

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.10.2020

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

T.C.A.Nos.395 to 398 & 400 of 2019

and

C.M.P.Nos.13142, 13150, 13157 & 13162 of 2019

Principal Commissioner of Income Tax 2,
No.63, Race Course Road,
Coimbatore - 641 018 .. Appellant in all T.C.As

Versus

M/s.SKM Egg Products Export India Ltd
No.185, Chennimalai Road,
Erode 638 001.
PAN:AAC CS 7106 G .. Respondent in all T.C.As

Prayer in T.C.A.No.395 of 2019:- Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai dated 12.11.2018 made in I.T.A.No.384/Chny/2018 relating to the Assessment Year 2003-04.

Prayer in T.C.A.No.396 of 2019:- Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai dated 12.11.2018 made in I.T.A.No.385/Chny/2018 relating to the Assessment Year 2004-05.

Prayer in T.C.A.No.397 of 2019:- Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai dated 12.11.2018 made in I.T.A.No.387/Chny/2018 relating to the Assessment Year 2006-07.

Prayer in T.C.A.No.398 of 2019:- Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai dated 12.11.2018 made in I.T.A.No.386/Chny/2018 relating to the Assessment Year 2005-06.

Prayer in T.C.A.No.400 of 2019:- Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai

dated 12.11.2018 made in I.T.A.No.383/Chny/2018 relating to the Assessment Year 2002-03 against the order dated 27/11/2017 in Appeal No.116/17-18, 117-17-18, 115/17-18, 118/17-18, C 114/17-18 in PAN/TAN/GIR No.AACCS7106G for the assessment year 2006-2007, 2005-2006, 2004-2005, 2003-2004, 2002-2003 respectively.

For Appellant :Mr.T.R.Senthil Kumar
Senior Standing counsel
Assisted by M/s.K.G.Usha Rani
[In all appeals]

For Respondent : Mr.M.P.Senthil Kumar
[In all appeals]

JUDGMENT

[Common Judgment was delivered by T.S.Sivagnanam,J.]

These Tax Case Appeals have been filed by the Revenue under Section 260 A of the Income Tax Act, 1961 ('the Act' for brevity), challenging the common order dated 12.11.2018 passed by the Income Tax Appellate Tribunal ('the Tribunal' for brevity), Madras 'B' Bench, Chennai, made in

Tax Case Appeal Nos.	I.T.A.Nos.	Assessment Years
T.C.A.No.395 of 2019	I.T.A.No.384/Chny/2018	2003-04
T.C.A.No.396 of 2019	I.T.A.No.385/Chny/2018	2004-05
T.C.A.No.397 of 2019	I.T.A.No.387/Chny/2018	2006-07
T.C.A.No.398 of 2019	I.T.A.No.386/Chny/2018	2005-06
T.C.A.No.400 of 2019	I.T.A.No.383/Chny/2018	2002-03

2. The Revenue has raised the following Substantial Questions of Law for consideration:

1. Whether the Tribunal was justified in holding that deduction u/s 10B of the Income Tax Act should first be excluded from the profits of the year, before set off "brought forward unabsorbed depreciation" as current year depreciation as per Section 32[2] pertaining to the said Export Oriented Unit?

2. Whether the Appellate Tribunal is not correctly interpreting the judgement of the Supreme Court in the case of Yokogawa India ltd (2017) 391 ITR 274 wherein it is held that "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 of the Act?

3. Whether on the facts and circumstances of the case and in law the ITAT is correct in allowing deduction u/s.10B to the assessee, when the A.O. had rightly followed the Supreme Court judgement in the case of Yokogawa India Ltd by calculating the income from business (from the eligible undertaking) under Section 28 in accordance with provisions contained in Section 30 to 43D of Chapter IV of the Act?

4. Whether the Tribunal erred in not following the decision in CIT Vs Himatasingike Seide Ltd. (Kar) 286 ITR 255 which was upheld by the Hon'ble Supreme Court in 48 taxmann.com 357(SC)?

