

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.03.2020

Pronounced on: 18.03.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

Tax Case Appeal No.228 of 2011

M/s.Comstar Automative Technologies Private Ltd.,
(Formerly known as Visteon Powertrain
Control Systems India Private Limited)
Keelakaranai Village,
Malrosapuram Post, Maraimalai Nagar,
Chengalpattu District - 603 204. ..Appellant/Respondent

Vs.

The Deputy Commissioner of Income Tax
Company Circle - I (3),
121, Nungambakkam High Road,
Chennai - 600 034. ..Respondent/Appellant

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, 'D' Bench, Chennai, dated 10.12.2010 made in ITA No.301/Mds/2009.

Against the order dt.29/10/2008 on the file of the Commissioner of Income Tax (Appeals) - III, Chennai 600 034 made in ITA No.745/06-07/AIII in the assessment year 2004-05 and against the Order dated 21/12/2006 the file of the Assistant Commissioner of Income Tax, Company Circle III(4) Chennai - 34 made in GIR No/PAN 555 -V/AAA CE 2284P for the Assessment year 2003 - 2004.

For Appellant : Mr.R.Sivaraman

For Respondent : Mr.T.Ravikumar
Senior Standing Counsel

J U D G M E N T

R.SURESH KUMAR, J

This Appeal is filed under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the impugned order passed by the Income Tax Appellate Tribunal, Chennai in I.T.A.No.301/Mds/2009, dated 10.12.2010.

2. The short facts which are required to be referred for the disposal of this appeal are as follows :

(i) That the Assessee is a company registered under the Companies Act, 1956, which engaged in the manufacturing of Starter Motors and Alternator and development of computer software. The Assessee is a 100% Export Oriented Undertaking (EOU). For the Assessment Year 2004-05, the Assessee filed a Return, declaring the taxable income of Rs.Nil after claiming deduction of Rs.29,26,65,024/- under Section 10B of the Act. Profit of Rs.1,55,62,609/- was set off against the brought forward unabsorbed depreciation loss of Assessment Year 2001-02.

(ii) The said Return of the Assessee was processed by the Revenue under Section 143(1) of the Act and was selected as a case for scrutiny by issuance of Notice under Section 143(2). A Notice under Section 142(1) with questionnaire was issued by the Assessing Officer. In response to the same, the Assessee produced all the details.

(iii) After consideration, the Assessment was completed and order was issued under Section 143(3) of the Act on 21.12.2006. In the said Assessment Order, the Assessing Officer had adjusted the brought forward unabsorbed depreciation loss relating to the Assessment Year 2001-02 to the extent of Rs.22,06,10,631/- and to the Assessment Year 2002-03, amounting Rs.8,76,17,002/- against the business profits before allowing the deduction claimed by the Assessee under Section 10B of the Act.

(iv) The said issue along with yet another issue was taken up on Appeal by the Assessee before the Commissioner (Appeals), before whom, the case of the Assessee was that, the deduction under Section 10B was to be granted prior to the set off of the brought forward unabsorbed depreciation loss of the earlier years. The Commissioner (Appeals) having accepted the said contention of the Assessee, allowed the Assessee's Appeal and the set off of the brought forward unabsorbed depreciation loss of the earlier years done by the Assessing Officer before granting deduction under Section 10B was set aside.

(v) Aggrieved over the said order of the Commissioner

(Appeals), the Revenue preferred the said I.T.A.No.301/09 before the Income Tax Appellate Tribunal (in short "the ITAT"), where the contention of the Assessee as well as the Revenue were heard and ultimately the ITAT by order, dated 10.12.2010 had decided the said issue against the Assessee and in favour of the Revenue, by thus, the order of the Commissioner (Appeals) was set aside and the decision of the Assessment Officer was restored. Felt aggrieved over the said order of the ITAT, dated 10.12.2010, the Assessee preferred the present Appeal.

3. We have heard Mr.R.Sivaraman, learned counsel appearing for the Assessee who would submit that, under Section 10B of the Act, the Assessee unit is fully eligible to get deduction, since it is a 100% Export Oriented Undertaking (EOU). The said deduction should have been made prior to the set off of the brought forward unabsorbed depreciation loss of the earlier years, i.e., AY 2001-02 and 2002-03, as from these two Assessment Years, the Assessee brought forward the unabsorbed depreciation loss which should be set off only after giving deduction under Section 10B.

