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TAX FLASH NEWS

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Timely filing of a declaration to opt out of a benefit of Section 10B is mandatory

Executive Summary

Section 10B of the Income-tax Act, 1961 (the Act) is a set of special provisions in respect of newly established 100% export-oriented undertakings. Section 10B(8) provides that the taxpayer has an option not to claim such benefit if he furnishes a declaration in writing to the Assessing Officer (AO). The said declaration is to be filed before the due date for furnishing the return of income under Section 139(1). Whether such requirement is mandatory or directory has been a matter of interpretation and litigation before the courts from a long time.

Recently, the Supreme Court, in the case of Wipro Ltd[1] (the taxpayer) dealt with the above twin conditions prescribed under Section 10B(8) i.e. filing of declaration in a timely manner. The Supreme Court held that the twin conditions are mandatory and should be complied strictly.

Facts of the case

- The taxpayer, a 100 per cent export-oriented undertaking (EOU), filed its return of income and claimed benefit under Section 10B. The taxpayer had not claimed carry forward of losses. Subsequently, the taxpayer filed a declaration under Section 10B(8) to opt-out of the benefit under Section 10B.

- Subsequently, the taxpayer filed the revised return of income where the benefit under Section 10B was withdrawn and the taxpayer claimed carry forward of losses.

- The AO rejected the withdrawal of benefit and held that the taxpayer did not furnish the declaration under Section 10B(8) before the due date of filing of the original return of income. Further, the taxpayer's claim of carry forward of losses under Section 72 was also denied.

- The Commissioner of Income-tax (Appeals) [CIT(A)] upheld the order of the AO. However, the Tribunal held the decision in favour of the taxpayer stating that the declaration under Section 10B(8) was filed by the taxpayer with the AO. The High Court upheld the order of the Tribunal.

Supreme Court's decision

- The wording of Section 10B(8) is very clear and unambiguous. The twin conditions of furnishing the declaration with the AO and furnishing the same before the due date of filing the return of income under Section 139(1) are mandatory.

- The taxpayer had filed its original return under Section 139(1) and not a loss return under Section 139(3). Therefore, the tax department was right in submitting that the revised return filed by the taxpayer under Section 139(5) can only substitute its original return under Section 139(1). It cannot transform an original return into a loss return under Section 139(3), in order to avail the benefit of carry forward or set-off of losses.

  - The taxpayer can file a revised return in a case where there is an omission or a wrong statement. However, a revised return of income under Section 139(5) cannot be filed to withdraw the claim and subsequently claim carry forward or set-off of losses.

  - Therefore, furnishing the declaration in the revised return of income much after the due date of filing the original return of income, cannot mean that the taxpayer had complied with the conditions of Section 10(8).

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[1] PCIT v. Wipro Ltd (Civil Appeal No. 1449 of 2022) – Taxsutra.com

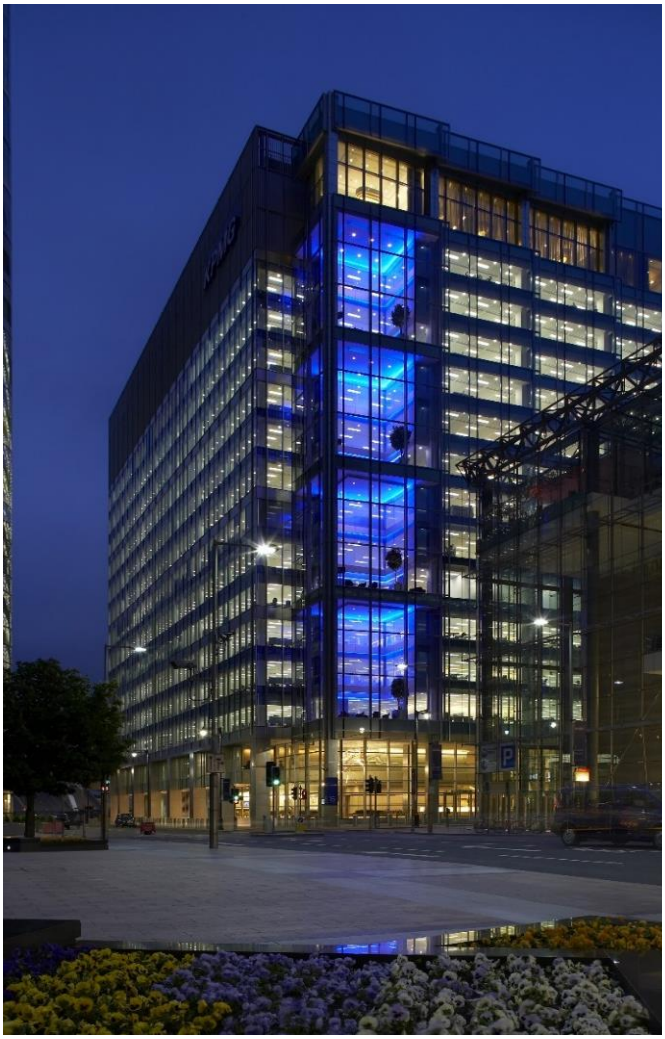
- The taxpayer's claim that it was not necessary to exercise the option under Section 10B(8) and even without filing the revised return of income, the taxpayer could have submitted the declaration in writing to the AO during the assessment proceedings has no substance and the same has not been accepted.

- The exemption provisions are to be strictly and literally complied with and the same cannot be construed as a procedural requirement.

- The decision[2] relied on by the taxpayer was distinguishable on facts of the case. None of the decisions relied on by the taxpayer on the interpretation of Chapter VI-A is applicable while considering the claim under Section 10B(8).

- For taxpayer's reliance on the Delhi High Court's decision in the case of Moser Baer[3], it was observed that the Special Leave Petition (SLP) against the said decision was dismissed as withdrawn due to low tax effect and the question of law had specifically been kept open.

- Accordingly, the taxpayer was not entitled to opt-out of the benefit under Section 10B(8) on non-compliance of the prescribed twin conditions.



Our comments

While various High Courts have given benefit to the taxpayer by interpreting exemption provisions liberally, the Supreme Court has not extended the option under Section 10B(8) to the taxpayer by interpreting exemption provisions strictly. The Supreme Court did not apply a liberal interpretation given by the Courts with respect to deduction provisions of Chapter VI-A. Taxpayers should take note of this strict interpretation of exemption provisions and make sure to comply with such conditions and procedural requirements in a timely manner.

[2] CIT v. G.M. Knitting Industries Pvt. Ltd [2015] 376 ITR 456 (SC)
[3] CIT v. Moser Baer India Limited (ITA No. 950/2007, dated 14 May 2008)

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