

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

I.T.T.A.No.409 of 2017

Date: 08.11.2017

Between:

The Principal Commissioner of Income Tax-2,
Hyderabad

...

Appellant

And

M/s.Indus Business System Ltd.
D.No.8-2-268/K/12,
Banjara Hills, Road No.12,
Hyderabad-34.

...

Respondent

Counsel for the Appellant : Ms.K.Mamta Choudary
Senior Standing Counsel for I.T.
Department

Counsel for the Respondent: Mr.C.V.Narasimham

The Court made the following:

Judgment: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

The following substantial questions of law have been raised in this appeal:

“6.1. Whether on the facts and circumstances of the case the ITAT is justified in concluding that deduction under Section 10A of the IT Act was required to be allowed before adjusting the brought forward losses and unabsorbed depreciation?.

6.2. Whether on the facts and circumstances of the case, the ITAT is justified in holding that the income under Section 10A of the Act is an exemption not deduction?”

2. We have heard Ms.K.Mamatha, learned Senior Standing Counsel for the Income Tax Department and Mr.C.V.Narsimham, learned counsel for the respondent-Assessee.

3. First, we would like to deal with the substantial question of law framed under ground No.6.2. The Supreme Court in **CIT VS. YOKOGAWA INDIA LIMITED**¹ held that Section 10A of the Income Tax Act, 1961 (for short, “the Act”) as amended, is a provision for deduction. This question is answered accordingly.

4. As regards ground No.6.1, the Commissioner of Income Tax (for short, ‘CIT’) passed an order in exercise of his revisional powers under Section 263 of the Act, revising the assessment made by the Assessing Officer, on the limited issue. He has delineated this issue as under:

¹ (2017) 2 SCC 1

“On verification of assessment record, it was observed that the assessee had brought forward business loss to the extent of Rs.1,26,68,529/- (depreciation loss Rs.42,80,324/- and business loss of RS.83,88,205/-). The assessee was allowed exemption to the tune of Rs.6,05,63,431/- u/s. 10A without setting off of brought forward losses of Rs.1,26,68,529/-“

5. In his revisional order, the CIT has computed the gains/profits under Section 10A of the Act, after taking into consideration the brought forward losses. This order was assailed by the assessee in the Appeal. The Tribunal, following the judgment of the Karnataka High Court in CIT VS. YOKOGAWA INDIA LIMITED², has set aside the order of the CIT.

6. It is noteworthy that after disposal of the Appeal by the Tribunal, the Supreme Court has disposed of the Civil Appeal filed against the judgment of the Karnataka High Court in CIT VS. YOKOGAWA INDIA LIMITED (2 supra) , on which, the Tribunal has placed reliance while allowing the assessee's appeal. The Supreme Court on consideration of the relevant provisions of the Act, concluded as under:

“If the specific provisions of the Act provide [first proviso to Sections 10-A(1); 10-A(1-A) and 10-A(4) that the unit that is contemplated for grant of benefit of deduction is the eligible undertaking and that is also how the contemporaneous circular of the department (No.794 dated 9.8.2000) understood the situation, it is only logical and natural that the stage of deduction of the profits and gains of the business of an eligible undertaking has to be made independently and, therefore, immediately after the stage of determination of its profits and gains. At that stage the aggregate of

² (2012) 341 ITR 385

the incomes under other heads and the provisions for set off and carry forward contained in Sections 70, 72 and 74 of the Act would be premature for application. The deductions under Section 10-A therefore would be prior to the commencement of the exercise of the assessee from the gross total income. The somewhat discordant use of the expression “total income of the assessee” in Section 10-A has already been dealt with earlier and in the overall scenario unfolded by the provisions of Section 10-A the aforesaid discord can be reconciled by understating the expression “total income of the assessee” in Section 10-A as “total income of the undertaking”.

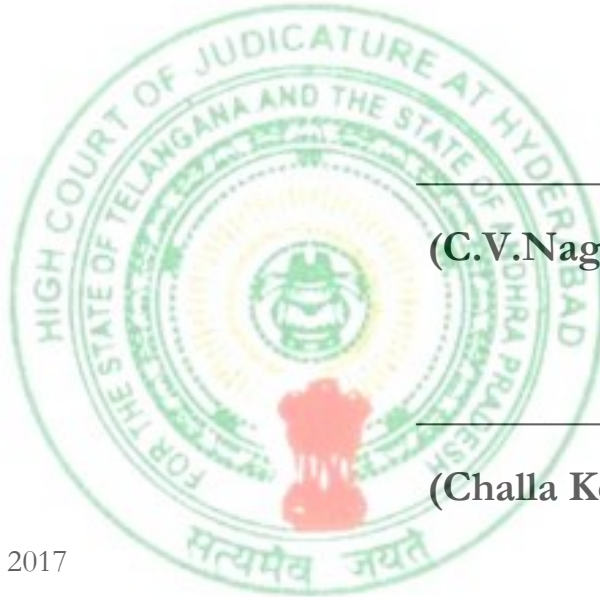
For the aforesaid reasons, we answer the appeals and the questions arising therein, as formulated at the outset of this order, by holding that though Section 10-A as amended, is a provision for deduction, the stage of deduction would be while computing the gross total income of the eligible undertaking under Chapter IV of the Act and not at the stage of computation of the total income under Chapter VI. All the appeals shall stand disposed of accordingly”.

7. It is clear from the ratio laid down in CIT VS. YOKOGAWA INDIA LIMITED (1 supra), that the unit that is contemplated for grant of benefit of deduction is the eligible undertaking (unit), that the stage of deduction of the profits and gains of the business of an eligible undertaking has to be made independently, that at that stage, the aggregate of the incomes under other heads and the provisions for set off and carry forward under Sections 70, 72 and 74 of the Act, would be premature for application of Section 10A. It can be further culled out from the said judgment that, deductions under Section 10A of the Act would be prior to the commencement of the exercise to be undertaken under Chapter VI of the Act, for arriving at the total income of the assessee from the gross total income. The Supreme Court also termed the use of words, “total income of the

assessee” under Section 10A as somewhat discordant and held that the said expression has to be construed as a total income of the undertaking.

8. In the light of the judgment of the Supreme Court, the substantial question of law raised in ground No.6.1 has to be necessarily answered in favour of the Assessee and it is answered accordingly.

9. The Appeal is accordingly dismissed.



 (C.V.Nagarjuna Reddy, J)

 (Challa Kodanda Ram, J)

Date: 8th November, 2017

Note:

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(B/o.)

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