

Plant and Machinery taken on lease from 100% export oriented sister concern - Sec.10B relief not available: HC

Summary – The High Court of Kerala in a recent case of Stabilix Solutions (P.) Ltd., (the Assessee) held that Sec.10B relief is not available since Plant and Machinery was taken on lease from 100% export oriented sister concern.

Facts

- The assessee-company, a 100% EOU had taken on lease from its sister concern also a 100% EOU certain used plant and machinery for producing computer software.
- The Assessing Officer held that leased machinery disqualified the assessee from being eligible for its claim under section 10B(1).
- The Commissioner (Appeals) allowed the claim of the assessee for exemption under section 10B(1).
- The Tribunal, on appeal filed by the revenue, held that the assessee had not satisfied the conditions of section 10B(2)(iii) and was, therefore, not entitled to be qualified for the benefit under section 10B(2).
- On appeal to High Court by assessee:

Held

- The HC held that there is no dispute that the assessee-company was formed substantially with the plant and machinery of the used sister concern and not new plant and machinery.
- The fact whether the 'lease' would qualify to be a 'transfer' within the meaning of section 10B(2)(iii) cannot be disputed and the argument of the assessee that the activity carried on was manufacture of computer software, which requires input of intellectual, rather than tangible resources, is also not acceptable to find a dominant aspect not being involved in the transfer by lease of the premises, computers and peripherals.
- In view of the aforesaid, the Tribunal was justified in holding that the assessee is not entitled to benefit under section 10B(2).