

Matter explained properly by assessee would bar AO to open case on another facet of same matter

Summary – The High Court of Gujarat in a recent case of QX KPO Services (P.) Ltd., (the Assessee) held that where during scrutiny assessment, Assessing Officer raised several queries asking assessee to justify its claim of deduction under section 10B and after considering assessee's detailed reply allowed deduction, he could not reopen assessment to examine another facet of said claim

Facts

- The assessee company was engaged in the business of providing accountancy, outsourcing and IT infrastructure management services. The assessee filed its return of income after claiming deduction under section 10B. The assessee had obtained Form No. 56G, being a report under section 10B. Return filed by the assessee was taken in scrutiny by the Assessing Officer. During such scrutiny assessment, the Assessing Officer had raised queries about deduction under section 10B. The assessee replied to such queries. The Assessing Officer had passed an order of assessment under section 143[3] choosing not to make any disallowance in respect of the claim of deduction under section 10B.
- After four years the Assessing Officer issued the impugned notice seeking to reopen assessment on grounds that assessee filed its return of income on 30-11-2011 which was beyond the due date of filling of return *i.e.*, 30-9-2011 and no deduction under section 10B could be allowed to an assessee who does not finish a return of his income on or before the due date specified under section 139(1). Secondly, as per explanation under sub-section 2(iv) to section 10B, 100 per cent EOU means 'Hundred percent export-oriented undertaking' means an undertaking which has been approved as hundred percent export oriented undertaking by the Board appointed in this behalf by the Central Government in exercise of the powers conferred by section 14 of the Industries (Development and Regulation) Act, 1951 (65 and 1951), and the rules made under Act. It was observed that there was no proof on record that there was ratification from Board of Approval for EOU scheme. Therefore, the assessee was not entitled to deduction under section 10B.
- In instant appeal the assessee contended that the notice of reopening was issued beyond the period of four years from the end of relevant assessment year. The original assessment was framed after scrutiny. It was further submitted that there was no failure on the part of the assessee to disclose truly and fully all material facts necessary for the assessment and hence, the impugned notice is bad in law. During the scrutiny assessment, the Assessing Officer had minutely examined benefit of deduction under section 10B and had chosen not to make any disallowance in respect of the claim of deduction under section 10B while framing assessment under section 143(3).

Held

- The petitioner had filed its return of income on 30-11-2011 after claiming deduction under Section 10B. Thereafter, the Assessing Officer issued a notice dated 4-9-2013 calling upon the petitioner to

furnish various details; including details pertaining to deduction under section 10B. It appears from the record that the assessee furnished required details to the respondent explaining the claim of deduction under section 10B. The Assessing Officer then was convinced with the explanation given by the petitioner claiming deduction under section 10B and accepted the return for the year under consideration by making no disallowance in respect of the claim of deduction under section 10B while framing assessment under Section 143(3).

- From the letter while furnishing the explanation in support of the claim of deduction under section 10B, it cannot be stated that there was any failure on the part of the petitioner in disclosing truly and fully all material facts necessary for its assessment for the year under consideration. The Assessing Officer, at the time of original assessment as such had scrutinized the claim of deduction under section 10B and did not chose to make any disallowance against the claim of deduction under Section 10B. It is the settled legal position that when a particular claim has been scrutinized by the Assessing Officer at the time of original assessment, as such, the Assessing Officer cannot reopen such assessed case in order to examine another facet of the same claim.
- In light of the facts that the very basis for reopening no longer survives, the assumption of jurisdiction under section 147 by the Assessing Officer of issuing notice under section 148 is without the authority of law and cannot be sustained.