

IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 122/2012

CIT Appellant

Through Mr. Deepak Chopra, Sr. Standing Counsel.

versus

ANNIK TECHNOLOGIES LTD Respondent

Through Ms. Akansha Aggarwal, Mr. Vikas Srivastava and Mr Parag Mohanty, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.V.EASWAR

O R D E R

15.05.2012

This appeal by the Revenue under Section 260A of the Income Tax Act, 1961 impugns the order dated 28th July, 2011 passed by the Income Tax Appellate Tribunal (for short, the tribunal) in the case of Annik Technologies Pvt. Ltd. The appeal pertains to the assessment year 2007-08.

2. Learned counsel for the Revenue has raised two contentions before us. These have been dealt with separately.

3. It is submitted that the respondent-assessee is not entitled to exemption under Section 10A, because it was formed by splitting up or reconstruction of business, which was already in existence. It is stated that Section 10A(2)(ii) of the Act has been violated. The aforesaid

contention does not require adjudication in this appeal as this issue and contention was not raised by the Revenue in the grounds of appeal filed before the tribunal. Learned counsel for the respondent has produced before us the grounds of appeal filed and raised before the tribunal in which reference has been made to violation of Section 10A(2)(i) (a) (b) and (c) of the Act and no ground or contention was raised in respect of violation of Section 10A(2)(ii). The tribunal has not dealt with and examined the said contention. Therefore, on this aspect, no substantial question of law arises out of the impugned order dated 28th July, 2011.

4. The second contention raised by the learned counsel for the Revenue relates to interpretation of Section 10A(2)(i) of the Act, which reads as under:-

?10A. Special provision in respect of newly established undertakings in free trade zone, etc.?

x x x x x x

(2) This section applies to any undertaking which fulfils all the following conditions, namely :?

(i) it has begun or begins to manufacture or produce articles or things or computer software during the previous year relevant to the assessment year?

(a) commencing on or after the 1st day of April, 1981, in any free trade zone ; or

(b) commencing on or after the 1st day of April, 1994, in any electronic hardware technology park or, as the case may be, software technology park ;

(c) commencing on or after the 1st day of April, 2001, in any special

economic zone ;

5. In the grounds of appeal filed by the Revenue before the tribunal, it was contended that the respondent-assessee did not fulfill the conditions stipulated in clauses (a), (b) and (c) to Section 10A(2)(i). The grounds of appeal itself indicate that the respondent-assessee was entitled to benefit under Section 10A in case any of the clauses (a), (b) and (c) are applicable. What is contended and argued before us is that clause (c) applicable w.e.f. 1st April, 2001 had the effect of overriding clauses (a) and (b).

6. This is not correct as the CBDT had issued Circular No. 794 dated 9th August, 2000 reported in (2000) 245 ITR (St.) 21, in which in paragraph 5.4, it has been observed:-

?5.4 The conditions for the applicability of these provisions are that the undertaking:-

(a) Begins to manufacture or produce articles or things or computer software during the previous year relevant to the assessment year

commencing on or after 1-4-1981 in any free trade zone or commencing on

or after the first day of April, 1994 in any electronic hardware park or software technology park. The benefit has also been extended to new undertaking set up in any previous year relevant to an assessment year beginning on or after the first of April, 2001 in a Special Economic Zone.?

7. Thus, clause (c) extends the benefit and does not withdraw the benefit extended and available to undertakings covered by clauses (a) and

(c). The three clauses are mutually exclusive and operate in their own field.

8. In the present case, STP registration was granted to the partnership firm-Annik Technologies by the Directorate of Software Technologies Parks of India. In September, 2005, pursuant to an agreement, the entire business was transferred to the respondent-company.

The name of the respondent-company was substituted in the STP registration record. The unit/undertaking of the respondent-assessee is

located in a software technology park and is accordingly covered by clause (b) to Section 10A(2)(i) of the Act.

9. The appeal has no merit and the same is dismissed. No costs.

SANJIV KHANNA, J.

R.V.EASWAR, J.

MAY 15, 2012

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