IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2022

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
AND
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

T.C.A.No.704 of 2010

The Commissioner of Income Tax,
Chennai. ... Appellant

Versus

Amnet Systems Pvt Ltd.,
JVL Plaza, 1st Floor,
501, Anna Salai, Teynampet,
Chennai. ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Chennai, "B" Bench, dated 08.01.2010 in I.T.A.No.726/Mds/2009, against the order of the Commissioner of Income Tax Chennai-I, Chennai-34, date 27/03/2009 C.No.218/CIT-1/43/263/2008-09 and arising out of the Assessment order of the Assistant Commissioner of Income Tax Company Circle I(1), Chennai dated 29.08.2006 vide PA/G.I.R.No.AACCA7522J/AX6-229.

For Appellant :Mr.T.Ravikumar
Senior Standing Counsel

For Respondent :Mr.S.Sridhar

J U D G M E N T
(Judgment of the Court was delivered by R. MAHADEVAN, J.)

This tax case appeal has been filed by the appellant / Revenue, challenging the order dated 08.01.2010 passed by the Income Tax Appellate Tribunal, Bench 'B', Chennai, in I.TA.No.726/Mds/2009, relating to the assessment year 2004-05.

2.By order dated 09.08.2010, this court admitted the aforesaid tax case appeal on the following substantial question of law:

> "Whether on the facts and circumstances of the case, the Tribunal was right in holding that since the issue of whether the deduction under section 10A is to be computed after or before setting off of the losses / depreciation is debatable and therefore CIT had no jurisdiction under Section 263 to revise the assessment order?"

3.The facts of the case are that appellant / assessee filed its return of income on 30.10.2004 admitting 'Nil' income after claiming deduction under section 10A of the Income-tax Act, 1961 (in short, 'the Act'), amounting to Rs.40,92,756/-. The return was processed and the assessing officer passed the assessment order on 29.08.2006 under section 143(3) of the Act. Subsequently, notice under section 263 was issued to the assessee on 06.02.2009, stating that deduction of Rs.42,26,504/- was allowed under section 10A of the Act, before set off of brought forward business losses and unabsorbed depreciation relating to the undertaking. In response, the appellant / assessee filed its reply on 16.02.2009. Thereafter, the CIT, by order dated 27.03.2009, set aside the assessment order for the limited purpose of examining the losses and unabsorbed depreciation of earlier years and computing the deduction allowable under section 10A of the Act for the year under consideration in accordance with law. Challenging the same, the appellant / assessee preferred appeal, which was allowed by the Tribunal vide order dated 08.01.2010. Therefore, this tax case appeal by the Revenue.

4.According to the learned counsel for the appellant / Revenue, the deduction under section 10A of the Act is to be completed only after setting off the losses / depreciation as per the decision of the Karnataka High court in CIT v. Himatasingike Seide Ltd [286 ITR 255 (KAR)]. Therefore, the order of the Tribunal is liable to be quashed.

5.On the other hand, the learned counsel for the respondent made his submission supporting the order impugned herein.

6.This court is of the view that the issue involved herein qua deduction under section 10A, is now, settled by the Hon'ble Supreme Court in CIT and others v. Yokogawa India Ltd [AIR 2017 SC 463], wherein, it was categorically held 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". The relevant passage of the said decision is usefully extracted below:

> "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.
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> 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 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.
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> 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 assessees 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 inst e 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."

7.Further, it is to be noted that though the decision of the Karnatake High Court, referred to above on the side of the appellant / Revenue was appealed by the Assessee therein in C.A.No.1501 of 2008 to the supreme court and the said appeal was dismissed by confirming the said view by order, dated 19.09.2013, this court is of the opinion that the view of the Karnataka High Court that the deduction under Chapter VI A has to be made only after or subsequent to the brought forward depreciation allowances, seems to have been taken depending on that particular case and hence, the same cannot be straight away applicable to all the cases.

8.Following the decision of the Hon'ble Supreme Court in CIT v. Yokogawa India Ltd (supra), this court has already decided the similar issue relating to computation of deduction under section 10A in favour of the assessee, in TCA Nos.24, 26 and 28 of 2022 by order dated 01.02.2022 in the case of CIT v. M/s.Comstar Automotive Technologies (P) Ltd.

9.In such view of the matter, the substantial question of law relating to computation of deduction under section 10A, will have to be answered in favour of the assessee and against the revenue. However, the issue pertaining to the jurisdiction of the CIT to revise the assessment order under section 263, is left open. Accordingly, the tax case appeal stands disposed of. No costs.

Sd/-
Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar

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To

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

2.The Commissioner of Income Tax,
Chennai-34

3.The Assistant Commissioner of Income tax
Company circle 1(1), Chennai.

+1cc to Mr.T.Ravi Kumar, Advocate SR.No.11168

T.C.A.No.704 of 2010

MT(CO)
CB(17/03/2022)