

EY Tax Alert

Supreme Court follows strict interpretation of exemption provision to mandatorily require filing of declaration to withdraw S. 10B benefit within due date

Executive summary

This Tax Alert summarizes a Supreme Court (SC) ruling in the case of Wipro Ltd.¹ (Taxpayer), dated 11 July 2022 wherein issue raised was whether a claim for exemption under section (S.) 10B made in original return of income (ROI) can be withdrawn by filing a declaration to opt out of the claim beyond the time specified in the provision.

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The Taxpayer filed its original ROI within the due date by declaring loss but reserved its claim for exemption under S. 10B by furnishing a certificate from an accountant verifying such a claim. Subsequently, the Taxpayer withdrew such claim under revised ROI, filed a belated declaration for opting out of S.10B and made a claim for carry forward of losses. However, tax authority denied the claim for belated withdrawal and thereby denied the benefit of carrying forward of loss.

In this backdrop, the SC negated the contention of the Taxpayer and held that exemption provisions are to be strictly construed and the time limit provided under S.10B(8) to file a declaration to opt out of the claim is mandatory. Accordingly, since in the present case, the withdrawal of such claim is made beyond the time limit, the tax authority was right in not accepting it. The SC also held that the revised ROI can be filed only in cases where there is omission or wrong statement in the original ROI. The revised ROI cannot be validly filed to withdraw a claim made in original ROI.

¹ [TS-544-SC-2022]

Background of provisions under Income Tax Laws (ITL) dealing with claim of exemption under S.10B

- ▶ The Government of India had introduced an Export oriented unit (EOU) Scheme to boost exports and foreign earnings whereby units undertaking to export their entire production/services were eligible for certain direct and indirect tax benefits.
- ▶ In this regard, S. 10B (1)² of the ITL, as part of Chapter III dealing with exemption of certain incomes from tax, provided an exemption to a 100% EOU to the extent of profits derived by it from such export, subject to certain conditions. The exemption was available for a period of ten consecutive tax years (TYs)³ beginning with TY in which such EOU begins to manufacture or produce articles or things or computer software, as the case may be. As per the ITL, a taxpayer is not eligible to carry forward any losses arising from such export, profits from which would have been deductible under section (u/s.) 10B.
- ▶ One of the preconditions provided for the claim of exemption u/s. 10B was that a taxpayer should furnish, along with ROI in prescribed form, the report of an accountant certifying that the exemption has been correctly claimed in accordance with the provisions of the ITL (Exemption Certificate).
- ▶ Further, an option was also given to the taxpayers to opt out of the provision by filing a declaration in this respect with the tax authority on or before the due date for ROI filing (Withdrawal Declaration). Where such option is exercised, the exemption provision ceases to apply to the taxpayers for any of the relevant TYs.

Facts

- ▶ The Taxpayer, a 100% EOU engaged in the business of running a call center and providing IT-enabled remote processing services, filed its ROI for TY 2000-01 on the last day available for such filing (viz. 31 October 2001) declaring loss and reserving its claim for exemption under S.10B of the ITL by filing an Exemption Certificate from an accountant. Note attached to the ROI stated that the Taxpayer is a 100% EOU entitled to claim exemption under S.10B and hence no losses are being carried forward.

- ▶ Subsequently, on 24 October 2002 (i.e., after almost a year had passed since the filing of the original ROI), the Taxpayer filed a Withdrawal Declaration with the tax authority withdrawing the claim of exemption.
- ▶ Thereafter, the Taxpayer filed a revised ROI on 23 December 2002 in which exemption under S.10B was not claimed, and the Taxpayer instead made a claim for carrying forward of losses.
- ▶ Tax authority rejected the claim made by the Taxpayer vide revised ROI, on the ground that the Withdrawal Declaration was not furnished within the due date of filing ROI. Accordingly, tax authority denied the claim of carry forward of losses.
- ▶ Being aggrieved by order of tax authority, the Taxpayer filed appeal to first appellate authority which was unsuccessful.
- ▶ However, on further appeal, Income Tax Appellate Tribunal (Tribunal) allowed the appeal in favor of the Taxpayer by accepting its claims.
- ▶ On further appeal by the tax authority, the High Court (HC) ruled in favor of the Taxpayer holding that while the requirement to file a Withdrawal Declaration is mandatory to opt out of exemption, the time limit prescribed for filing of such Withdrawal Declaration with the tax authority till the due date of filing of ROI is only a procedural requirement of directory nature and can be filed at any time till the completion of the assessment.
- ▶ Being aggrieved by HC's ruling, the tax authority filed appeal before the SC.

