

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI**

श्री चंद्र पूजारी, लेखा सदस्य एवं श्रीजी. पवन कुमार, न्यायिक सदस्यकेसमक्ष

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.As. No.897, 898, 899 & 900/Mds/2016

निर्धारण वर्ष /Assessment years : 2008-09, 2009-10, 2010-11, 2011-12.

RC Golden Granites Private Ltd,
Plot No.17, Type II,
DR.VSI Estate,
Thiruvanmiyur,
Chennai 600 041.

Vs. The Income Tax Officer,
Company Ward V(1)
Chennai.

[PAN AADCR3826P]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. T. Banusekar, C.A.

प्रत्यर्थी की ओर से /Respondent by : Shri. Supriya Pal, JCIT.

सुनवाई की तारीख/Date of Hearing : 29-06-2016

घोषणा की तारीख /Date of Pronouncement : 22-07-2016

आदेश / O R D E R

PER G. PAVAN KUMAR, JUDICIAL MEMBER:

These four appeals filed by the assessee are directed against different orders of Commissioner of Income-tax (Appeals)-3, Chennai dated 26.02.2016 for the assessment years 2008-09, 2009-2010, 2010-2011 passed u/s.143(3) r.w.s.264 and for assessment

year 2011-12 u/sec. 143(3) and 250 of the Income Tax Act, 1961. Since the issue in these appeals are common in nature, these appeals are clubbed, heard together, and disposed of by this common order for the sake of convenience.

2. The assessee has raised the following grounds which are common for all assessment years 2008-09, 2009-2010, 2010-2011 and 2011-2012:-

- 1. For that the order of the Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case to the extent prejudicial to the interests of the appellant and is opposed to the principles of natural justice, equity and fair pay.*
- 2. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the order of the Assessing Officer is without jurisdiction.*
- 3. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the Assessing officer erred in denying the deduction claimed under section 10B.*
- 4. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the Assessing Officer ought to have allowed the deduction claimed by the appellant u/s.10B as all the conditions have been fulfilled by the appellant.*
- 5. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the Assessing Officer erred in stating that the ratification by the "Board of Approval" for EOU Scheme is not the one prescribed in the provisions of section 10B.*
- 6. For that, without prejudice, the Commissioner of Income Tax (Appeals) failed to appreciate that the Assessing Officer ought to have allowed the appellant, deduction u/s.10A*
- 7. For that the Commissioner of Income Tax (Appeals) failed to admit the additional evidence filed under Rule 46A, even when the appellant was prevented by sufficient cause from producing the evidence before the Assessing Officer*

The assessee in continuation to above grounds raised the following grounds for assessment year 2011-2012.

'7. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the Id. Assessing Officer erred in disallowing a sum of ₹1,30,32,500/- u/s. 40A(3).

8. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the Id. Assessing Officer erred in invoking the provisions of section 40A(3) which cannot be invoked in the facts and circumstances of the case.

9. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the Id. Assessing Officer erred in alleging that there is a mismatch between the cash book and the reconciliation statement submitted by the appellant.

10. For that, without prejudice, the Id. Commissioner of Income Tax (Appeals) failed to appreciate that the disallowance, if any u/s.40A(3) will qualify for deduction u/s.10B/10A.

11. For that the Id. Commissioner of Income Tax (Appeals) failed to admit the additional evidences filed under Rule 46A, even when the appellant was prevented by sufficient cause from producing the evidence before the Assessing Officer".