4. The learned counsel would further contend that, the ITAT, on an erroneous consideration, mainly relying upon the case of the Tribunal in the case of Sword Global, had allowed the Appeal of the Revenue, holding that, the deduction under Section 10B has to be made only after the set off of the brought forward unabsorbed depreciation loss of the earlier years.

5. The learned counsel would further contend that, the said view taken by the ITAT is erroneous and in support of the said contention, the learned counsel would rely upon a latest decision of the Hon'ble Apex Court in the matter of Commissioner of Income-tax v. Yokogawa India Ltd., dated 16.12.2016 reported in (2017) 77 taxmann.com 41 (SC). He would also contend that, in the said decision of the Hon'ble Apex Court, it has been categorically held that, these kind of deductions as contemplated under Section 10A or 10B has to be given prior to the set off of brought forward unabsorbed depreciation loss of the earlier years. Therefore the learned counsel would contend that, the issue is squarely covered by the said decision of the Hon'ble Apex Court, accordingly the impugned order is liable to be interfered with and to be set aside.

6. The learned counsel for the Assessee would also submit that, following the dictum of the Hon'ble Apex Court in Commissioner of Income-tax v. Yokogawa India Ltd., (cited supra), a number of decisions have been made by the Hon'ble Apex Court as well as various other High Courts. To be listed some of them, the learned counsel relied upon the following decisions :

1. Principal Commissioner of Income Tax v. Infosys BPO Ltd., (2019) 107 taxmann.com 57 (SC)

2. Commissioner of Income Tax v. J.P.Morgan Services India Pvt., Ltd., (2017) 393 ITR 24 (SC)

3. The Commissioner of Income Tax v. J.P.Morgan Services India Pvt., Ltd., MANU/MH/3184/2016

4. The Principal Commissioner of Income Tax v. Rangsons Electronics Pvt., Ltd., (2017) 398 ITR 619 (SC)

5. Principal Commissioner of Income Tax and Ors., v. Making India Private Ltd., (2017) 393 ITR 291 (SC)

6. Principal Commissioner of Income Tax-4, Bangalore and Ors., v. Makino India Pvt., Ltd., MANU/KA/3572/2016

7. Pr.Commissioner of Income Tax, Bangalore v. Rangsons Electronics Pvt., Ltd., MANU/KA/3652/2016

7. Per contra, Mr.T.Ravikumar, learned Senior Standing counsel appearing for the Revenue would contend that, the Assessee may be a 100% EOU and with that capacity, it may be entitled to get deduction under Section 10B of the Act, however such kind of deduction would be permissible only from the total income of the Assessee as defined under Section 2(45) of the Act.

8. Learned counsel would further contend that, the total income can be derived after due computation by verifying the profit and loss, thereby since the Assessee wanted to bring forward the unabsorbed depreciation loss of the earlier years, that kind of set off should be first taken care of and thereafter only the final figure of total income can be arrived at and only from that total income, the deduction claimed by the Assessee under Section 10B can be permitted.

9. In support of his contention, the learned counsel for the Revenue, has relied upon a Division Bench Judgment of the Karnatake High Court, in the matter of Commissioner of Income Tax v. Himatasingike Seide Ltd., dated 04.08.2006 reported in (2006) 286 ITR 0255. The learned counsel would further contend

that, the view taken by the Karnataka High Court though was appealed by the Assessee therein to the Hon'ble Apex Court, where also, the said view has been confirmed, of course by a short order, dismissing the Appeal in C.A.No.1501 of 2008 by the Hon'ble Apex Court, by order, dated 19.09.2013. Therefore the learned counsel for the Revenue would contend that, the said view expressed by the Karnataka High Court in favour of the Revenue that, the deductions can be made under Section 10B only after the set off of brought forward unabsorbed depreciation loss of the earlier years, since was holding the field even from the year 2006 onwards, the present order passed by the ITAT which is impugned herein, dated 10.12.2010 cannot be found fault with, therefore the said order of the ITAT can very well be sustained.

10. We have considered the said rival submissions made by the learned respective counsel for the parties and also have perused the materials placed before this Court.

11. This Appeal, in fact was admitted by a Co-ordinate Bench of this Court, on the following Substantial Question of Law :

"Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that relief under Section 10B ought to be granted only after the set off of brought forward loss and unabsorbed depreciation of the earlier years ?"

12. Since this is the only issue, on which the Appeal was admitted and the arguments were advanced only on the same and both sides produced the Judgment of the Hon'ble Apex Court, we take the said issue in the given facts and circumstances of the present case.