Tax authority's contentions

- ▶ Withdrawal Declaration is required to be filed within the statutory time limit prescribed in the ITL and is mandatory. The HC erred in considering the requirement as procedural.
- ▶ Revised ROI can be filed only to remove omission, mistake or arithmetical error and not for making an altogether new claim (as in the present case).
- ▶ There is a distinction between the provisions seeking exemption and the provisions for deduction. The plethora of rulings referred by the Taxpayer (infra) are inapplicable as they do not deal with Chapter III of the ITL (where S. 10B is placed) dealing with exemptions. As held by the

² The provision had a sunset date of 31 March 2011 whereby no deduction could be claimed by EOU u/s 10B from TY 2011-12 onwards

³ Period beginning on 1 April of a calendar year and ending on 31 March of the subsequent calendar year

SC in its earlier rulings⁴, while the machinery provisions of a taxing statute may be interpreted liberally to effectuate its object and purpose, exemption provisions must be construed strictly.

Taxpayer's contentions

The Taxpayer's contentions were as follows:

- ▶ While the requirement to file the Withdrawal Declaration was mandatory to opt out of the exemption provision, the time limit for such filing is only directory.
 - Reliance in this regard was placed on the SC decision in case of G.M. Knitting Industries Pvt. Ltd⁵, which on similar lines permitted belated claim of additional depreciation in a case where such additional depreciation was claimable, subject to the filing of the prescribed form with the ROI. The SC ruling thereby endorses the view that option can be exercised at any time before completion of the assessment.
 - The Taxpayer's case in present matter stands on a better footing since the ITL itself gives an express and unequivocal statutory right to the Taxpayer to change its option by filing Withdrawal Declaration.
- ▶ Reliance was placed also on various judicial pronouncements⁶ rendered in the context of other deduction provisions of the ITL under Chapter VIA or rulings rendered in the context of S. 10B (which in turn relied on rulings on deduction provisions of the ITL under Chapter VIA) wherein it was held that submission of document is mandatory but the condition that the same should be filed with ROI is only directory.
- ▶ As against tax authority's contention that S. 10B is an exemption provision and hence requires strict interpretation, the Taxpayer contended that S.10B is a deduction provision and not an exemption provision as held by SC in case of Yokogawa India Ltd⁷.
- ▶ Validity of revised ROI is wholly immaterial and irrelevant as the Taxpayer could have validly exercised option by filing declaration during the course of assessment proceedings.
- ▶ The Exemption Certificate filed by the Taxpayer remains unaffected by the Withdrawal

Declaration since the loss set out in the certificate remained exactly the same. In any case, upon withdrawal of claim for exemption, such certificate becomes irrelevant.

- ▶ The only requirement under the ITL for carry-forward of losses is filing of an ROI showing the loss before the due date for submitting ROI. Since in the instant case, the loss was shown in the revised ROI, the date of filing for which relates back to the original ROI, this requirement was met.