3. First, We take up ITA No.897/Mds/2016 of assessment year 2008-2009 for adjudication:- The Brief facts of the case are that the assessee is in the business of manufacturing and export of Monument Granite company registered as 100% Export Oriented Unit (EOU) in Special Economic Zone (SEZ) Tambaram and eligible for exemption u/s.10B of the Act. Due to inability of the assessee to fillup relevant columns in e-Return of income exemption u/s.10B of the Act was

denied by CPC, Bangalore. Subsequently, the assessee company has filed revision petition u/s.264 of the Act with CIT-V, Chennai. The Id. Commissioner of Income Tax-V after considering the findings of the Id. Assessing Officer and submissions of assessee has passed an order with findings that the claim of the assessee with regard to allowance of exemption u/s.10B of the Act is genuine and allowed the revision petition with a direction to the Id. Assessing Officer to verify the conditions for claiming 100% exemption as "EOU" and exemption u/s. 10B are fulfilled by the assessee. The Id. Assessing Officer while passing consequential order for the assessment year Based on the Directions of the Commissioner of Income Tax –V u/s.264 of the Act found that in the assessment proceeding of assessment year 2011-2012, the Id. Assessing Officer observed that the assessee has not fulfilled the conditions as stipulated in the Act and passed assessment order u/s.143(3) dated 28.03.2014 denying the claim referred at page 2 & 3 as under:

The assessee company is a 100% export oriented undertaking located in MEPZ-SEZ and doing the business of manufacture and export of marbles & Granites The assessee has claimed deduction u/s 10(B) of the Income Tax 1961 in respect of Asst. Year 2011-12 for Rs. 65,32,975/- and the same is disallowed for the following reasons.

"As per explanation 2(iv) to section 10(B), 100% Export Oriented Undertaking (EOU) means an undertaking which has been approved as a 100% EOU by the Board

appointed in this behalf by the Central Govt. in exercise of powers conferred by Section 14 of the industries (Development and Regulation) Act 1951 and Rules made under that Act".

But the AR has submitted only a copy of green card as an 100% EOU and the letter of the Development Commissioner of MEPZ(SEZ) dt.27/03/2014 wherein it was stated that the approval for setting up a 100% EOU has been ratified by the Board of approval in its 2nd meeting (2011 series) held on 25/03/2011 along with the a copy of minutes which is not prescribed one as per provisions of section 10B of the IT, Act, 1961 to allow deduction claimed u/s.10b

It has been held in the case of Regency Creations Ltd. and Valiant Communications Ltd(ITA 69-2008J83 of 2009,239 of 2011) as under:

" There is no notification or official document suggesting that either the Inter-Ministerial committee or any other officer or agency was nominated to perform the duties of the Board (constituted under section 14 of the IOR Act) for the purposes of approvals u/s 10B. Though the consideration which apply for granting approval u/s 10A and 10B may, to an extent overlap, yet the deliberate segregation of these two benefits by the Statute reflect the Parliamentary intention that the specific procedure enacted for the purpose under either has to be followed to qualify for benefit. There is nothing in any of the circulars or instruction implying that approval for purpose for purposes of an STP/EOU/EPZ also entitled a unit to benefit u/s 10B."

In view of the above, the assessee's claim on deduction u/s 10B for Rs.6532975/- is disallowed and added to the total income of the assessee. "

On the basis of findings of the Id. Assessing Officer in the assessment year 2011-2012, the present Id. Assessing Officer has disallowed the

deduction u/s.10B of the Act of ₹65,32,975/- and added to the Returned income. Aggrieved by the order, the assessee filed an appeal before Commissioner of Income Tax (Appeals).

4. In the appellate proceedings, the Id. Authorised Representative of assessee argued the grounds explaining that the Id. Assessing Officer ought to have allowed the deduction claimed by the assessee u/s.10B of the Act have been complied. The Id. Assessing Officer observed ratification by the "Board of Approval" granted by the Development Commissioner, MEPZ, SEZ, Tambaram has not the one prescribed under the provisions of Sec. 10B of the Act. The Id. Assessing Officer also relied on the decision of Delhi High Court in the case of *CIT vs. Regency Creations Ltd (2013) 353 ITR 326* and ITAT, Delhi decision in the case of *DCIT vs. Valiant Communications Ltd (2012) 11 TMI 382*, the Id. Authorised Representative further argued that alternatively the Id. Assessing Officer should have allowed deduction u/s.10A of the Act. In the appellate proceedings, the assessee has produced on 28.01.2016 Additional information before the Id. Commissioner of Income Tax (Appeals) under the provisions of rule 46A of the Income Tax Act and explained that certain papers should be accepted as additional evidence under Rule 46A. The Id. Commissioner of Income Tax (Appeals) questioned the assessee

