

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**TUESDAY, THE SEVENTEENTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FOUR**

PRESENT

**THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HON'BLE SRI JUSTICE J. SREENIVAS RAO**

INCOME TAX TRIBUNAL APPEAL NO: 105 OF 2008

Income Tax Tribunal Appeal under Section 260-A of the Income tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Hyderabad Bench "B", Hyderabad in I.T.A. No. 841 / HYD/2004 (Asst. Year 2001-2002) dated 06-10-2006 preferred against the order of the Commissioner of Income Tax (Appeals), IV Hyderabad dated 04-06-2004 in Appeal ITA No. 7/AC 3 (30/CIT (A)-IV / 2004-05 preferred against the order of the Asst. Commissioner of Income Tax, Circle -3 (3), Hyderabad dated 08-03-2004 in P.A.N./G.I.R. No. AABCT3197P/T-179

Between:

M/s. Trigeo Image Systems [P] Ltd., 813, Nagarjuna Hills, Punjagutta, Hyderabad rep. by its Finance Manager Shri D. Raghava Raju.

...APPELLANT

AND

The Asst. Commissioner of Income Tax, Circle 3 (3), Hyderabad.

...RESPONDENT

**Counsel for the Appellant: SRI M. SRIDHAR, REPRESENTING
M/s. CKR ASSOCIATES**

Counsel for the Respondent: SRI J.V. PRASAD SENIOR SC FOR I.T. DEPT.

The Court delivered the following Judgment :

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE

AND

THE HON'BLE SRI JUSTICE J.SREENIVAS RAO

INCOME TAX TRIBUNAL APPEAL No.105 of 2008

JUDGMENT: *(Per the Hon'ble the Chief Justice Alok Aradhe)*

Mr. M.Sridhar, learned counsel representing M/s. CKR Associates for the appellant.

Mr. J.V.Prasad, learned Senior Standing Counsel for Income Tax Department for the respondent.

2. This appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') has been filed by the assessee. The subject matter of the appeal pertains to assessment year 2001-02. The appeal was admitted on following substantial question of law:

"Whether the findings recorded by the Income Tax Appellate Tribunal is perverse as the same have been recorded in ignorance of the documentary evidence on record, namely the letter dated 22.12.2003 issued by Reserve Bank of India?"

3. Facts giving rise to filing of this appeal briefly stated are that the assessee filed the return of income for the assessment year 2001-02 on 30.10.2001 disclosing a total income of Rs.24,344/- along with report in Form 3CD as required under Section 44AB of the Act. The return was processed under Section 143(1) of the Act. The assessee had claimed exemption under Section 10A of the Act amounting to Rs.86,17,929/- in computation of total income. In support of the aforesaid claim, Report in Form in 56F furnished by the Chartered Accountant was filed. The case of the assessee was converted into limited scrutiny and a notice under Section 143(2)(1) of the Act was issued on 18.10.2002 to the assessee.

4. In response to the notice, the assessee filed a letter dated 24.03.2003 followed by another letter dated 31.03.2003 and it was mentioned that as per the said letters, entire balance amount except a sum of Rs.6,21,701/- was received by August, 2002. The assessee requested that claim for exemption under Section 10A of the Act be allowed in full. The Assessing Officer by an order dated 08.03.2004, disallowed the claim under Section 10A of the Act and issued a demand for a sum of Rs.12,23,411/-. Being aggrieved, the

assessee filed an appeal. The Commissioner of Income Tax (Appeals) IV, Hyderabad by an order dated 27.05.2004 *inter alia* held that the Reserve Bank of India had granted Ex-post facto approval for the realization made by the appellant and the conditions prescribed in Section 10A(3) of the Act are fulfilled. Accordingly, the assessee was held entitled to exemption under Section 10A of the Act. The Commissioner of Income Tax (Appeals) IV, Hyderabad therefore set aside the order passed by the Assessing Officer and allowed the appeal.