13. Before we delve into the said issue, for the easy understanding, the relevant provision namely Section 10B of the Act is extracted hereunder:

"Special provisions in respect of newly established hundred per cent export-oriented undertakings.

10B. (1) Subject to the provisions of this section, a deduction of such profits and gains as are derived by a hundred per cent export-oriented undertaking from the export of articles or things or computer software for a period of ten consecutive assessment

years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce articles or things or computer software, as the case may be, shall be allowed from the total income of the assessee :

Provided that where in computing the total income of the undertaking for any assessment year, its profits and gains had not been included by application of the provisions of this section as it stood immediately before its substitution by the Finance Act, 2000, the undertaking shall be entitled to the deduction referred to in this sub-section only for the unexpired period of aforesaid ten consecutive assessment years :"

14. Section 10B of the Act provides a deduction of such profits and gains derived by any hundred percent export-oriented undertaking from the export of articles or things or computer software for a period of ten consecutive assessment years beginning with the year of starting of the actual manufacture or produce of articles or things or computer software, from the total income of the assessee.

15. Only in this context, the ITAT has taken the view, of course by following the earlier decision of the ITAT, on the term "total income" as defined under Section 2(45) of the Act. As per the said definition, the total income means the total amount of income referred to in Section 5 computed in the manner laid down in the Act. Therefore, whatever the total income arrived at after computation of the same under various provisions of the Act in consonance with Section 5, would be the total income for the purpose of Section 10B deduction also.

16. Here in the case in hand, the Assessee is entitled to seek exemption by way of deduction under Section 10B, since it is a 100% EOU, which is an admitted fact. In that capacity, the Assessee claimed exemption / deduction of a sum of Rs.29,26,65,024/- from out of the profit and gain of the business which amounts to Rs.30,82,27,633/-. Also it claimed unabsorbed brought forward depreciation allowances relating to AY 2001-02 to the extent of Rs.1,55,62,609/-, thereby shown the taxable income as Nil in the Return submitted for the AY 2004-05.

17. In this context, the Assessing Authority by its Assessment Order, dated 21.12.2006 has computed the income of the Assessee for the AY 2004-05 in the following manner :

Profit from business	30,82,27,633
LESS : 1.Carry forward depreciation allowance of assessment year 2001-02	22,06,10,631
2.Carry forward depreciation allowance of assessment year 2002-03	8,76,17,002

BUSINESS INCOME	NIL
Income from other Sources :	
Interest Income	4,63,745

Taxable Income	4,63,745
LESS : Set off unabsorbed depreciation from assessment year 2002-03	4,63,745

TOTAL INCOME	NIL

18. By thus, the Assessing Officer not allowed the deduction to be made under Section 10B of the Act before the setting off of the brought forward unabsorbed depreciation loss of the earlier years. Therefore the issue is in very narrow point, as to whether the deduction or exemption claimed by the Assessee under Section 10B to the extent of Rs.29,26,65,024/- has to be given prior to the carry forward depreciation allowance of the previous years or not.

19. In this context, the learned counsel for the Revenue has heavily relied upon a decision of the Karnataka High Court in the case of Commissioner of Income Tax v. Himatasingike Seide Ltd., (cited supra)

20. In order to appreciate the said contention and for a ready reference, the relevant paras of the said decision of the Karnataka High Court are quoted below :

"8. Several case laws have been placed before us by the parties concerned.

9. Distributors (Baroda) (P) Ltd. v. Union of India & Ors. (1985) 47 CTR (SC) 349 : (1985) 155 ITR 120 (SC) deals with s.80AA of the IT Act. In the said Judgment, the Supreme Court has ruled that insofar as sub-s (1) of s. 80M of the IT Act is concerned, the deduction required to be allowed under that provision is liable to be calculated with reference to the amount of dividend computed in accordance with the provisions of the Act and forming part of the gross total income and not with

reference to the full amount of dividend received by the assessee.