company why it could not adduce the evidence before Id. Assessing Officer in the assessment proceedings and also perused the provisions and found that the reasons explained by the assessee during the appellant proceedings for filing additional evidence are not covered by the provisions of Rule 46A of the Act and rejected the evidence on record. Subsequently, the Id. Commissioner of Income Tax (Appeals) perused the grounds and findings of the Id. Assessing Officer and the reasons recorded by the Id.AO in his order referred at page 4. The Id. Authorised Representative in compliance to grounds of appeal and additional evidence has filed written submissions on disallowance u/s.10B of the Act relying on the applicability of provisions on the permission, renewal and approvals of Development Commissioner of MEPZ, EOU scheme and further supported the grounds with decisions of Supreme Court, Tribunal ,judicial decisions and CBDT circulars. The Id. Commissioner of Income Tax (Appeals) observed the submissions at page 4 to 9 of his order. The Id. Commissioner of Income Tax (Appeals) based on the findings of the Id. Assessing Officer, Arguments, grounds and written submissions is of the opinion that the action of the Id. Assessing Officer shall be sustained as the assessee company could not produce information or comply the conditions. . The Id. Commissioner of Income Tax (Appeals) at page 9 of his order observed as under:-

"I have considered submissions of the AR of the appellant, findings of the Assessing Officer , on perusal of AO's finding in so far as disallowance made u/s 10B, I found that AO's finding has force. AO has come to conclusion that appellant company could not produce approval from the Board appointed in this behalf by Central Govt. in exercise of the powers conferred by section 14 of the Industries (Development and Regulation) Act. 1951. and the Rules made under that Act. Assessing Officer has also placed reliance on the decision of Hon'ble Delhi High Court in the case of Regency Creations Ltd and Valiant Communications Ltd(ITA 69-2008, 783 of 2009 239 of 2011. It has been held in the case of Regency Creations Ltd. and Valiant Communications Ltd (ITA 69- 2008, 783 of 2009,239 of 2011) as under :-

'There is no notification or official document suggesting that either the Inter-Ministerial committee or any other officer or agency was nominated to perform the duties of the Board (constituted u/s. 14 of the IDR Act) for the purpose of approvals u/s. 10B. Though the consideration which apply for granting approval u/s.10A and 10B may, to an extent overlap, yet the deliberate segregation of these two benefits by the Statue reflect the parliamentary intention that the specific procedure enacted for the purpose under either has to be followed to qualify for benefit. There is nothing in any of the circulars or instructions implying that approval for purpose of an STP/EOU/EPZ also entitled a unit to benefit u/s. 10B".

I am also fortified by the jurisdictional High Court order in the case of CIT vs. Live Connection Software (P) Ltd (2014) 51 taxmann.com 454 (Mad)".

Further, the Id. Commissioner of Income Tax (Appeals) based on the above decisions is of the opinion that the Id. Assessing Officer has categorically stated that the assessee company could not get such approval and the arguments of the Id. Authorised Representative of assessee are without any substance. The assessee company could not comply the conditions for eligibility to claim deduction u/s.10B of

the Act for approval from the Board appointed by the Central Government. Since the assessee company has failed to obtain approval, the Id. Assessing Officer has disallowed the claim u/s.10B of the Act and same was upheld by Commissioner of Income Tax (Appeals) and dismissed the grounds of the assessee.

