

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 26th day of July, 2011

PRESENT

THE HON'BLE MR. JUSTICE N KUMAR

AND

THE HON'BLE MR. JUSTICE RAVI MALIMATH

ITA No. 465 of 2008

BETWEEN:

1 The Commissioner of Income Tax
C R Building
Queens Road
Bangalore

2 The Income-Tax Officer
Ward - 12(1)
C R Building
Queens Road
Bangalore

...Appellant

(By Sri M V Seshachala, Advocate)

AND:

M/s. Maxim India Integrated
Circuit Design Pvt. Ltd.,

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No.6, Royal Arcade
2nd Floor
Koramangala Industrial Area
Bangalore - 560 095

... Respondent

(By Sri Chythanya K K, Advocate)

This ITA filed U/s. 260A of I.T. Act, 1961 arising out of Order dated 29-11-2007 passed in ITA No.231/Bang/2007, for the Block Assessment Year 2003-2004, praying to (i) formulate the substantial questions of law stated therein (ii) allow the appeal and set aside the order passed by the ITAT Bangalore in ITA No.231/Bang/2007, dated 29-11-2007 and confirming the order of the Appellate Commissioner and confirm the order passed by the Income Tax Officer, Ward 12(1), Bangalore.

This ITA coming on for hearing this day, **N. KUMAR J.**, delivered the following:

J U D G M E N T

This appeal is by the Revenue challenging the order passed by the Tribunal which has held that the assessee is entitled to the benefit of Section 10A by setting aside the order passed by the Assessing Authority as well as the Appellate Commissioner.

2. Assessee was incorporated on 13.03.2002 and commenced business on 01.05.2002. The assessee is a 100% captive center providing software design and development services to its parent company M/s Maxim Integrated Products Inc. earning revenue from its services on a 'Cost Plus Model'. The assessee in the return of income filed, claimed benefit under Section 10A of the Income Tax Act, 1961, hereinafter referred to as the 'Act', for the period from 01.01.2003 to 31.03.2003. The assessee had made an application to the Director, Software Technology Parks of India (STPI) at Bangalore, on 23.12.2002 and the approval was granted by letter dated 31.12.2002. The assessee thereafter moved the Customs authorities to derive benefit granted to an STPI Unit under the Customs Regulations. The certificate of bonding was issued to the assessee on 21.01.2003. However, the Assessing Authority did not accept the case of the assessee on the ground that the application filed before STPI on 20.12.2002 was, for seeking approval to establish a new unit and not for recognizing an existing unit. Therefore, it declined to grant

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benefit under Section 10A of the IT Act. The appellate Commissioner held that the undertaking of the assessee in question was not formed by splitting. Therefore he held that it was a maiden business which was commenced on 01.05.2002 and the provisions of Section 10A(ii) are not applicable to the assessee's case. Therefore, he granted the relief to the assessee as provided under Section 10A of the Act.

2. Challenging the aforesaid order, the Revenue preferred an appeal before the Tribunal. The Tribunal declined to interfere with the order passed by the Appellate Commissioner and dismissed the appeal. Aggrieved by the same, the Revenue is in appeal.

3. The learned Counsel appearing for the Revenue assailing the impugned order contended that it was a case of reconstruction and therefore the assessee is not entitled to the benefit of Section 10A of the Act. ✓

4. The material set out amply proves that it is not a case of reconstruction as mistook by the assessing authority. The facts disclosed that the assessee commenced production from 01.05.2002 and the assessee was entitled to the benefit under Section 80HHE. However, after approval was granted by the Director of STPI on 31.12.2002, the assessee was entitled to the benefit of Section 10A of the Act. This is supported by the circular No.1/05 dated 06.01.2005 issued by the CBDT.

4. In fact, this Court had an occasion to consider similar case in the case of **COMMISSIONER OF INCOME-TAX Vs. M/s EXPERT OUTSOURCE (P) LTD.**, reported in **2011-TIOL-236-HC-KAR-IT**, where it has been held as under:

“CBDT Circular No.1/2005 dated 6-1-2005 grants certain benefits u/s 10B. Though the circular is in the context of Section 10B, the ratio of the circular equally applies to Section 10A also. In fact, the CIT(A) has referred to various judgments on the point and had come to the conclusion that the benefit of Section 10A would also be available

even when an existing units get converted into a STPI unit. In fact, the material on record discloses that no export of computer software was made before 4-8-2004. The export commenced only after 4-8-2004. The invoices produced in the case clearly establish the said fact. The appellate authority as well as the tribunal was justified in extending the benefit of Section 10A of the unit in question."

5. In view of the aforesaid legal position, we do not see any justification to interfere with the well considered orders passed by the appellate Tribunal. No substantial question of law do arise for consideration in this appeal. **Appeal is devoid of merits and accordingly it is dismissed.**

Sd/-
JUDGE

Sd/-
JUDGE

ksp/-