

1208

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H' NEW DELHI.
BEFORE SHRI A.D. JAIN AND SHRI K.G. BANSAL

I.T.A. No. 4936(Del)/2011
Assessment year: 2007-08

Universal Precision Screws,
146, New Cycle Market,
Jhandewalan Extn.,
New Delhi-55.

Vs.

Additional Commissioner of
Income-tax, Range-39,
New Delhi.

(Applicant)

(Respondent)

Applicant by : Shri Ved Jain &
Ms. Rani Jain, C.As

Respondent by: Shri A.K. Monga, Sr. D.R.

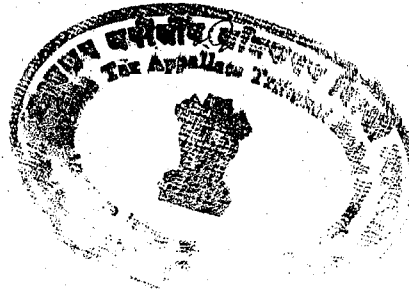
Date of Hearing: 10.01.2012

Date of Pronouncement: 10.01.2012.

ORDER

PER K.G. BANSAL : AM

The facts of the case are that the assessee-firm filed its return on 29.10.2007 declaring total income of Rs. 75,45,940/-. The return was processed u/s 143(1) of the Income-tax Act, 1961. Thereafter, assessment proceedings were initiated by serving a notice u/s 143(2) of the Act on the assessee. It was found that the firm was constituted on 18.10.2004 with seven partners. This is the first year of commercial production.

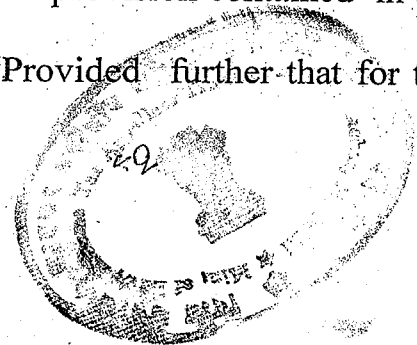


1.1 Coming to the specific, the assessee claimed deduction of Rs. 1,29,96,359/- u/s 10B. It was held that the assessee is entitled to deduction of Rs. 1,16,96,723/- only, being 90% of the profit of Rs. 1,29,96,359/-. Accordingly, the claim of deduction was reduced while computing the total income, which was computed at Rs. ⁸ ⁴² 8,45,280/-.

1.2 The Id. CIT(Appeals) confirmed this finding by referring to the second proviso to section 10B, which according to her provided for deduction of only 90% of the profits and gains derived from the eligible undertaking.

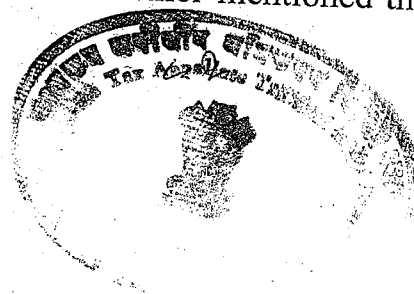
1.3 Aggrieved by this order, the assessee is in appeal before us. It has taken up three grounds. Ground nos. 1 and 3 are general and residuary in nature, which ^{were} ~~was~~ not argued before us. Ground no. 2 is to the effect that the Id. CIT(Appeals) erred in holding that the assessee is entitled to deduction of Rs. 1,16,96,723/- u/s 10B against the claim of Rs. 1,29,96,359/-.

2. Before us, the Id. counsel referred to the provision contained in the second proviso to section 10B which is ⁴² ~~is~~ "Provided further that for the



assessment year beginning on the 1st day of April, 2003, the deduction under this sub-section shall be ninety per cent of the profits and gains derived by an undertaking from the export of such articles or things or computer software". The case of the ld. counsel is that this provision is applicable only in respect of assessment year 2003-04. Otherwise, the assessee is entitled to deduction of the whole of the profits and gains which are derived by the undertaking from the export of articles or things or computer software, as mentioned in sub-section(1).

2.1 In order to support the aforesaid contention, reliance is placed on the memorandum explaining the provisions in the Finance Bill, 2002 (2002) 254 ITR 190 (Statutes). While explaining clauses 5 and 6 of the Bill regarding deduction to units in Free Trade Zones etc., it is mentioned that under the existing provisions of section 10A, profits and gains from export earning of new undertaking established in Free Trade Zones, Software Technology Parks, Electronics Hardware Technology Parks or Special Economic Zones⁴² which are engaged in manufacturing or production of article or things etc. are provided with a deduction equal to 100% of such profits. Section 10B provides for a similar deduction in respect of earnings of 100% export oriented units. It is further mentioned that in

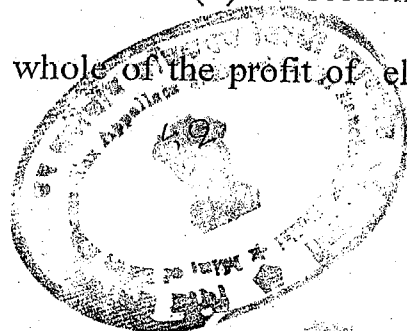


view of the need for resource mobilization for short term, the amendment seeks to restrict the deduction to 90% of such profits and gains as are derived by an undertaking from export of articles or things etc. for the assessment year 2003-04 only.

2.2 Reliance has also been placed on circular no. 8 of 2002, dated 27.08.2002, regarding Finance Act, 2002 and explanatory notes on provisions relating to direct taxes, (2002) 258 ITR 13 (St.). In paragraph no. 19.4 of the circular, it is mentioned that in view of the need for resource mobilization for the short term, Finance Act, 2002 seeks to restrict the 100% deduction u/s 10A and 10B, for one assessment year 2003-04 to 90% of such profits and gains as are derived by an undertaking from the export of articles or things or computer software.

2.3 In reply, the ld. senior DR relied on the orders of the authorities below.

3. We have considered the facts of the case and submissions made before us. The case involved ^{by} interpretation of the provisions ^{by} contained in the second proviso to section 10B and sub-section (1) of section 10B. The general rule for deduction is that the whole of the profit of eligible



undertaking is deductible under sub-section (1). The second proviso carved out an exception for grant of the deduction @ 90% of such profit for the assessment year beginning on 01.04.2003, i.e., assessment year 2003-04. This exception is carved out only for one year and it does not apply to any subsequent year. In subsequent years, the provision contained in sub-section (1) is applicable. Therefore, on the face of it, the ^{exception} exemption is not applicable to assessment year 2007-08, which is the year before us. This view is strengthened by the memorandum and the circular mentioned above. Accordingly, we are of the view that the Id. CIT(Appeals) erred in restricting the deduction to 90% of the profits.

4. In the result, the appeal is allowed.

Sell

(A.D. Jain)
Judicial Member

SP Satia

Sellr

(K.G. Bansal)
Accountant Member

Copy of the order forwarded to:-

Universal Precision Services, New Delhi.

Additional CIT, Range-39, New Delhi.

CIT(A)

CIT,

The Registrar, New Delhi.



By H...

[Signature]

Assistant Registrar.

सहायक पंजीकार

Assistant Registrar

आयकर अपील अपिकरण

Income Tax Appellate Tribunal

नई दिल्ली/ New Delhi