4.1 In respect of alternative claim of deduction u/s.10A of the Act. The assessee company has not made such claim before Id. Assessing Officer. The Id. Commissioner of Income Tax (Appeals) perused and compared the provisions of Secs. 10A and 10B of the Act were two sections stand on the separate footings as far as eligibility criteria, intent and purpose are concerned, whereas procedure and conditions laid down to claim deduction under respective section are different and the assessee company has not produced any evidence in support of alternative claim. Therefore, the alternative ground raised by the assessee is dismissed and passed an order dated 26.02.2016. Aggrieved by the Commissioner of Income Tax (Appeals) order, the assessee assailed an appeal before Tribunal.

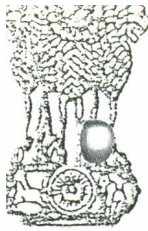
5. Before us, the Id. Authorised Representative of assessee reiterated the submissions made before assessment and appellate proceedings alongwith evidences and argued the grounds that Id.

Commissioner of Income Tax (Appeals) has erred in confirming the findings of the Id. Assessing Officer in denying the claim of Sec. 10B of the act. The Id. Assessing Officer should have allowed the deduction claimed by the assessee as all the conditions are fulfilled. Further, the Id. Commissioner of Income Tax (Appeals) is not correct in concurring with the findings of the Id. Assessing Officer that the ratification by the Board of approval for EOU scheme is not one prescribed in the provisions of Sec. 10B of the Act and also the assessee company was denied alternative claim u/s.10A of the Act. The Id. Commissioner of Income Tax (Appeals) has rejected to admit additional evidence filed under Rule 46A, which assessee company was prevented by sufficient cause in producing before Id. Assessing Officer. Further, the additional evidence play a vital role in support of the assessee ground and filed paper book and relied on case laws and prayed for allowing the appeal.

6. Contra, Id. Departmental Representative relied on the orders of the Commissioner of Income Tax (Appeals) and vehemently opposed the grounds.

7. We heard the rival submissions, perused the material on record and judicial decisions cited. The Arguments of the Id. Authorised Representative that the Id. Assessing Officer has rejected

the claim of deduction u/s. 10B of the Act relying on the findings of the Id. Assessing Officer in subsequent assessment year in his assessment order. The Id. Assessing Officer is of the opinion that ratification of Board of approval for EOU scheme is not the same and irrespective of the fact that the assessee has complied the conditions for eligibility of deduction u/s.10B of the Act. The Id. Authorised Representative drew our attention to the page no.2 to 5 of paper book where a letter dated 27.03.2014 addressed to the assessee and Office Memorandum dated 28.03.2011 and part -II was filed as under:



सत्यमेव जयते

Government of India, Ministry of Commerce and Industry,
Department of Commerce,
Office of the Development Commissioner,
MEPZ SPECIAL ECONOMIC ZONE &
HEOUs in Tamil Nadu, Poodicherry,
Andaman & Nicobar Island
Administrative Office Building,
National Highway-45, Tambaram, Chennai - 600 045.

F. No.A/2007/08/EOU-TN,
Dated 27.03.2014

M/s.RC Golden Granites Pvt Ltd.,
MC5fN()fl, Type 11,
Dr.VSI Estate,
Thiruvanmiyur,
Chennai 600 041.

Sub: MEPZ 100% EOU - claiming of Income Tax
Exemption - reg.

Ref: 1. Your letter dated 17.3.2014.

2. LOP No. A/2007/008/EOU-TN dated 9.3.2007.

Please refer to your letter cited *above*. It is informed that M/s. RC Golden Granites Pvt Ltd., were issued LOP By the Development Commissioner, MEPZ -SEZ *vide* this office letter No. A/2007 /008/EOU- TN dated 9.3.2007 issued to your unit for setting up a new 100% EOU for manufacture and export of your

licensed product at, RS No. 124, Mangalam Village, Uthiramerur, Mathuranthagam Taluk, Kancheepuram District - 603 107, Tamilnadu, under the provisions of Exim Policy 2004-09. The said approval was subsequently ratified by the Board of Approval in its 2nd meeting (2011 series) held on 25.3.2011 (copy enclosed).