3. We have heard Mr.T.R.Senthil Kumar, learned Senior Standing counsel assisted by M/s.K.G.Usha Rani, learned counsel for the Revenue and Mr.M.P.Senthilkumar, learned counsel appearing for the respondent/assessee.

4. It is not disputed before us that the above referred Substantial Questions of law have been answered in favour of the assessee in the case of M/s.Comstar Automotive Technologies Private Limited., Vs. The Deputy Commissioner of Income Tax Company Circle - I (3) in T.C.A.No.228 of 2011 dated 18.03.2020, which was followed by this Court in the case of The Commissioner of Income Tax Vs. M/s.Comstar Automotive Technologies Pvt. Ltd., in T.C.A.No.301 of 2019 dated 06.07.2020.

5. The operative portion of the judgment in the case of M/s.Comstar Automotive Technologies Private Limited., Vs. The Deputy Commissioner of Income Tax Company Circle - I (3) (cited supra) reads as follows:

"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."

6. Thus, following the above decision, the Tax Case Appeals are dismissed and the Substantial Questions of Law are answered against the Revenue. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS IV)

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Sub Asst. Registrar

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To

1.The Income Tax Appellate Tribunal,
'B' Bench, Chennai.

2.The Commissioner of Income Tax
(Appeals-1) Coimbatore

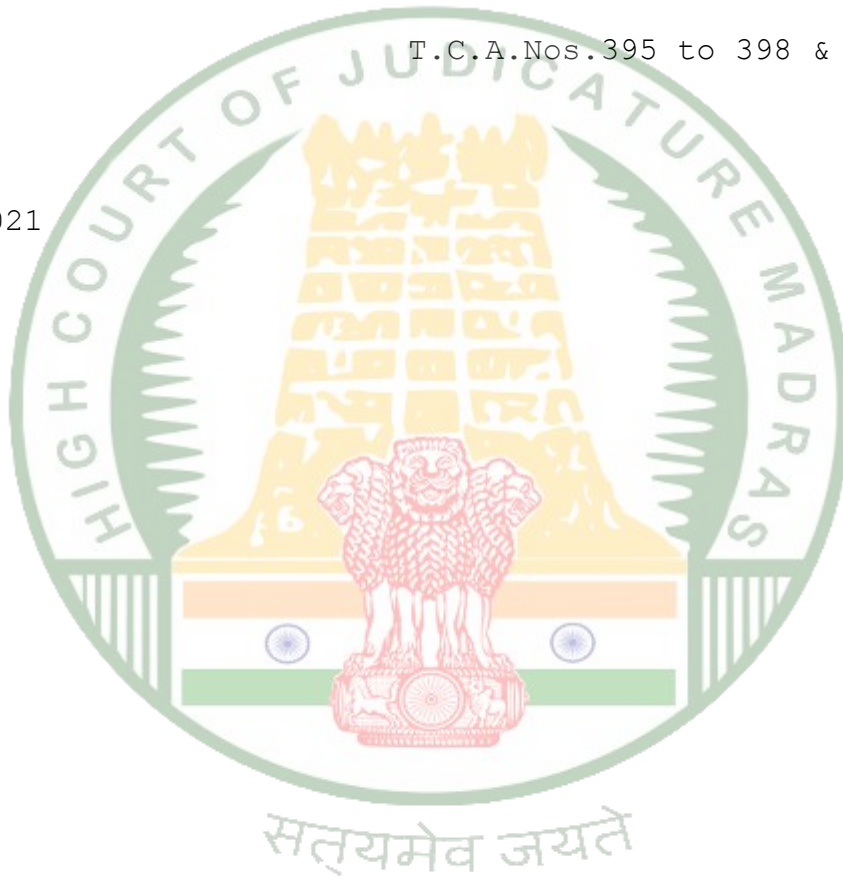
3.The Assistant Commissioner of Income Tax
Circle-I, Erode

+5 ccs to M/s.G.Baskar Advocate sr33596,33595
33594,33593,33598

+1 cc to M/s.T.R.senthil kumar Advocate sr33402

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