

\$~

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

Date of Decision: 25.10.2017

+ ITA 892/2017 & CM No.38022/2017

M/S AVALON BUSINESS ASSOCIATES Appellant

Through: Mr. N.P. Sahni with Mr.
Ruchesh Sinha, Advs.

versus

PR. COMMISSIONER OF INCOME TAX-14 & ANR.

..... Respondents

Through: Mr. Ashok K. Manchanda,
Sr. Standing Counsel for ITD.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

%

25.10.2017

1. Issue notice.
2. Mr. Ashok K. Manchanda, learned counsel for the ITD accepts notice.
3. The assessee is aggrieved by the invocation of power – by the Commissioner under Section 263 of the Income Tax Act, 1961 (hereafter referred to as ‘the Act’).

4. The AO, for the relevant year i.e. 2011-12 had upheld the assessee's contention with regard to applicability of Section 10B to its unit. Section 263 was invoked primarily on the ground that the approval did not conform to the CBDT's circular dated 09.03.2009 (F.No.178/19/2008).

5. In this regard, learned counsel submitted that the decision of the Division Bench of this Court in *Commissioner of Income-Tax v. Enable Exports (P.) Ltd.* [2012] 17 taxmann.com 182 (Delhi) is conclusive and the ITAT's reliance upon its subsequent ruling in *Commissioner of Income Tax v. Valiant Communications Ltd.* (2013) 353 ITR 326 Del. deserves no consequence. It was highlighted that *Valiant Communications Ltd.* (supra) did not take into account the relevant circulars of 2008-09 as well as the decision in *Enable Exports (P.) Ltd.* (supra).

6. At the outset, we notice that *Enable Exports (P.) Ltd.* (supra) itself took note of the circular of 09.03.2009, which in material particulars records as follows:

“The matter regarding validity of approvals given by Development Commissioner has been examined in the Board. It has been decided that an approval granted by the Development Commissioner in the case of a hundred percent export oriented unit will be considered valid, once such an approval is ratified by the Board of Approval for EOU scheme.

[Emphasis supplied]”

7. Mr. N.P. Sahni, learned counsel for the assessee/appellant urged that the approval of the Development Commissioner *ipso facto* was sufficient having regard to the previous binding circulars of the concerned Ministry which were consistently applied by the CBDT in all Income Tax authorities. In particular, he relied upon the delegation of powers for automatic post approval amendments (press note No.5 of 1997 series) issued by the Department of Electronics.

8. We have considered the submissions.

9. The invocation of Section 263 in the opinion of this Court cannot be faulted. As to whether in fact there was no necessity for a further ratification, in the light of the appellant's contention that a general or a specific circular, which delegated the powers of the Board of Approvals, applied after the issuance of the 09.03.2009 circular, is however kept open for consideration. In case such contention is urged by the appellant before the Income Tax authorities, the same shall be considered on its own merits.

10. The appeal is dismissed, subject to the above observations.

S. RAVINDRA BHAT, J

SANJEEV SACHDEVA, J

OCTOBER 25, 2017

kks