Yours faithfully,

(UMA RAGHUNATHAN)
Asst. Development Commissioner
for Development Commissioner

Encl: Copy of the minutes of the BOA

MOST /IMMEDIATE
BY FAX/SPEED POST

No.F14/2/2011-EOU
Government of India
Ministry of Commerce and Industry,
Department of Commerce.

Udyog Bhawan, New Delhi
The 28th March, 2011

003170

OFFICE MEMORANDUM

Subject:- Minutes of the 2nd meeting (2011 series) of the Board of Approval for the EOU scheme held on 25th March, 2011.

The undersigned is directed to forward herewith a copy of the 'minutes of the, 2nd Meeting (2011 series) of the Board of Approval for EOU Scheme held on 25.03.2011 for necessary action.

2. Implementation report on the decisions taken by the Board of approval may please for forwarded to this Department on priority basis.

Encl: As above.

(G. Muthuraja)
Under Secretary to the Govt. of India.
Tel23061762

Email:g.muthuraja@nic.in

1. Shri Shyamal Mishra, 'Director, % Industrial Policy & Promotion
2. CBEC (Member (customs) M/o. Finance.
3. CBDT (Member(Income Tax) M/so. Finance
4. DGFT.
5. The Joint Secretary, M/o. Environment & Forest.
6. The Joint Secretary, M/o Science & Technology.
7. The Additional Development Commissioner, MSME, M/o. Micro, Small and Medium Enterprises.
8. The Development Commissioner, SEEPZ-SEZ, FSEZ, MSEZ, VSEZ, KASEZ, CSEZ, NSEZ & ISEZ.
9. The Director General, EPCES.
10. All concerned Administrative Ministries.

Copy to PPS to PPS to SS(PKC)/PS to JS(TS)/PS to JS(AW) PS to Dir (SS)

PART II

Approval granted by Development Commissioner under Delegated Powers for ratification of BOA as per Press Note No.3 of 1995

- (i) The Board ratified the approvals granted by Unit Approval Committee (except ISEZ and NSEZ from which no such proposal was received) as below:

A	Approval granted under delegated powers for the month of December,2010 and January, 2011	CSEZ
B	Approval granted under delegated powers for the month of and January, 2011	MEEZ
C	Approval granted under delegated powers for the month of December,2010 and January, 2011	FASEZ
D	Approval granted under delegated powers for the month of January, and February 2011	SEEPZ
E	Approval granted under delegated powers for the month of December, 2010 January, and February 2011	VSEZ
F	Approval granted under delegated powers for the month of October 2010 to December, 2010.	KASEZ
G	Approvals not received	ISEZ
H	Approvals not received	NSEZ

- (ii) The Board also ratified the approvals given by SEZs(Old cases) as below:-

1	Ratification of project approvals under automatic approval scheme Year 2001 to 2002 (19LOPS) Year 2002 to 2003 (20LOPS) Year 2003 to 2004 (20LOPS) Year 2004 to 2005 (13LOPS) Year 2005 to 2006 (38LOPS) Year 2006 to 2007 (23LOPS) Year 2007 to 2008 (4 LOPS)	KASEZ
2	Year 2005 to 2006 (52LOPS) Year 2006 to 2007 (52LOPS) Year 2007 to 2008 (41 LOPS) Year 2008 to 2009 (33LOPS) Year 2009 to 2010 (19 LOPS) Year 2010 to Jan, 2011 (28 LOPS)	MSEZ
3	March to May, 2010 June to July, 2010 August to Sept 2010	SEEPZ