5. The Revenue thereupon filed an appeal before the Income Tax Appellate Tribunal, Hyderabad Bench-B. The Income Tax Appellate Tribunal by an order dated 06.10.2006, *inter alia* held that the letter of Reserve Bank of India dated 28.04.2003 cannot be construed to be an order of the competent authority as provided under Section 10A(3) of the Act for permitting the assessee to receive the foreign exchange beyond a period of six months from the end of the previous year. The Income Tax Appellate Tribunal therefore set aside the order passed by the Commissioner of Income Tax (Appeals) IV and restored the order passed by the Assessing

Officer. In the aforesaid factual background, this appeal has been filed by the assessee.

6. Learned counsel for the assessee submitted that the Income Tax Appellate Tribunal did not take into account the subsequent letter dated 22.12.2003 issued by the Reserve Bank of India, by which Ex-post facto approval for extension of time for realization of export proceeds was granted. It is further submitted that the finding recorded by the Income Tax Appellate Tribunal is perverse as the Income Tax Appellate Tribunal has failed to take into account the letter dated 22.12.2003. In support of aforesaid submission, learned counsel for the assessee has placed reliance on decision in **Commissioner of Income-tax v. Morgan Stanley Advantage Services P. Ltd.**¹.

7. On the other hand, learned Senior Standing Counsel for the Revenue has supported the order passed by the Income Tax Appellate Tribunal and has contended that the letter dated 28.04.2003 issued by Reserve Bank of India cannot be construed as regularizing or validating in any irregularities under the provisions of other laws and

¹ 2011 SCC OnLine Bom 1196 : (2011) 339 ITR 291

regulations and the same therefore cannot be construed to be an order of the competent authority as provided under Section 10A(3) of the Act for permitting the assessee to receive the foreign exchange beyond the period of six months.

8. We have considered the submissions made on both sides and have perused the record.

9. Before proceeding further, it is apposite to take note of relevant extract of Section 10A of the Act, which reads as under:

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

(1) Subject to the provisions of this section, a deduction of such profits and gains as are derived by an undertaking from the export of articles or things or computer software for a period of ten consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce such articles or things or computer software, as the case may be, shall be allowed from the total income of the assessee:

Provided that where in computing the total income of the undertaking for any assessment year, its profits and gains had not been included by application of the provisions of this section as it stood immediately before its substitution by the

Finance Act, 2000, the undertaking shall be entitled to deduction referred to in this sub-section only for the unexpired period of the aforesaid ten consecutive assessment years:

Provided further that where an undertaking initially located in any free trade zone or export processing zone is subsequently located in a special economic zone by reason of conversion of such free trade zone or export processing zone into a special economic zone, the period of ten consecutive assessment years referred to in this sub-section shall be reckoned from the assessment year relevant to the previous year in which the undertaking began to manufacture or produce such articles or things or computer software in such free trade zone or export processing zone:

Provided also that for the assessment year beginning on the 1st day of April, 2003, the deduction under this sub-section shall be ninety per cent of the profits and gains derived by an undertaking from the export of such articles or things or computer software:

Provided also that no deduction under this section shall be allowed to any undertaking for the assessment year beginning on the 1st day of April, 2012 and subsequent years.

xxx xxx xxx

(3) This section applies to the undertaking, if the sale proceeds of articles or things or computer software exported out of India are received in, or brought into, India by the assessee in convertible foreign exchange, within a period of six months

from the end of the previous year or, within such further period as the competent authority may allow in this behalf.

Explanation 1.- For the purposes of this sub-section, the expression "competent authority" means the Reserve Bank of India or such other authority as is authorised under any law for the time being in force for regulating payments and dealings in foreign exchange.

Explanation 2.- The sale proceeds referred to in this sub-section shall be deemed to have been received in India where such sale proceeds are credited to a separate account maintained for the purpose by the assessee with any bank outside India with the approval of the Reserve Bank of India."

10. It is not in dispute that the Reserve Bank of India is the competent authority to grant extension of time as provided under Section 10A(3) of the Act. The Reserve Bank of India had issued a communication dated 28.04.2003. The relevant extract of the aforesaid communication reads as under:

"Please refer your letter dated 25th April 2003 on the captioned subject.

In this connection we advise that the delayed realization of export proceeds in respect of 5 Softex Forms, the details of which are mentioned below, are regularised upto the date of realization.

