IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2020

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. No. 28948 of 2013
and
M.P. No. 1 of 2013

Reckitt Benckiser School India Ltd.
(Previously SSL-TTK Limited)
A Company existing under the Companies
Act, 2013 represented by its
Authorized signatory M.Ponraj
and having its registered office at:
Plot F 73/74,
SIPCOT Industrial Park,
Irungattukottai, Sriperumbudur,
Kancheepuram District.
Tamil Nadu. ... Petitioner

Vs

1. Union of India through the
Central Board of Direct Taxes
CRD-1/3, Vinay Marg,
Chankyapuri, New Delhi - 110 021.

2. Deputy Commissioner of Income Tax,
Company Circle - VI (I), Chennai
'Aayakar Bhawan', New Block,
7th Floor, 121, Nungambakkam High Road,
Chennai - 600 034.

3. Deputy Commissioner of Income Tax,
Company Circle - V (3), Chennai
Room No.407, Main Building,
Aayakar Bhawan, MG Road,
Nungambakkam, Chennai - 600 034. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration, declaring the Circular No.7/DV/2013 (File No.279/Misc./M-116/2012-ITJ) dated 16.07.2013 issued by the First Respondent as illegal, ultra vires of Sections 10A and 10B and other applicable provisions of the Income Tax Act, 1961.

For Petitioner : Mr. R. Jawaharlal

For Respondents : Mr. D. Prabhu Mukunth Arun Kumar
Junior Standing Counsel
for Ms. Hema Murali Krishnan
Senior Standing Counsel

ORDER

In this Writ Petition, the Petitioner has challenged the vires of Circular dated 16.07.2013 as per the referring Circular No.7/DV/2013 (File No.279/Misc./M-116/2012-ITJ).

2. By the aforesaid Circular, the Central Board of Direct Taxes, the First Respondent has clarified as follows:-

> “5.2. The income computed under various heads of income in accordance with the provisions of Chapter IV of the IT Act shall be aggregated in accordance with the provisions of Chapter VI of the IT Act, 1961. This means that first the income/loss from various sources i.e., eligible and ineligible units, under the same head are aggregated in accordance with the provisions of section 70 of the Act. Thereafter, the income from one ahead is aggregated with the income or loss of the other head in accordance with the provisions of section 71 of the Act. If after giving effect to the provisions of section 70 and 71 of the Act there is any income (where there is no brought forward loss to be set off in accordance with the provisions of section 72 of the Act) and the same is eligible for deduction in accordance with the provisions of Chapter VI-A or section 10A, 10B etc. of the Act, the same shall be allowed in computing the total income of the assessee.
>
> 5.3. If after aggregation of income in accordance with the provisions of section 70 and 71 of the Act, the resultant amount is a loss (pertaining to AY 2001-02 and any subsequent year) from eligible unit it shall be eligible for carry forward and set off in accordance with the provisions of section 72 of the Act. Similarly, if there is a loss from an ineligible unit, it shall be carried forward and may be set off against the profits of eligible unit or ineligible unit as the case may be, in accordance with the provisions of section 72 of the Act.”

3. Circulars are neither binding on the assessee or on the Court. The Hon'ble Supreme Court in CCE Vs Ratan Melting & Wire Industries, (2008) 13 SCC 1, has held as follows:-

> "Circulars and instructions issued by the Board are not doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the court to direct that the circular appropriate for the court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the court. It is for the court to declare what the particular provision of statute says and it is not for the executive. Looked at from another angle, a circular which is contrary to the statutory provisions has really no existence in law."

4. The clarification given in the impugned circular now stands diluted in the light of the decision of the Hon'ble Supreme Court in Commissioner of Income Tax Vs Yokogawa India Limited, 2017 2 SCC 1. The Hon'ble Supreme Court has clarified that its decision rendered in the context of Section 10(A) of the Income Tax Act, 1961 will equally apply to Section 10(B) of the Income Tax Act, 1961. In Paragraph 2, the Hon'ble Supreme Court has observed as under:-

> "2. The true and correct meaning and effect of the provisions of Section 10-A of the Income Tax Act, 1961 (herein 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 10-A of the Act would equally be applicable to cases governed by the provisions of Section 10-B in view of the said later provision being pari materia with Section 10-A of the Act though governing a different situation."

5. In Paragraphs 17 to 19, the Hon'ble Supreme Court in Commissioner of Income Tax Vs Yokogawa India Limited, 2017 2 SCC 1, has observed as under:-

> "17. From a reading of the relevant provisions of

Section 10-A 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 order 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 10-A and 10-B 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."

18. If the specific provisions of the Act provide [first proviso to Sections 10-A; 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 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 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 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 understanding the expression "total income of the assessee" in Section 10-A as "total income of the undertaking.

19. 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."

6. Therefore above circular is no longer binding on the Assessing Officer also in the light of the decision of the Hon'ble Supreme Court in Commissioner of Income Tax Vs Yokogawa India Limited, 2017 2 SCC 1, as the Hon'ble Supreme Court has made it clear that the decision rendered by it in the above case in the context of section 10(A) would equally govern Section 10(B) of the Income Tax Act, 1961.

7. Therefore, there is no necessity for the impugned circular to remain any longer. Accordingly, the impugned circular has to be declared as irrelevant in the light of the ratio of the Hon'ble Supreme Court in Commissioner of Income Tax Vs Yokogawa India Limited, 2017 2 SCC 1. The Assessing Officers are bound to complete the pending assessment or re-assessment as the case may be in terms of the above decision of the Hon'ble Supreme Court in Commissioner of Income Tax Vs Yokogawa India Limited, 2017 2 SCC 1. Therefore, the impugned circular is declared as ultra vires Sections 10(A) and 10(B) of the Income Tax Act, 1961.

8. Accordingly, the present Writ Petition stands allowed with the above observations. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

arb

To

1. The Central Board of Direct Taxes,
Government of India,
CRD-1/3, Vinay Marg,
Chankyapuri, New Delhi - 110 021.

2. Deputy Commissioner of Income Tax,
Company Circle - VI (I), Chennai
'Aayakar Bhawan', New Block,
7th Floor, 121, Nungambakkam High Road,
Chennai - 600 034.

3. Deputy Commissioner of Income Tax,
Company Circle - V (3), Chennai
Room No.407, Main Building,
Aayakar Bhawan, MG Road,
Nungambakkam, Chennai - 600 034.

+1cc Mrs.Hema Muralikrishnan, Advocate SR.6434

W.P. No. 28948 of 2013
and
M.P. No. 1 of 2013

MG(CO)
CB(06/03/2020)