Lop 2006-07

44	RC Golden Grantiies Pvt. Ltd	A/2007/008/EOU- PY	09.3.2007
45	SOWRAG Agro Exports	A/2007/008/EOU- T	19.02.2007
46	Nachoris Enterprises	A/2006/024/EOU-	12.04.2006
47	K.M.B. Granites (P) Ltd	A/2007/006/EOU	29.01.2007
48	Photon Infortech Pvt. Ltd	A/2006/80/EOU-TN	08.01.2007
49	Avathar International	A/2007/50/EOU-TN	10.10.2007
50	Amrita Chemicals (India)	A/2007/17/EOU-TN	19.04.2007
51	Arasan Technology P. Ltd	A/2006/002/EOU-TN	31.03.2006
52	Bala Murugan Company	A/2006/067/EOU-TN	26.06.2006
53	Standard Granities	A/2006/36/EOU-TN	19.05.2006
54	Stelite Industries (I) Ltd	A/2006/30/EOU-TN	27.04.2006

On perusal of the letter dated 27.03.2014, the Development Commissioner informed that the Board has subsequently ratified its

approval in second meeting held on 25.03.2011. Further, on perusal of the document dated 28.03.2011 from Government of India, Ministry of Commerce and Industries, Department of Commerce were the minutes of the 2nd meeting of the Board of Approval for EOU scheme held on 25.03.2011 and was endorsed to the Development Commissioners at Sl. No.8. The Id. Authorised Representative drew our attention to the CBDT instructions dated 09.03.2009 on the subject of Section 10B clarifications regarding validity of approvals given by Development Commissioner has been examined by the Board. It has been decided that an approval granted by the Development Commissioner in the case of an export oriented unit set up in an Export Processing Zone will be considered valid, once such an approval is ratified by the Board of approval for EOU scheme and in subsequent corrigendum dated 08.05.2009 it was mentioend that as under:-

'CBDT has issued an instruction no.02/2009, dated 9th March, 2009. The second para of that instur4itron may be substituted with the following para:'

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

This may kindly be brought into the notice of all officer under your charge".

The Id. Authorised Representative relied on the judicial decisions and we on perusal of decision of Gujarat High Court in the case of *Principal Commissioner of Income Tax vs. ECI Technologies Pvt. Ltd (2015) 375 ITR 0595 (Guj)* were similar issue on Sec. 10B was dealt were it was held as under:

"It is an admitted position that there was already a permission/ approval granted by the Development Commissioner declaring /approving the assessee as 100% EOU. However, on considering the word, approved by the Board of Approval as mentioned in Sec. 10 of the Act and at the relevant time there was no ratification of the decision of the Development Commissioner by the Board of Approval, the Assessing Officer denied the deduction under Section 10B of the Act. However, it is required to be noted and it is not in dispute that vide Circular / instruction of the CBDT dated 09/03/2009 it was clarified that the approval granted by the Development Commissioner in the case of Export Oriented Unit set up in an Export Processing Zone will be considered valid, once such an approval is ratified by the Board of Approval for EOU Scheme. In the present case, it is not in dispute that the permission / approval granted by the Development Commissioner has been ratified by the Board of Approval, may be subsequently. The moment the decision / approval of the Development Commissioner is ratified by the Board of Approval it will relate back to the date on which the approval was granted by the Development Commissioner. If that be so, it cannot be said that the assessee was not a Export Oriented Unit, which was entitled to the deduction under Section 10B of the Act. Incidentally it is to be noted that in the subsequent circular NO.68 issued by the Export Promotion Council for Eous & SEZS dated 14/05/2009 it mentions that from 1990 onwards Board of Approval had delegated the power of approval of 100% to the Development Commissioner and, therefore, it can be very well

argued and said that the Development Commissioner while granting the approval of 100% EOU exercises delegated powers. In any case and apart from the above when it is found that at the relevant time the Development Commissioner granted the approval of 100% EOU in favour of the assessee-Company, which came to be subsequently ratified by the Board of Approval and as observed hereinabove as such the ratification shall be from the date on which the Development Commissioner granted the approval, both the learned CIT(A) as well as the learned Tribunal have rightly held that the assessee was entitled to deduction under Section 10B of the Act as claimed. HIGH COURT confirm the view taken by both the authorities below holding that the assessee was entitled to 100% EOU as claimed. No substantial question of law arises in the present Tax Appeal. Hence, the present Tax Appeal deserves to be dismissed and is accordingly dismissed.

