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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 3598/2019 & CM Appl.No. 16512/2019**

COSMO FILMS LIMITED Petitioner

Through: Mr. M.S.Syali, Sr.Advocate with
Mr.Mayank Negi & Mr. Hardeep
Singh Chawla, Advocates

versus

**CENTRAL BOARD OF DIRECT TAXES, MINISTRY OF
FINANCE, NORTH BLOCK, NEW DELHI & ANR.....** Respondents

Through: Mr. Zoheb Hossain, Sr.Standing
counsel for Revenue

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S.MEHTA

ORDER
14.05.2019

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1. The Petitioner has filed the present petition for direction to the Respondents to accept the Petitioner's return of income for Assessment Year (AY) 2017-18 manually since the Petitioner has not been permitted to carry forward the business losses because of a programming difficulty which precludes the Petitioner from claiming it while filing its return online in Form ITR- 6.

2. The facts in brief are that the Petitioner is engaged in the business of manufacturing Bi-axially Oriented Polypropylene Films ('BOPP'). The Petitioner also exports BOPP films. The Petitioner has manufacturing units

set up both in the Domestic Tariff Area ('DTA') as well as Special Economic Zone ('SEZ'). The Petitioner is also qualified as an 'entrepreneur' as defined in Section 2(j) of the Special Economic Zones Act, 2005. The Petitioner has been allowed deduction under Section 10AA of the Income Tax Act, 1961 ('Act') since Assessment Year (AY) 2014-15.

3. In its return for AY 2017-18, filed on 29th November 2017, the Petitioner reported an income as regards its SEZ Unit, under the head 'Profit and Gains of Business and Profession' (PGBP) to the tune of Rs. 52,55,59,560/-. This SEZ Unit (otherwise referred to as 'the eligible unit') is eligible to claim deduction under Section 10AA. Following the decision of the Supreme Court of India in *CIT v. Yokogawa India Ltd. (2017) 391 ITR 274 (SC)* the Petitioner first calculated the PGBP of the eligible unit separately by claiming the deduction under Section 10AA in Form ITR-6. In other words, the losses of the ineligible unit i.e. the unit set up in the DTA, in the sum of Rs. 33,80,37,785/- was not taken into account while calculating the PGBP of the eligible unit. The Petitioner also enclosed the Audit Report in the prescribed format under Section 10 A (5) of the Act read with Rule 16D of the Income Tax Rules, 1962.

4. It is stated that while filing the return online, in the reflection in the computation of total income, the claim of deduction was not accepted. The software of the Department did not permit the Petitioner's claim under Section 10AA without setting off the loss of the ineligible unit. As a result the entire loss of the ineligible unit got set off against the PGBP of the eligible unit. The net losses of the ineligible unit which were to be carried

forward was thus brought down to ‘Nil’.

5. The Petitioner filed an application before the jurisdictional Assessing Officer (‘AO’) on 3rd August, 2018 pointing out to the above discrepancy in the online filing of Form ITR- 6. The Petitioner enclosed a hard copy of the income tax return and requested that it be acted upon so that the carry forward of the losses of the ineligible unit would not be denied to the Petitioner. This was followed by a representation on 15th November, 2018 to the Central Board of Direct Taxes (‘CBDT’) invoking its jurisdiction under Section 119(2) of the Act. The Petitioner pointed out that it is facing genuine hardship due to being unable to carry forward the losses of the ineligible unit. This was followed by reminders on 21st January, 13th February, and 25th March, 2019. Thereafter, the present petition was filed.

6. In response to the notice issued in the present petition on 9th April, 2019 the Respondents have filed a counter affidavit where it is not disputed that the amendment to Section 10AA, to overcome the decision of the Supreme Court in *Yokogawa India Ltd.* (*supra*) was with effect from 1st April, 2018. It is pointed out in para 3.8 of the counter affidavit that the CBDT under circular No.2/2018 dated 15th February, 2018 published the explanatory notes of the Finance Act, 2017 to reflect the legislative intent. The relevant portion of the explanatory notes as set out in the said circular read as under:-

“3.8 The Explanatory Notes to Finance Act, 2017, published by the CBDT vide Circular No. 2/2018 dated 15.02.2018 clearly reflect the intention of the legislature. The relevant portion of the explanatory notes is extracted hereunder:

"13. Rationalisation of provisions of Section 10AA.

13.2 The said section allows deduction in computing the total income of the assessee; hence the deduction is to be allowed from the total income of the assessee as computed in accordance with the provision of the Income-tax Act before giving effect to the provisions of section 10AA. However, courts have taken a view (while deciding the matter pertaining to the section 10A of the Income-tax Act which also contains similar provision) that the deduction is to be allowed from the total income of the undertaking and not from the total income of the assessee.

13.3 In view of the above, section 10AA of the Income-tax Act has been amended to clarify that the amount of deduction referred to in the said section shall be allowed from the total income of the assessee computed in accordance with the provisions of the Income-tax Act before giving effect to the provisions of the said section and the deduction under the said section in no case shall exceed the said total income.

13.4 Applicability: This amendment takes effect from 1st April, 2018 and will, accordingly, apply from assessment year 2018-19 and subsequent assessment years."

7. Once it is abundantly clear that the amendment in Section 10AA takes effect only from 1st April, 2018 and would apply only from AY 2018-19, it is clear that for all the AYs prior to 2018-2019, the law explained by the Supreme Court in ***Yokogawa India Ltd.*** (*supra*) would apply. This is not even disputed by the Revenue.

8. If the legal position is therefore clear then it becomes incumbent on the Respondents to correct the E-filing software to enable the implementation of the decision in ***CIT vs. Yokogawa India Ltd.*** (*supra*). In other words, it will not be open to the Respondents to contend that the E-filing software will

determine whether an Assessee can carry forward losses of ineligible unit. The software will have to be changed to comply with the legal requirement and not the other way round.

9. The issues arising from transiting to an online system have been dealt with earlier by the Courts. In each such instance, when faced with the situation of a software glitch that prevents an Assessee from either filing a return or claiming a benefit, the Courts have repeatedly had to permit the manual filing of return/claims and have directed the Respondents to act on such manual filing of returns. Once such instance is in *Tara Exports vs. Union of India* 98 Taxman.Com 363 (Mad).

10. In the present case, since it is not in dispute that prior to AY 2018-2019 the computation of the Profits and Gains of the eligible unit by giving the deduction under Section 10AA would have to be independent of the computation of Profit and Gains of the ineligible unit, it is obvious that in the present case which concerns Assessment Year (AY) 2017-2018, the Petitioner should be permitted to carry forward the losses of its ineligible unit.

11. Accordingly, a direction is issued to the Respondent to either accept the manual return of the Petitioner or alter the software to permit it to again file online its returns claiming the carry forward of losses of its ineligible unit for the AYs in question. Either of these two options should be completed by 31st May, 2019.

12. A copy of this order will be dispatched by the Registry forthwith to the Director General (Systems), Income Tax Department, New Delhi for compliance.

13. The petition and the pending application are disposed of in the above terms.

S. MURALIDHAR, J.

I.S. MEHTA, J.

MAY 14, 2019

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