IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

Tax Case (Appeal) No.115 of 2016

M/s.Visual Graphics Computing Services
India Private Limited
Ascendas International Tech Park Unit
4& 5, 5th Floor, CSIR Road
Chennai 600 113. ... Appellant

Vs.

The Deputy Commissioner of Income Tax
Company Circle-III(4), Chennai 600 034. ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the common order of the Income Tax Appellate Tribunal 'A' Bench, Chennai dated 29.05.2015 in ITA No.617/Mds/2011,

Appeal against the order dated 21/01/2011 made in ITA No.537/09-10/A.111 on the file of the Commissioner of Income Tax (A)-III, Chennai for the Assessment Year 2006-2007 and

as against the order dated 15/12/2009 made in PAN 502-V/AAACV3342H on the file of the Additional Commissioner of Income Tax, Company Range III, Chennai for the Assessment Year 2006-07.

For Appellant : Mr.M.Vijayaraghavan
for M/s.Subbaraya Aiyar Padmanabhan

For Respondent: Mr.M.Swaminathan,
Senior Standing Counsel
assisted by Ms.V.Pushpa
Junior Standing Counsel

J U D G M E N T

(Judgment of the Court was delivered by DR.VINEET KOTHARI,J)

Both the learned counsel agree that the controversy in the present case is covered by the decision rendered by this Bench in Tax Case Appeal No.228 of 2011 (M/s.Comstar Automotive Technologies Private Limited -Vs- The Deputy Commissioner of Income Tax, Chennai) decided on 18.03.2020. The question of law arising in the present appeal is as under.

> " Whether the Tribunal was right in law in holding that the carry forward loss / depreciation of one eligible unit should be set off against the profits of another eligible unit before deduction under Section 10A of the Act?"

2. It was held by the Division Bench in the aforesaid judgment in the case of M/s.Comstar Automotive Technologies Private Limited -Vs- The Deputy Commissioner of Income Tax, Chennai as under.

> " 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."

3. Accordingly, in terms of the aforesaid judgment rendered by this Court itself, the present appeal is disposed of in the same terms and the question of law framed above is answered in the same terms. The appeal is accordingly disposed of. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

KST

To

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

2.The Commissioner of Income Tax (A)-III,
Chennai.

3.The Additional Commissioner of Income Tax,
Company Range-III,
Chennai.

T.C.(A) No.115 of 2016

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srg 30/07/2020