out that in the present case also the alternative contention of the Assessee is that even if its claim for deduction under Section 10B of the Act is not allowable, it should not be denied the deduction under Section 10A of the Act. It is submitted that the alternative plea of the Assessee has not been considered by the ITAT in the present matter.

7. In that view of the matter, the Court sets aside the impugned order of the

ITAT and holds that, in view of the decision of this Court in ***Regency Creations Ltd.*** *(supra)*, as further modified by the order dated 4th January 2013, in the application filed by Regency Creations Limited in that very case, the ITAT should consider the alternative plea of the Respondent-Assessee regarding its entitlement of deduction under Section 10A of the Act, notwithstanding the fact that the Assessee might not be entitled to such deduction under Section 10B of the Act.

8. In view of the aforementioned judgment of this Court in ***Regency Creations Ltd.*** *(supra)*, the impugned order of the ITAT, to the extent that it holds that the Respondent is entitled to deduction under Section 10B of the Act, is hereby set aside.

9. The Revenue's appeal being ITA No. 5093/Del/2011 is restored to file of the ITAT. The Assessee will file its cross objections before the ITAT to formally put forth the alternative plea that the assessee is entitled to deduction under Section 10A of the Act. The appeal of the Revenue and the cross objections of the Assessee will be heard and disposed of by the ITAT expeditiously.

10. The aforementioned appeal of the Revenue will be listed before the ITAT on 9th October 2017 for directions.

11. The appeal is disposed of in the above terms.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

SEPTEMBER 04, 2017/*rd*