Sl. No.	Softex Form No.	Amount regularised	Date of realization
1	AC 483956	US \$ 1,70,363.89	10.10.2002
2	AC 483597	US \$ 1,00,477.10	27.12.2001
3	AC 483969	D.M. 5,600.00	21.01.2002
4	AC 483967	US \$ 16,365.00	04.10.2001
5	AC 483962	US \$ 39,346.00	14.09.2001

Note

This communication is issued from the foreign exchange angle under the provisions of FEMA and should not be construed to convey the approval by any other statutory authority or Government under any other laws/regulations. If further approval or permission is required from any other regulatory authority or Government under the relevant laws/regulations, the applicant should take the approval of the concerned agency before effecting the transaction. Further, it should not be construed as regularizing or validating any irregularities, contravention or other lapses, if any, under the provisions of any other laws/regulations."

11. Thereafter, the Reserve Bank of India issued another communication dated 22.12.2003. The aforesaid communication reads as under:

2. In partial modification of the permission granted vide our letter No.4468 dated April 28, 2003, we advise that we have granted post-facto approval for extension of time for realisation

of export proceeds for the export bills upto the dates of realisation as indicated hereunder:

Sl. No.	Softex Form No.	Amount Regularised	Dates of realization
1	AC 483956	US\$. 1,70,363.89	10.10.2002
2	AC 483597	US\$.1,00,477.10	27.12.2001
3	AC 483969	DM. 5,600.00	21.01.2002
4	AC 483967	US\$.16,365.00	04.10.2001
5	AC 483962	US\$.39,346.00	14.09.2001

12. Admittedly, the Reserve Bank of India is competent authority under Foreign Exchange Management Act, 1999, which regulates the payments and dealings in foreign exchange. Section 10A(3) of the Act provides that the benefits under Section 10A(1) of the Act is available to the assessee, if export proceeds are realized within the time prescribed by the competent authority under the Foreign Exchange Management Act, 1999. In the instant case, the competent authority under the Foreign Exchange Management Act, 1999, namely the Reserve Bank of India has granted approval in respect of export proceeds realized by the assessee. Therefore, the approval granted by the Reserve Bank of India meets the requirement of Section 10A(3) of the Act. The Income Tax Appellate Tribunal ought to have appreciated that the assessee had fulfilled the requirement

::10::

contained in Section 10A(3) of the Act and therefore was entitled to exemption under Section 10A of the Act.

13. We are in respectful agreement with the view taken by Bombay High Court in **Morgan Stanley Advantage Services P. Ltd.** (supra).

14. For the aforementioned reasons, the substantial question of law framed by this Court is answered in favour of the assessee and against the Revenue.

15. In the result, the order dated 06.10.2006 passed by the Income-Tax Appellate Tribunal, Hyderabad Bench 'B' in I.T.A.No.841/Hyd/2004 is set aside and the appeal is allowed.

Miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

//TRUE COPY//

Sd/- M. VIJAYA BHASKER
JOINT REGISTRAR


SECTION OFFICER

To

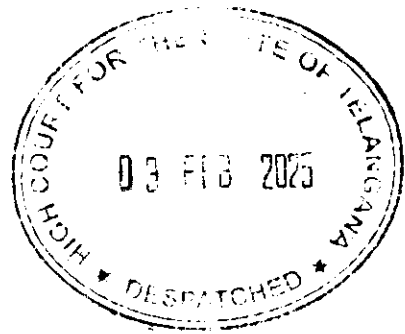
1. The Income –Tax Appellate Tribunal, Hyderabad Bench, "B" Hyderabad.
2. The Commissioner of Income-Tax (Appeals)IV, Hyderabad.
3. The Asst. Commissioner of Income Tax, Circle -3 (3), Hyderabad.

4. One CC to M/S CKR ASSOCIATES, Advocate [OPUC]
5. One CC to SRI. J.V. PRASAD SC FOR I.T DEPT (OPUC)
6. Two CD Copies

kul/gh *KS*

HIGH COURT

DATED:17/12/2024



JUDGMENT

ITTA.No.105 of 2008

ALLOWING THE ITTA

WITHOUT COSTS

8 copies
K
24/1/25