10. In case of (1978) 113 ITR 84 (SC) [sic- (1985) 47 CTR (SC) 349 : (1985) 155 ITR 120 (SC) (supra)], the Court considered as under:

"The question which arose in Cambay Electric Supply Co's case 1978 CTR (SC) 50 : (1978) 113 ITR 84 (SC) was whether unabsorbed depreciation and unabsorbed development rebate were liable to be deducted in arriving at the figure of profits and gains exigible to deduction of 8 per cent contemplated in sub-s. (1) of s. 80E. The argument of the assessee was precisely the same as the one advanced in the present case, namely, that the words 'such profits and gains' in the latter part of sub-s.(1) of s.80E were intended to refer only to the category of profits and gains referred to in the earlier part of that provision, namely, 'profits and gains attributable to the business of generation or distribution of electricity or any other form of power or of construction, manufacture or production of any one or more of the articles or things specified in the list in the Fifth Schedule' and not to the quantum of the profits and gains included in the total income, so that the profits and gains exigible to the deduction of 8 per cent were the profits and gains attributable to the specified business in their entirety and not the profits and gains as computed in accordance with the provisions of the Act. The assessee contended that, in the circumstances, unabsorbed depreciation and unabsorbed development rebate were not liable to be deducted from the profits and gains attributable to the specified business for arriving at the figure exigible to the deduction of 8 per cent. This argument of the assessee was rejected by the Court and the Court held that the profits and gains exigible to the deduction of 8 per cent were profits and gains computed in accordance with the provisions of the Act and forming part of the total income and hence unabsorbed depreciation and unabsorbed development rebate were liable to be excluded from the profits and gains attributable to the

specified business in arriving at the figure exigible to 8 per cent deduction."

11. In the case of CIT v. Virmani Industries (P) Ltd., and Ors. (1995) 129 (CTR (SC) 189 " (1995) 216 ITR 607 (SC), the Court considered the issue of unabsorbed depreciation in terms of s. 32(2) of the IT Act.

12. The Rajasthan High Court in the case of CIT vs. Sun Stone Engineering Industries (P) Ltd., (1996) 132 CTR (Raj) 2003 : (1996) 220 ITR 182 (Raj), has ruled that :

"for the purpose of determination of the relief under s.80HH of the Act, the gross total income of the assessee has to be worked out after deducting unabsorbed losses and unabsorbed depreciation and the income eligible for deduction under s.80HH will be the net income as computed in terms of the provisions of the Act.

The Rajasthan High Court again in the case of CIT vs. Surendra Textiles (2002) 172 CTR (Raj) 555 : (2002) 258 ITR 387 (Raj) ruled that :

"the gross total income of the assessee has to be worked out after deducting unabsorbed loss and unabsorbed depreciation and the income eligible for deduction under s.80HH of the IT Act, 1961, will be the net income as computed in accordance with the provisions of the Act and not the gross income."

13. The Bombay High Court in the case of Indian Rayon Corporation Ltd., v. CIT (2003) 182 CTR (Bom) 247 : (2003) 261 ITR 98 (Bom) has considered the depreciation in the matter of special deduction. In the said case, the following reference was made:

"Whether on the facts and circumstances of this case, the Tribunal was justified in coming to the conclusion that depreciation allowance ought to be deducted while computing the total income for the purposes of deduction under s.80HH?"

The Bombay High Court noticed the case of Cambay Electric Supply Industrial Co. Ltd., v. CIT 1978 CTR (SC) 50 : (1978) 113 ITR 84

(SC). After noticing the Bombay High Court ruled as under:

"The scheme of ss.4 and 5 of the IT Act does indicate that income-tax is a tax in respect of income computed as per the provisions of the Act. There is a distinct dichotomy between cases of computation of normal income under the Act de hors Chapter VI-A and computation of taxable income where the assessee claims the benefit of deduction under Chapter VI-A because the legislature has intended that these special deductions should be restricted to the profits derived from a newly established undertaking."

The Court ruled ultimately at p.107 reading as under:

"That Chapter VI-A, for the purposes of computing such deductions, constituted a separate code by itself. In order to compute the total taxable income of the assessee, deductions computed under s.80HH have to be reduced from the gross total income of the assessee. The question basically in this matter is concerning computation of deduction under Chapter VI-A in which s.80HH falls. Profits and gains of a newly established undertaking, therefore, have got to be computed as per the provisions of s.29 to s.43A and if the assessee claims relief under Chapter VI-A of the Act, then it is not open to the assessee to disclaim depreciation allowance. This is because Chapter VI-A is an independent code by itself for computing these special types of deductions. In other words, one must first calculate the gross total income from which one must deduct a percentage of incomes contemplated by Chapter VI-A. That such special incomes were required to be computed as per the provisions of the Act, viz., s.29 to s.43A, which included s.32 (2). Therefore, one cannot exclude depreciation allowance while computing profits derived from a newly established undertaking for computing deductions under Chapter VI-A. Therefore, the appellant's claim for allowance of deduction under s.80HH, without taking into consideration the current depreciation will have to be rejected."

