Sec. 10A relief denied on software development units on failure of assessee to prove that they were independent units

Summary – The High Court of Delhi in a recent case of HCL Technologies., (the Assessee) held that where material on record was found to be insufficient to treat each of 31 units of assessee as separate undertakings, benefit under section 10A would be limited to eligible undertakings of assessee

Facts

- The assessee was, a public limited company, engaged in providing software development services through its software development undertakings set up in the Software Technology Park (STP). It had 31 independent software development units or undertakings set up at distinct locations and these were registered under 13 licenses with STP authorities. In the original return the assessee had claimed deduction under section 10A only in respect of 13 units and in the revised return number of units eligible for the benefits under section 10A was increased from 13 to 31 and separate Form 56F was filed for each of these 31 units.
- The Assessing Officer disallowed the aforesaid additional deduction claimed under section 10A, on the grounds that the units set up in the earlier years were mere expansion of the existing units; there was no separate approval as a new unit by the STPI authorities; and that the claim that the units set up were independent and separate new units, was raised belatedly which could not be gone into at this late stage. The Assessing Officer, therefore, restricted the assessee's claim of deduction under section 10A of the Act to 13 'mother'/undertakings instead of 31 independent and eligible units. He further held that there was no new material on record to establish that the assessee had treated 31 units as distinct undertaking.
- The Tribunal held that the assessee could not claim enhanced deduction under section 10A by departing from its earlier position that the units in question were only extension or expansion of the pre-existing units and were not new units.
- On appeal the assessee contended that the Tribunal failed to appreciate that the mere fact that in the earlier years the assessee did not compute the deduction under section 10A by considering these 31 units as separate undertakings and instead computed deduction under that section on the basis of 13 STPI licenses, did not, in law, operate as an estoppel.

Held

- The first issue that this Court has to determine is whether in the event of an assessee's failure to avail the benefits of a statutory provision, such as section 10A, it creates an estoppel precluding it from availing such benefits in future. The Assessing Officer, DRP as well as the Tribunal concurrently have rejected the assessee claims under its revised return primarily on the ground that the assessee

itself did not treat all 31 units as separate undertakings previously, and in fact, for the subject assessment year as well, it originally adopted its earlier approach.

- The impugned judgment erred in holding that the assessment would be guided by the assessee's treatment of its 'internal affairs' and that the assessee's claim must fail because it has 'consistently taken a decision as per facts exclusively available to it in its personal domain on the basis of which the assessee has chosen to treat the expanded units as part of the 13 units'. The authorities relied upon by the assessee unequivocally establish that an assessee's treatment of facts in any given manner is not relevant for the purposes of determining liability under the Act. If, on an application of the statutory provision, the party is entitled to the benefits under the Act, the mere circumstance that for the past 5 to 7 years, or even 10 years, it did not claim such benefit would not preclude it from availing it in the assessment year in question. What the assessee cannot resile from is the existence of a given set of facts which it has not challenged earlier. However, if, based on the same set of facts, assessee seeks to claim deduction under section 10A which it had foregone earlier, assessee's claim must be allowed, provided of course, the requirements of section 10A are satisfied. Therefore, in the instant case, in the event the assessee establishes that the 31 units constitute separate undertakings for the purposes of section 10A, it would be entitled to the claims made in the revised return.
- On the second issue, this Court affirms the concurrent findings approved by the Tribunal as justified in the facts and circumstances of the case.
- The assessee, as proof of the fact that each and every location with a single license is a separate undertaking and that there are 31 distinct undertakings, has submitted that there are separate lease deeds for each premise, separate STPI approval documents, and separate Customs Bond certificates, and has relied upon application to the STPI authority and approval of the STPI authority. Further, the assessee has contended that it has maintained separate books of account. However, the Assessing Officer and the Tribunal rejected the assessee contentions and held that there was no material on record to establish that assessee had treated the 31 units as distinct undertakings.
- Besides, the Assessing Officer noted that no evidence was placed on record to establish that each and every unit had a separate bank account; there had been no emergence of a fresh new undertaking and no fresh investments have been made; the profits and capital of the 31 units have been carved out from the original 13 units and the assessee has not been able to produce any documentary evidence to show that in the years in which the units were formed, there was a separate capital investment. Based on the material available on record, the Tribunal did not find any infirmity in the Assessing Officer's finding. The assessee had urged before the Tribunal that each software development centre owned by it is and always had been treated as a separate undertaking. For this, it relied upon the assessment order for 1999-2000, where reference to the 15 undertakings was made by the Assessing Officer. The Tribunal rejected this contention after having examined the contents of the assessment order. Facially, the assessment order for the assessment year 1999-2000, indicates that contrary to the assessee's submission, unit-wise break-up of profits

was not provided by it. The assessee contended that a complete copy of the assessment order was provided to the Tribunal during the course of the hearing. However, this Court is inclined to reject this contention in light of the observations of the Tribunal that there is no document available on record on the basis of which an inference can be drawn that the assessee's application before the STPI authorities was for setting up a new undertaking and not for expanding an existing undertaking.

- Since the deduction under section 10A is available to each undertaking, and material on record was found to be insufficient to treat each of the 31 units as separate undertakings, 31 units cannot be treated as separate undertakings for the purposes of availing benefit under section 10A.