The Id. Authorised Representative supported the case with the facts and law with High Court decisions and find the Co-ordinate Bench of the Tribunal in the case of *ACIT vs. M/s. Severn Glocon (India) Pvt. Ltd* in ITA No.2816/Mds/2014, dated 19.06.2014 held in para 9, page 6 in respect of claim of Sec. 10B and alternative claim u/s.10A of the Act held as under:-

“9. We have considered the rival submissions on either side and perused the relevant material on record. Explanation 2(iv) to Section 10B clearly says that approval by the Board appointed by Government of India under Section 14 of the Industries (Development & Regulation) Act, 1951 is an essential condition. In this case, though the assessee claims that the approval initially granted by Development Commissioner, Special Economic Zone was ratified by the Board, it is not clear from the material available on record whether ratification was accorded by the Board constituted by Government of India under Section 14 of the Industries (Development & Regulation) Act, 1951. In the absence of any material to show that whether the approval was accorded by the Board constituted under Industries (Development & Regulation) Act, 1951, this Tribunal is of the considered opinion that the matter needs to be re-examined.

Moreover, Section 10A also gives exemption to 100% export oriented unit. Therefore, this Tribunal is of the considered opinion that the matter needs to be re-examined by the Assessing Officer in the light of the provisions of Section 10A of the Act, in case the assessee is not eligible under Section 10B of the Act. Accordingly, the orders of the lower authorities are set aside and the entire issue is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the issue afresh and find out whether the Board constituted by Government of India under Section 14 of the Industries (Development & Regulation) Act, 1951 has approved the assessee as 100% export oriented unit. In case such approval was not granted, the Assessing Officer shall also examine the claim of the assessee under Section 10A of the Act on merit, in accordance with law, after giving a reasonable opportunity to the assessee”.

So, we are of the opinion that Board has ratified the approval of 100% EOU which is not disputed by the Revenue. The decision of *ECI Technologies Pvt. Ltd (cited supra)* has dealt on the issue where the approval of Development Commissioner was ratified by the Board of Approval shall relate back to the approval of Development Commissioner. In the present case, the Id. Assessing Officer is of the opinion that the assessee has not fulfilled the conditions stipulated under the Act and the assessee company is 100% EOU doing business of manufacture and export of marbles and granites. The Id. Assessing Officer has also interpreted the explanation that the approval should be 100% EOU by the Board appointed on behalf of Central Government and is of the view that Development Commissioner letter of the MEPZ SEZ dated 27.03.2014 regarding ratification is not

prescribed one as per provisions of Sec. 10B of the Act. The Id. Assessing Officer has not made any independent investigation or adduce any evidence with authentic proof that the assessee is not eligible for deduction u/s.10B of the Act. Further, the Id. Commissioner of Income Tax (Appeals) has rejected the additional evidence produced under provisions of Rule 46A in the appellate proceedings irrespective of the fact that sufficient cause was explained for not filing in assessment proceedings. Now the question arise, the Id. Assessing Officer or Id. Commissioner of Income Tax (Appeals) had never verified the credible evidence and documents which are vital for claim of the assessee company. We respectfully following the Co-ordinate Bench decision in the case of *M/s. Severn Glocon (India) Pvt. Ltd (cited supra)* remit the disputed issue to the file of Assessing Officer to re-examine the issue afresh considering approval of the board and pass the order and the assessee should be provided adequate opportunity of being heard and also alternative claim on Sec. 10A of the Act. The ground of the assessee is allowed for statistical purpose.

8. Similarly, the appeal of the assessee in ITA Nos.898 & 899/Mds/2016 of assessment years 2008-09, 2009-2010 and 2010-2011 are allowed for statistical purpose.

9. In ITA No.900/Mds/2016, for assessment year 2011-2012, the assessee has raised one more ground that the Commissioner of Income Tax (Appeals) erred in confirming the disallowance of ₹1,30,32,500/- on application of provisions of Sec. 40A(3) of the Act.