14. All these Judgments would support the argument that calculation cannot be at the whims and fancies of an assessee for exemption of tax. It has to be in accordance with the provisions of the Act.

15. CIT vs. H.M.T. Ltd. (1992) 108 CTR (Kar) 215 : (1993) 199 ITR 235 (Kar) is pressed into service by Sri. Parthasarathi, learned Counsel. We have carefully gone through the said Judgment. In the said Judgment, the Division Bench of the High Court has no doubt ruled that computation of profits and gains of new unit may be made without deducting depreciation and investment allowance.

But the facts of the present case stands on a different footing compared to the facts in the case on hand. The petitioner has chosen to calculate depreciation in such a way that he has chosen nil liability.

21. When the aforecited Judgment was appealed, the Hon'ble Apex Court, by order, dated 19.09.2013, in the matter of Himatsingka Seide Ltd., v. Commissioner of Income Tax (cited supra), has made the following order :

"1. We have heard learned counsel for the parties to the lis.
2. Having perused the records and in view of the facts and circumstances of the case, we are of the opinion that the Civil Appeal being devoid of any merit deserved to be dismissed and is dismissed accordingly.
Ordered accordingly."

22. In the said case, though the Karnataka High Court has taken the said view that, the deductions under Chapter VI A has to be made only after or subsequent to the brought forward depreciation allowances, the said view seems to have been taken because, in that particular case, which according to the Karnataka High Court, stood on a different footing, as the petitioner in that case had chosen to calculate depreciation in such a way that, he has chosen Nil liability. This can be derived from para 15 of the said Judgment, which has been quoted herein above.

23. Whereas the learned counsel for the Assessee has heavily relied upon the subsequent decision of the Supreme Court in Commissioner of Income-tax v. Yokogawa India Ltd., (cited supra). In that case, though it was an issue relates to Section

10A of the Act, the Hon'ble Supreme Court has made it clear that, the decision made in the said Judgment pertains to Section 10A would be equally applicable to cases governed by the provision of Section 10B also. This can be gained from para 2 of the said Judgment, which reads thus :

"2. The true and correct meaning and effect of the provisions of Section 10A of the Income Tax Act, 1961 (hereinafter referred to as "the Act") is the principal issue arising for determination of the Court. At the outset, it must be made clear that the decision of this Court with regard to the provisions of Section 10A of the Act would equally be applicable to cases governed by the provisions of Section 10B in view of the said later provision being pari materia with Section 10A of the Act though governing a different situation."

24. The question which came up for consideration in the said case before the Hon'ble Apex Court has been framed as follows at para 3 of the Judgment :

"3. The broad question indicated above may be conveniently dissected into the following specific questions arising in the cases under consideration.

(i) Whether Section 10A of the Act is beyond the purview of the computation mechanism of total income as defined under the Act. Consequently, is the income of a Section 10A unit required to be excluded before arriving at the gross total income of the assessee ?

(ii) Whether the phrase "total income" in Section 10A of the Act is akin and pari materia with the said expression as appearing in Section 2(45) of the Act?

(iii) Whether even after the amendment made with effect from 1.04.2001, Section 10A of the Act continues to remain an exemption section and not a deduction section?

(iv) Whether losses of other 10A Units or non 10A Units can be set off against the profits of 10A Units before deductions under Section 10A are effected ?

(v) Whether brought forward business losses and unabsorbed depreciation of 10A Units or non 10A Units can be set off against the profits of another 10A Units of the assessee.

25. Having considered the said questions, as has been brought before the Hon'ble Apex Court for consideration, their Lordships have decided the issue in favour of the Assessee. The relevant portion of the order of the Apex Court in Commissioner of Income-tax v. Yokogawa India Ltd., are quoted hereunder :

"12. We have considered the submissions advanced and the provisions of Section 10A as they stood prior to the amendment made by the Finance Act, 2000 with effect from 1-4-2001; the amended Section 10A thereafter and also the amendment made by the Finance Act, 2003 with retrospective effect from 1.4.2001.

13. The retention of Section 10A in Chapter III of the Act after the amendment made by the Finance Act, 2000 would be merely suggestive and not determinative of what is provided by the section as amended, in contrast to what was provided by the un-amended section. The true and correct purport and effect of the amended section will have to be construed from the language used and not merely from the fact that it has been retained in Chapter III. The introduction of the word "deduction" in Section 10A by the amendment, in the absence of any contrary material, and in view of the scope of the deductions contemplated by Section 10A as already discussed, it has to be understood that the section embodies a clear enunciation of the legislative decision to alter its nature from one providing for exemption to one providing for deductions.