Supreme Court's ruling

SC upheld tax authority's contentions that Taxpayer has not validly opted out of exemption provision and held as under:

- ▶ In a taxing statute, provisions are to read as they are and they are to be literally construed, more particularly in a case of exemption sought by a taxpayer.
- ▶ On a literal reading of the ITL, the wording is very clear and unambiguous to convey that for withdrawing benefit of S. 10B through Withdrawal Declaration, twin conditions of (i) furnishing the declaration in writing; and (ii) the same to be furnished before the due date of filing the ROI are required to be satisfied. One condition cannot be considered as mandatory and the other one as directory. Both are mandatory.
- ▶ Revised ROI can be filed only in cases of "omission" or "wrong statement" and the same cannot be filed for withdrawing a claim made under original ROI and making altogether a new claim. Also, a revised ROI filed can only substitute the original ROI and cannot transform it into a loss return so as to avail the benefit of carry forward and set-off of loss.
- ▶ If the claim made on submission of an Exemption Certificate is permitted to be withdrawn post ROI filing date, the Exemption Certificate would become falsified and stand to be nullified. Accordingly, the Taxpayer's submission that the Withdrawal Declaration may be filed even during assessment proceedings without filing revised ROI has no substance.
- ▶ The Taxpayer's reliance on SC ruling in case of G.M. Knitting Industries Pvt. Ltd (supra) as well as other rulings rendered in the context of Chapter VI-A is inapplicable since S. 10B is an

⁴ Calcutta Knitwears, Ludhiana [2014] 362 ITR 673 (SC); Commissioner of Customs (Import), Mumbai v. Dilip Kumar and Company and others (2018) 9 SCC 1

⁵ [2015] 376 ITR 456 (SC)

⁶ Moser Baer India Limited, decided on 14.05.2008 in ITA No. 950/2007 (Del HC); Shivanand Electronics [(1994) 209 ITR 63 (Bombay HC)]; Telangana State Pollution Board v. CBDT [Writ Petition No. 4834/2020, decided on 26.07.2021 (Telangana HC)]; Rana Polycot Ltd. (2011 SCC OnLine P&H 17591); CIT v. Panama Chemical Works, 2006

SCC OnLine MP 704; CIT v. Punjab Financial Corp. ILR 2002 (1) P&H 438; CIT v. Hardeodas Aggarwala Trust; 1991 SCC OnLine Cal.414; CIT v. Gupta Fabs, 2005 SCC OnLine P&H 1315; Murali Export House v. CIT, 1995 SCC OnLine Cal. 286; CIT v. Berger Paints India Ltd., 2002 SCC OnLine Cal. 869; and CIT v. Ramani Relators (P) Ltd., 2014 SCC OnLine Mad. 12717.

⁷ Refer EY Alert titled "SC settles certain controversies on profit-linked deduction for export units" dated 21 December 2016

exemption provision in Chapter III of the ITL which cannot be equated with the provisions of Chapter VIA or additional depreciation related provisions which operate in different fields with varied mechanisms. Provisions of Chapter III, being exemption provisions, are to be strictly and literally complied with and the same cannot be construed as a procedural requirement.

Comments

The instant SC ruling is significant in terms of diverse principles emanating from it.

One of the propositions endorsed by the SC is that revised tax return cannot be filed to modify the claim made in the original return except in cases involving mistake or wrong statement in the original return.

Further, distinguishing its earlier ruling⁸, in the present case the SC also held that claim for exemption under Chapter III of the ITL needs to be made as per the prescribed timelines, and it is not correct to suggest that time limits prescribed for exemption claims are not mandatory, but only directory. In SC's view, its earlier ruling considering timelines as directory is restricted to cases of deductions under the ITL. Accordingly, the earlier judicial decisions permitting submission of a fresh claim in respect of deduction provisions of the ITL during the course of assessment or appellate proceedings may not be regarded as getting diluted.

Applicability of the SC ruling may therefore need a fact-specific analysis.

In a case where a taxpayer has missed the claim to be made within the time provided under the ITL, it may explore approaching the Central Board of Direct Taxes⁹ (CBDT) - which is empowered under the ITL to admit belatedly such claim for exemption, deduction or relief under the ITL by condoning the delay - for relief.

⁸ In the case of G.M. Knitting Industries Pvt. Ltd (supra)

⁹ Apex body of the direct tax administration in India

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