9.1 The Id. Authorised Representative argued the grounds that the Id. Assessing Officer has erred in invoking provisions of Sec. 40A(3) of the Act in Alleging that there is mismatch between cash book and reconciliation statement submitted by the assessee company in assessment proceedings and disallowance u/sec. 40A(3) of the Act if confirmed, the same shall be considered in computing deduction u/sec.10A of the Act. The Id. Authorised Representative submitted paper book and explained that the Id. Assessing Officer has verified Bank account and Books of account and further the system of reporting of cash expenses in the Books of account and reconciliation statement was filed. The Id. Assessing Officer on verification is of the opinion that there is no matching of expenses with withdrawals from the Bank and issued letter dated 19.03.2014 u/s.133(6) of the Act to the Banks and obtained a copy of the self cheques and exceeding more than ₹20,000/- . The Id. Authorised Representative on perusal found that the assessee company has issued cheques exceeding ₹20,000/- in the financial year 2010-2011 totaling ₹1,30,32,500/- in

respect of expense and by applying the provisions of Sec. 40A(3) of the Act added to the returned income. The Id. Authorised Representative filed paper book with Provident Fund statement at page no.6 and also cash book of the assessee company from 01.04.2010 to 31.03.2011 and the reconciliation statement considering the amount drawn from the Banks by cheque and the payments were made towards salary, other expenses. Further, the salary payments, statements of factory, office and casual labours from page 86 to 229 are filed to support the grounds that the action of the Id. Assessing Officer invoking provisions of Sec. 40A(3) of the Act is bad in law. The assessee company has withdrawn from Bank consolidated amount and the payments were made to individual workers in current financial year by passing the entries in the Books of Account and prayed for allowing the appeal.

9.2 Contra, the Id. Departmental Representative relied on the orders of Commissioner of Income Tax (Appeals) and opposed to the grounds.

9.3 We heard the rival submissions, perused the material on record and material evidence filed. The crux of the issue lies on the disallowance u/s.40A(3) of the Act were the payments in cash exceeded more than ₹20,000/-. The Id. Authorised Representative

explained that the assessee is a manufacturer and also has trading unit and shall pay wages and salaries to the casual labours and also statutory payments. The money is withdrawn from the Bank is reflected in the cash book and corresponding expenditure was incurred by cash which is below the admissible limits u/s. 40A(3) of the Act. Further, the Id. Authorised Representative drew our attention to the cash book and reconciliation statement of salary with cash book and salary statements of office employee and casual labours. We found that there are no findings by the Id. Assessing Officer in assessment order regarding submissions filed before us which need to be checked and examined. So, we are of the opinion that the Id. Assessing Officer has to verify the voluminous documents submitted before us on the ICAIM u/s.40A(3) of the Act and we remit the disputed issue to the file of the Id. Assessing Officer. Further if any disallowance is confirmed u/s.40A(3) of the Act, the same shall be considered in computing alternative claim u/s. 10A of the Act. Hence, we set aside the order of Commissioner of Income Tax (Appeals) and remit the entire issue to the file of the Id. Assessing Officer for re-examination. The Id. Assessing Officer shall provide adequate opportunity of being heard to the assessee and decide the issue on merits. The ground of the assessee is allowed for statistical purpose.

9.4 The appeal of the assessee in ITA No.900/Mds/2016 of assessment year 2011-2012 is allowed for statistical purpose.

10. In the result, the appeals of the assessee in ITA Nos. 897 to 900/Mds/2016 of assessment years 2008-09, 2009-10, 2010-11 and 2011-12 are allowed for statistical purpose.

Order pronounced on Friday, the 22nd day of July, 2016, at Chennai.

Sd/-

(चंद्र पूजारी)

(CHANDRA POOJARI)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(जी. पवन कुमार)

(G. PAVAN KUMAR)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated:22.07.2016

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |