R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

INCOME TAX APPEAL NO. 1368 OF 2017

Pr. Commissioner of Income Tax-1, Pune .. Appellant

Versus

Aesseal India Pvt Ltd .. Respondent

....

- Mr. Suresh Kumar for the Appellant

....

CORAM : UJJAL BHUYAN &
MILIND N. JADHAV, JJ.

DATE : JANUARY 27, 2020.

P.C.:

1. Heard Mr. Suresh Kumar, learned standing counsel, revenue for the appellant.

2. This appeal under Section 260A of the Income Tax Act, 1961 (**"the Act"** for short) has been preferred by the revenue against the order dated 5.5.2016 passed by the Income Tax Appellate Tribunal, Pune Bench "A", Pune (**"Tribunal"** for short) in Income Tax Appeal No. 1356/PN/2014 for the assessment year 2007-08.

3. Revenue has projected the following three questions as substantial questions of law:-

(i) Whether on the facts and in the circumstances of the case and in the law, the Tribunal was justified in holding that the deduction u/S. 10A of the Act is to be computed before adjusting business loss/depreciation?

(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in not considering the Circular No. 7/DV/2013 dated 16.7.2013 of the CBDT which clarifies the position of law on the issue?

(iii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that business loss and depreciation of the assessee were not liable for set-off against the current years' business profits without appreciating that in case of Galaxy Sufactants Ltd., ITXA 3465 of 2011, this Court has held that there is no bar in Section 10A of the Act to prohibit the operation of Sections 70, 71, 72 etc unlike Section 80IA(5) or Section 80IA(6) and therefore, by that ratio business losses / depreciation have been rightly set off by the Assessing Officer prior to computing deduction u/S. 10A of the Act?

4. Mr. Suresh Kumar, learned standing counsel, revenue very fairly submits that all the three questions are covered by the decision of the Supreme Court in **Commissioner of Income Tax Vs. Yokogawa India Ltd[1].** wherein Supreme Court held as under:-

1 [2017] 77 taxmann.com 41 (SC)

"16. From a reading of the relevant provisions of Section 10A it is more than clear to us that the deductions contemplated therein is qua the eligible undertaking of an assessee standing on its own and without reference to the other eligible or non-eligible units or undertakings of the assessee. The benefit of deduction is given by the Act to the individual undertaking and resultantly flows to the assessee. This is also more than clear from the contemporaneous Circular No. 794 dated 9.8.2000 which states in paragraph 15.6 that,

> "The export turnover and the total turnover for the purposes of Sections 10A and 10B shall be of the undertaking located in specified zones or 100% Export Oriented Undertakings, as the case may be, and this shall not have any material relationship with the other business of the assessee outside these zones or units for the purposes of this provision."

17. If the specific provisions of the Act provide [first proviso to Sections 10A(1); 10A (1A) and 10A (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 09.08.2000) 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 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 10A therefore 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 somewhat discordant use of the expression "total income of the assessee" in Section 10A has already been dealt with earlier and in the overall scenario unfolded by the provisions of Section 10A the aforesaid

discord can be reconciled by understanding the expression "total income of the assessee" in Section 10A as 'total income of the undertaking'.

5. In the light of the above, we find no error or infirmity in the view taken by the Tribunal. No substantial question of law arises in the appeal. Appeal is accordingly dismissed. However, there shall be no order as to cost.

[MILIND N. JADHAV, J.] **[UJJAL BHUYAN, J.]**

Ravindra M. Amberkar

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