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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 29.06.2021

CORAM:

THE HON'BLE MR. JUSTICE M.DURAI SWAMY
AND
THE HON'BLE MRS.JUSTICE R.HEMALATHA

T.C.A.Nos.572 & 573 of 2014

Commissioner of Income Tax,
Coimbatore

.. Appellant in both TCAs

v.

M/s. Rieter LMW Machinery Ltd.,
Sulur Railway Feeder Road,
Muthugoundenpudur,
Coimbatore - 641 406.

... Respondent in both TCAs

T.C.A. No.572 /2014 : Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras, "D" Bench, dated 06.06.2013 in ITA.No.1443/Mds/2005 for the Assessment Year 2000-2001.

T.C.A. No.573 /2014 : Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras, "D" Bench, dated 06.06.2013 in ITA.No.1444/Mds/2005 for the Assessment Year 2001-2002 against the orders of the commissioner of Income Tax (A)-I Madurai Dated 17.03.2005 & 21.03.2005 in I.T.A No.139 &140/04-05 against the Amendment Orders of the Deputy Commissioner of Income Tax, Company Circle IV(2) I/c. Coimbatore Dated 23/02/2004 & 21/03/2005 respectively.

For Appellant : Mr. T.R. Senthil Kumar
(in both TCAs) Senior Standing Counsel
Assisted by Mrs. K.G. Usha Rani, JSC

For Respondents : Mr. R. Venkatnarayanan
(in both TCAs)



COMMON JUDGMENT

(Judgment was delivered by M. DURAISWAMY, J.)

Challenging the common order passed in ITA.Nos.1443/Mds/2005 and 1444 /Mds/2005 in respect of the Assessment Years 2000-2001 and 2001-2002 on the file of the Income Tax Appellate Tribunal, Chennai, "D" Bench (for brevity, the Tribunal), the Revenue has filed the above appeals.

2.1 The respondent-assessee is a company engaged in the business of manufacture of machinery. The assessee is a 100% EOU and started claiming deduction under section 10B of the Income Tax Act, from the assessment Year 1997-1998. While computing deduction under section 10B, the assessee did not set off unabsorbed depreciation pertaining to assessment year 1995-96 and 1996-1997, but, set off the same against profit on sale of special export licence. However, the Assessing Officer completed the assessment for the years 2000-2001 and 2001-2002 holding that the deduction under section 10B is to be allowed only after set off of the unabsorbed depreciation.

2.2 Challenging the orders passed by the Assessing Officer, the assessee filed appeals before the Commissioner of Income Tax (Appeals) and the Commissioner of Income Tax (Appeals) directed the Assessing Officer to compute the deduction under 10B after the set off and partly allowed the appeals. Challenging the orders passed by the CIT (Appeals), the Revenue filed an appeal before the Income Tax Appellate Tribunal and the Tribunal by common order allowed the appeal of the assessee and dismissed the appeal of the Revenue. Aggrieved over the common order passed by the Income Tax Appellate Tribunal, the Revenue has filed the above appeals.

3. In the above appeals, the assessee has raised the following Substantial Questions of Law for consideration:

" (i) Whether under the facts and circumstances of the case the Income tax Appellate Tribunal was right in holding that the assessee is eligible for deduction under section 10B before setting off the unabsorbed depreciation ?

(ii) Whether under the facts and circumstances of the case, the Income tax Appellate Tribunal was right in holding that the brought forward business loss and unabsorbed depreciation are to be set off only after grant of deduction under section 10A?"



4. When the appeals are taken up for hearing, Mrs. K.G. Usha Rani, learned Standing Counsel appearing for the appellant-revenue fairly submitted that the substantial questions of law that are raised in the above appeals were already decided by the Division Bench of this court in the Common Judgment dated 08.10.2020 made in T.C.A.Nos.395 to 398 & 400 of 2019 [Principal Commissioner of Income Tax 2, Coimbatore v.M/s.SKM Egg Products Export India Ltd, Erode] wherein the Division Bench held as follows:-

" 5. The operative portion of the judgment in the case of M/s.Comstar Automative 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



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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 assessee 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."



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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."

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5. Mr. R. Venkatnarayanan, learned counsel appearing for the respondent-assessee submitted that in view of the Common Judgment made in T.C.A.Nos.395 to 398 & 400 of 2019 [cited supra], the appeals may be dismissed.

6. Having regard to the submissions made by the learned counsel on either side, following the ratio laid down in the Common Judgment dated 26.02.2021 made in T.C.A.Nos.395 to 398 & 400 of 2019 [cited supra], dated 08.10.2020, the questions of law are decided against the Revenue and in favour of the assessee. The Tax Case Appeals are dismissed. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

Rj

To

1. The Registrar Income Tax Appellate Tribunal,
Chennai, "D" Bench.
2. The commissioner of Income Tax (A)-I Madurai.
Camp Office @ Coimbatore.
3. Deputy Commissioner of Income Tax,
Company Circle IV(2) I/c. Coimbatore

+1cc to Mr. TR.Senthilkumar, Advocate SR.No.30333
+1cc to Mr.Subbaraya Aiyar, Advocate SR.No.29951

T.C.A.Nos.572 & 573 of 2014

PPA (CO)
CT(30.07.2021)