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

\+ ITA 937/2017 and CM APPL. 39594/2017

PRINCIPAL COMMISSIONER OF INCOME TAX-06
..... Appellant

Through: Mr. Zoheb Hossain, Sr. Standing Counsel.

versus

M/S. MIDLAND CREDIT MANAGEMENT INDIA PVT. LTD.,
..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

O R D E R

% 10.01.2018

CM APPL. 39594/2017 *(for condonation of delay)*

For the reasons mentioned in the application, delay in re-filing the appeal is condoned.

CM stands disposed of.

ITA 937/2017

Admit.

The question of law urged in this appeal by the Revenue is as follows:-

"(1) Whether the Income Tax Appellate Tribunal ('ITAT') was justified in concluding that the assessee was entitled to

deduction under Section 10A of the Income Tax Act, 1961 ('the Act') in respect of sum of Rs.2,98,16,425/-, as export proceeds realised beyond the period of six months from the end of the relevant assessment year (A.Y.), in the absence of specific extension within that time by the competent authority under Section 10A(3) of the Act?"

The facts are that the assessee company is a wholly owned subsidiary of Midland India LLC and is a 100% export oriented undertaking (EOU) approved under software technology park (STP) of India scheme w.e.f. 08.08.2005. It is eligible to claim deduction under Section 10A of the Act. It renders consumers collections related services to Encore Capital Group Inc. by calling identified customers. Services relate to collection of distressed, low balance, unsecured consumer receivables portfolio. For the assessment year (A.Y.) in question, the income tax return was filed claiming Rs.3,97,10,497/- as deduction under Section 10A of the Act. Later, revised return was filed on 31.03.2011, where the deduction claimed was Rs.6,95,26,922/-. Upon scrutiny assessment, the Assessing Officer (AO) brought to tax Rs.2,98,16,425/- on the reasoning that the amount was received after the period stipulated by Section 10A(3) of the Act. Both the CIT(A) and the ITAT set aside the addition and upheld the scheme for deduction of the entire sum.

The Revenue contends that the benefit of deduction under Section 10A of the Act is controlled by sub-section (3), which places the time limit. That time limit can be extended only by the competent authority – in this case, the Reserve Bank of India. Learned counsel relies upon the notification No.FEMA 23/2000 - RB dated 03.05.2000 which stipulates regulation with respect to the manner in which the issue is to be dealt with. It is submitted that in the present case, the invoice itself was raised upon the foreign buyer or entity, after a belated period of almost two years. The assessee was well aware of Section 10A(3) of the Act and was under an obligation to ensure that the attempts were made to claim the amounts receivable and confine its benefit within four corners of the statute.

This Court notices that the ITAT premised its reasoning upon the decision in *'Commissioner of Income Tax vs. Morgan Stanley Advantage Services (P) Ltd.'*, (2011) 339 ITR 291 (Bom). In that case too, the assessee received the export benefits after the stipulated period. The Court had observed and held, as follows:-

> *"8. In our opinion, no fault can be found with the decision of the Income-tax Appellate Tribunal. In the present case, the note appended to the Reserve Bank of India's letter dated April 25, 2007, no doubt records that the approval granted by the Reserve Bank of India is under the Foreign Exchange Management Act and the said approval should not be construed as approval by any other authority or the Government under any other laws/regulations. The question is, whether the extension of time for realisation of the export proceeds by the competent authority under the Foreign Exchange Management Act can be said to be the approval granted by the competent authority under section 10A(3) of the Income-tax Act, 1961.*

9. Explanation 1 to section 10A(3) clearly provides that the expression "competent authority" in section 10A means the Reserve Bank of India or such other authority as is authorised under any law for the time being in force for regulating payments and dealings in foreign exchange. Admittedly, the Reserve Bank of India is the competent authority under the Foreign Exchange Management Act which regulates the payments and dealings in foreign exchange. Thus, what section 10A(3) of the Act provides is that the benefits under section 10A(1) would be available if the export proceeds are realised within the time prescribed by the competent authority under the Foreign Exchange Management Act. In the present case, the competent authority under the Foreign Exchange Management Act, namely, the Reserve Bank of India, has granted approval in respect of the export proceeds realised by the assessee till December, 2004. Therefore, the approval granted by the Reserve Bank of India under the Foreign Exchange Management Act would meet the requirements of section 10A of the Income-tax Act, 1961. In other words, once the competent authority under the Foreign Exchange Management Act which regulates the payments and dealings in foreign exchange has approved realisation of the export proceeds by the assessee till December, 2004, then it would meet the requirements of section 10A(3) and, consequently, the assessee would be entitled to the benefits under section 10A(1) of the Act.

10. Moreover, in the present case, the Reserve Bank of India which is the competent authority under the Foreign Exchange Management Act as also under section 10A of the Income-tax Act, 1961, has neither declined nor rejected the application made by the assessee seeking extension of time under section 10A of the Act. Therefore, the decision of the Income-tax Appellate Tribunal in holding that the approval *granted under the Foreign Exchange Management Act constitutes a deemed approval granted by the Reserve Bank of India under section 10A(3) of the Act cannot be faulted.*

11. In the result, we answer the question raised in the appeal by holding that the Reserve Bank of India being the competent authority under the Foreign Exchange Management Act as also under 10A(3) of the Act, in the facts of the present case, the Income-tax Appellate Tribunal was justified in holding that the assessee was entitled to the deduction under section 10A of the Income-tax Act, 1961, in respect of the export proceeds realised till December, 2004, for which approval has been granted by the competent authority under the Foreign Exchange Management Act, namely, the Reserve Bank of India. The appeal is accordingly disposed of with no order as to costs."

In this case the facts are that the Reserve Bank of India was well aware of the time limit and had in fact been approached by the assessee. As a competent authority, the RBI approved the receipt of the foreign exchange, as export proceedings. In these circumstances, the Court is of the opinion that the reasoning adopted by the ITAT – based upon Morgan Stanley's case (supra), is reasonable and cannot be faulted with.

The second question was urged with respect to the revised benchmarking – as an international transaction of the additional income of Rs. 2,98,16,425/- brought to tax. In view of the concurrent findings that the amount had to be part of the exemption under Section 10A of the Act, the adjustments and consequent additions made, were untenable.

For the above reasons, the appeal fails and is dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

JANUARY 10, 2018
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