



Analysis of recent Supreme Court Ruling in case of Wipro Ltd

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Errors & Omissions -Not Accepted! – A Case Law Analysis

Wipro Limited – [2022] 140 taxmann.com 223 (SC)

Introduction:

The debate over recent ruling of the Honorable Supreme Court in case of validity of notices issued under the old regime of re-assessment proceedings is yet to get over and Honorable Court has come with yet another decision in favor of the Revenue.

This judgment will have some far-reaching implications in the interpretation of statutes specifically in interpretation of the exemption provisions. Without much ado, let's get into the ruling.

Brief Facts of the Case:

- Assessee is 100% Export Oriented Unit and engaged into the business of running a call centre and IT Enabled and Remote Processing Services.
- For the AY 2001-02, Assessee filed its return of income on 31.10.2001 declaring loss of Rs.15.47 Cr and claimed exemption u/s 10B of the Act.
- Along with ROI, assessee annexed a note stating that; assessee, being 100% EOU, entitled to claim exemption under Section 10B and therefore no loss was being carried forward.
- Afterwards, on 24.10.2002 assessee filed declaration stating that: company did not want to avail benefit of Section 10B in light of provision of the Section 10B(8). Subsequently a revised return had been filed on 23.12.2002 where instead of exemption, assessee claimed carry forward of losses.
- AO passed an order dated 31.03.2004 rejecting the withdrawal of exemption under Section 10B and denied carry forward losses by holding that the assessee did not furnish the declaration in writing before the due date of filing of return of income, which was 31.10.2001.

- During the first appeal, the CIT(A) upheld order of the AO and dismissed assessee's claim.
- However, on second appeal before the ITAT, issue was decided in favour of the assessee.
- Aggrieved by order of the ITAT, Revenue preferred appeal to the High Court, which was dismissed.
- Again, aggrieved and dissatisfied, revenue preferred appeal to the Apex Court.

Substantial Question of Law:

- The substantial question of law before the Apex Court was interpretation of the Section 10B (8) of the Income Tax Act, viz., whether the requirement of submission of the declaration before the last date for submission of the return is mandatory or directory.

Arguments of the Revenue:

The arguments of the Council appeared on behalf of the Revenue are summarized as under:

- The return filed u/s 139(1) can be revised u/s 139(5) only to correct error/omission of the original return and not to make any new claim or to withdraw claim.
- But entire act of the assessee was not on account of any such error/ omission but just as an afterthought.
- Filing declaration before filing Return u/s 139(1) is not mere procedural requirement but mandatory condition when assessee does not want to avail exemption.
- Taxing statute should be strictly construed and that the machinery provisions must be so construed to effectuate the object and purpose of statute and that the exemption provisions must be construed strictly and by a strict interpretation.

Arguments of the Assessee:

The arguments of the Council appeared on behalf of the assessee are summarized as below:

- Filing a declaration is mandatory in nature, while the time limit in filing the declaration is directory in nature.
- The assessee filed a revised return only to bring to the notice of the AO the factum of exercise of option under Section 10B. Even if the revised return had not been filed and instead, the assessee had submitted the declaration in writing to the AO during the assessment proceedings, it would have made no difference whatsoever to the exercise of option under Section 10B (8).
- A substantive claim which assessee considers to be more beneficial, must be allowed to be made until the conclusion of assessment and the time within which any form which enables the claim should be filed, is only directory.

Verdict of the Apex Court:

The Honourable Supreme Court disregarded arguments of the assessee and decided appeal in favour of the Revenue on the following counts:

- The exemption provisions are to be complied with strictly and literally and the same cannot be construed as procedural requirement.
- Filing a revised return under Section 139(5) and taking a contrary stand and/or claiming the exemption, which was specifically not claimed earlier while filing the original return of income is not permissible.
- For claiming the benefit under Section 10B (8), the twin conditions of furnishing the declaration to the AO in writing and that the same must be furnished before the due date of filing the return of income under sub-section (1) of section 139 are required to be fulfilled ie both the conditions are mandatory in nature.
- High Court has committed a grave error in observing and holding that the requirement of furnishing a declaration under Section 10B (8) is mandatory, but the time limit within which the declaration is to be filed is not mandatory but is directory. The same is erroneous and contrary to the unambiguous language contained in Section 10B (8).

Key Takeaways and Observations:

- This ruling can be a trigger warning for revised returns. According to this judgment, revise return u/s 139(5) can be filed only when there is an error or wrong statement and not to withdraw the claim just as an afterthought.

- Under the Income Tax Act, in order to claim relief/ exemption/ deduction, certain prescribed forms are needed to be filed that to before filing Return of Income u/s 139(1).
- However, there were instances where taxpayers overlooked filing of such forms before filing return u/s 139(1).
- In such cases, High Courts and Tribunals used to take lenient view and allow such claim based on assessee's argument of procedural lapse.
- In this particular case, the prescribed form was related to claim of exemption and accordingly the Apex Court was of the view that; Chapter III and Chapter VI-A are distinct provisions where former is related to exemptions and later is for deductions. Both can not be compared as exemption provisions are to read and interpreted strictly.
- It would be tale of time , whether the impact of this judgment would remain limited to the Chapter III or whether relief which is not in form of exemption but deduction, would also get covered as a part of strict interpretation.
- The only sensible step to avoid litigation is to comply with prescribe procedures within time frame, especially when taxpayer wants to claim any kind of exemption/ deduction/relief.

Concluding Remarks:

When it comes to interpretation of the exemption provisions, the Apex Court has always adopted strict approach and rule of literal interpretation. In this particular case, assessee's subsequent withdrawal of the claim appears as an afterthought and court has rightly rejected the same.

However, this ruling would also adversely affect to those cases wherein return needs to be revised due to actual error or omission or genuine delay in furnishing prescribed form before filing Return of Income u/s 139(1). In those cases, litigation will become inevitable.

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