14. The difference between the two expressions 'exemption' and 'deduction', though broadly may appear to be the same i.e. immunity from taxation, the practical effect of it in the light of the specific provisions contained in different parts of the Act would be wholly different. The above implications cannot be more obvious than from the case of Civil Appeals Nos. 8563 and 8564 of 2013 and civil appeal arising out of SLP (C) No. 18157 of 2015, which have been filed by loss making eligible units and/or by non-eligible assesseees seeking the benefit of adjustment of losses against

profits made by eligible units.

15. Sub-section (4) of Section 10A which provides for pro rata exemption, necessarily involving deduction of the profits arising out of domestic sales, is one instance of deduction provided by the amendment. Profits of an eligible unit pertaining to domestic sales would have to enter into the computation under the head "profits and gains from business" in Chapter IV and denied the benefit of deduction. The provisions of sub-section (6) of Section 10A, as amended by the Finance Act of 2003, granting the benefit of adjustment of losses and unabsorbed depreciation, etc. commencing from the year 2001-02 on completion of the period of tax holiday also virtually works as a deduction which has to be worked out at a future point of time, namely, after the expiry of period of tax holiday. The absence of any reference to deduction under Section 10A in Chapter VI of the Act can be understood by acknowledging that any such reference or mention would have been a repetition of what has already been provided in Section 10A. The provisions of Sections 80HHC and 80HHE of the Act providing for somewhat similar deductions would be wholly irrelevant and redundant if deductions under Section 10A were to be made at the stage of operation of Chapter VI of the Act. The retention of the said provisions of the Act i.e. Sections 80HHC and 80HHE, despite the amendment of Section 10A, in our view, indicates that some additional benefits to eligible Section 10A units, not contemplated by Sections 80HHC and 80HHE, was intended by the legislature. Such a benefit can only be understood by a legislative mandate to understand that the stages for working out the deductions under Sections 10A and 80HHC and 80HHE are substantially different. This is the next aspect of the case which we would now like to turn to.

16. From a reading of the relevant provisions of Section 10A it is more than clear to us that the deductions contemplated therein are 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 para 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 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 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".

18. 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 10A, 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."

26. In the aforesaid Judgment, the reason for such conclusion arrived at by the Hon'ble Apex Court has been explained at para 17 in unequivocal terms. The Apex Court has specifically held that, at the stage of the aggregate of the incomes under other heads, the provisions for set off and carry forward contained in Sections 70, 72 and 74 of the Act would be a premature for application. The deduction 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. Ultimately, the issue has been settled with the following words of the Hon'ble Apex Court in the said decision "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."

27. Therefore the law has been settled by the said decision of the Hon'ble Apex Court, where in clear terms, it has been held that, the deductions either under Section 10A or 10B would be made while computing the gross total income of the eligible undertaking (like the Assessee) under Chapter IV of the Act and not at the stage of computation of the total income under Chapter VI of the Act.

28. Here in the case in hand, the total income was first arrived at by the Revenue through the Assessing Officer in the Assessment Order by computing the total income by way of brought forward or carry forward the depreciation allowance of the earlier Assessment Years and set off the unabsorbed depreciation first and making the return Nil, thereby leaving the Assessee in a position where it could not claim any deduction under Section 10B as there was no income after set off of carry forward depreciation and unabsorbed depreciation from earlier years.

29. This method of computing the income in the present case made by the Revenue is totally against the said law as has been declared by the Hon'ble Apex Court in the aforesaid decision in Commissioner of Income-tax v. Yokogawa India Ltd., (cited

supra).

30. Therefore we have no hesitation to hold that, the decision of the ITAT, which is impugned herein, would not stand in the legal scrutiny, in view of the law having been declared by the Hon'ble Apex Court. Therefore, we are of the view that, the Substantial Question of Law raised in this Appeal is covered by the said decision, therefore it can be answered accordingly.

31. In the result, the Appeal is allowed and the Substantial Question of Law raised in this Appeal is answered in favour of the Assessee and against the Revenue. There shall be however no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

tsvn

To

- 1.The Deputy Commissioner of Income Tax
Company Circle - I (3),
121, Nungambakkam High Road,
Chennai - 600 034.
- 2.The Commissioner of Income Tax,
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- 3.The Assistant commissioner of Income Tax,
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+1cc to M/s.R.Hemalatha, Advocate, S.R.No.24217/2020

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Judgment in
TCA No.228 of 2011

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