

High court says I-T department filing appeals ‘mechanically’

The Karnataka High Court, in a recent judgement, passed strictures on Income-Tax (I-T) department for filing repeated appeals and wasting taxpayers’ money. “It seems that the (I-T) department is filing these appeals mechanically—either for the purpose of statistics or to save their skins without application of mind,” the court said. It also said the I-T department can recover the cost of Rs1 lakh from the official who has decided to file these appeals.

“Having regards to the facts of the case, the Parliamentary intention and the object sought to be achieved and the way the two appellate authorities have pointed out that express provision, the view of the (I-T) department in contrary to law, unsustainable and cannot be countenanced. Hence, we are of the view that the appellants (I-T Dept) are liable to pay costs of Rs1 lakh for making the assessee (DSL Software) to contest the cases in three forums and wasting the tax payers’ money,” the high court said in its order.

The case relates to DSL Software, a 100% export-oriented unit (EOU), which was denied benefits of the tax holiday under Section 10B of the I-T Act. The I-T department extended the tax holiday period to 10 years from five years, to be reckoned from the date, the eligible unit started software development.

As per the previous amendment, DSL Software claimed benefit of tax holiday in accordance with the un-amended provision of Sect 10B for five years till 1997-98. However, after the amendment that came into force from 1 April 1999, DSL Software claimed the tax holiday benefits for 1999-2002, which was challenged by the I-T department. The I-T department said since DSL Software had already claimed tax benefits under Section 10B prior to the amendment; it cannot take the same benefit under the new amendment. DSL Software filed an appeal before the Commissioner of Income Tax (Appeals).

The appellate commissioner held that there is nothing in the Act to provide that the units which have fully availed the benefit of exemption under Section 10B in accordance with the provisions of Section 10B(7) as it stood originally shall not get the benefit of amended provision introduced by I-T (Second Amendment) Act, 1998. The commissioner said DSL Software is entitled for exemption under Section 10B for the assessment years (1999-2002) under consideration.

Aggrieved by the order from the appellate commissioner, the I-T department filed an appeal to the I-T Tribunal. After taking note of the object with which the amendment was introduced as well as the amended provisions, the tribunal held that the provisions of Section 10B do not place the old and new EOU units on a different footing. While dismissing the appeal, the tribunal said, “The reference in the proviso is to the unexpired period of 10 years without any qualification. It does not refer to the unexpired period of the tax holiday duration. The substituted section, being without any qualification is therefore to be held as applicable to the assessee (DSL Software).”

The I-T department then approached the high court, which also dismissed its petition while passing strictures on the functioning of the department. The court said, orders passed by the tribunal as well as the first appellate authority are strictly in accordance

with law and do not suffer from any legal infirmity, which calls for interference and no substantial question of law arises for consideration in this appeal.

“The case brings to the fore the way in which the I-T department, without a proper application of mind, are filing appeals against the orders of the tribunal and thus, wasting the precious time of this court and wasting the tax payers’ money. It only shows the lack of application of mind and it is our experience that it is not an isolated case. It seems that the department is filing these appeals mechanically either for the purpose of statistics orto save their skins without application of mind,” the court said.

Last year, to curb increased litigation, the revenue department revised the limits for filing appeals before the I-T Appellate Tribunal (ITAT), high courts and the Supreme Court to Rs3 lakh, Rs10 lakh and Rs25 lakh, respectively. The department was expecting the number of cases to fall by about 25% to 1,500 per month from 2,000 cases a month. The assessee of course is free to move higher courts in case of an adverse verdict. The measures were expected to cut litigations by 13% in the case of ITAT and 25% to 30% each in the case of high courts and the Supreme Court, said PTI in a report.