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T.C.A.No.128 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2024

CORAM

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN**

T.C.A.No.128 of 2015

M/s.Chettinad Quartz Products Limited,
(Now merged with M/s.Chettinad Morimura
Semi Conductor Material Private Limited),
37, Old Mahaballipuram Road,
Khazhipattur Village, Padur PO.,
Kancheepuram District - 603 103.
PAN:AAACC2461Q

... Appellant

-Vs-

The Assistant Commissioner of Income Tax,
Company Circle-I(3),
Chennai - 600 034.

... Respondent

PRAYER : Tax Case Appeal filed under Section 260 A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal 'A' Bench, chennai dated 16.10.2014 in I.T.A.No.430/Mds/2014 for the assessment year 2008-09.

For Appellant : Mr.A.S.Sriraman

For Respondent : Mr.T.Ravikumar
Senior Standing Counsel



J U D G M E N T

WEB COPY (Judgment of the Court was delivered by **C.SARAVANAN,J.**)

The appellant is before this Court aggrieved by the impugned order dated 16.10.2014 passed by the Income Tax Appellate Tribunal 'A' Bench, Chennai for the assessment year 2008-09.

2. The dispute pertains to availability of benefit of deduction under Section 10B of the Income Tax Act, 1961. The Appellate Tribunal had rejected the claim of the appellant vide impugned order with the following observations:

"5. Heard both sides. Perused orders of lower authorities and the decisions relied on. We find that the issue in appeal has been decided by the co-ordinate Bench of this Tribunal in the case of S.R.A.Systems Ltd.(supra) following the decision of the Hon'ble Supreme Court in the case of M/s.Himatsingka Seide Ltd.(supra). The co-ordinate Bench while deciding the issue held that unabsorbed depreciation has to be set off before computing exemption allowable under Section 10A of the Act observing as under:-

"7. The third issue in appeal relates to the method of computation of deduction u/s.10A of the Act. The assessee has claimed deduction u/s 10A before setting off of unabsorbed depreciation and brought forward losses. The Id.AR of the assessee in order to fortify the stand of assessee has placed reliance on the decision of the Tribunal in assessee's appeal for the A.Y.2005-06 and A.Y.2007-08 (supra). The Id.AR



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has also drawn support from the judgment of the Hon'ble Karnataka High Court in the case of CIT Vs. Yokogawa India Ltd. (supra). On the other hand, the Id.DR has relied on the latest decision of the Hon'ble Apex Court in the case of M/s. Himatsingka Seide Ltd., Vs. CIT (supra). The Hon'ble Supreme Court of India dismissed the appeal of the assessee and has upheld the judgment of the Hon'ble Karnataka High Court. The Hon'ble High Court has held that the brought forward depreciation has to be adjusted against the profits of the EOU before computing the exemption allowable u/s. 10B. The provisions of Section 10A are pari materia with the provisions of Section 10B of the Act. We find that as far as unabsorbed depreciation is concerned, the Hon'ble Supreme Court of India in the case of M/s. Himatsingka Seide Ltd., Vs. CIT (supra), has up-held the findings of the Hon'ble Karnataka High Court and as such, un-absorbed depreciation has to be set-off before computing the exemption allowable u/s. 10A. In respect of setting-off of the brought forward losses, the decision of the Hon'ble Karnataka High Court in the case of CIT Vs. Yokogawa India Ltd. (supra) still holds good. Accordingly, the assessee can claim deduction u/s. 10A before setting off of brought forward losses. In view of the above, this ground of appeal of the assessee is partly allowed.

- 6. Respectfully following the above decision of the Tribunal, we allow the grounds raised by the Revenue.*
- 7. In the result, appeal of the Revenue is allowed."*

3. The learned counsel for the appellant has relied on the following decision of this Court :-



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- (i) **M/s.Comstar Automative Techonologies Private Limited (formerly known as Visteon Powertrain Control Systems India Private Limited, Keelakaranai Village, Malrosapuram Post, Maraimalai Nagar, Chenalpattu District - 603 204) Vs. The Deputy Commissioner of Income Tax, Company Circle-I (3), 121, Nungambakkam High Road, Chennai - 600 034 in T.C.A.No.228 of 2011;**
- (ii) **Commissioner of Income Tax, Chennai Vs. SRA Systems Limited in (2021) 129 taxmann.com 118 (Madras);**
- (iii) **CIT vs. S.R.A.Systems Ltd T.C.A.No.975 of 2010**

4. In **M/s.Comstar Automative Techonologies Private Limited vs.**

The Deputy Commissioner of Income Tax referred to supra, it was held 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 is 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



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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 an 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

5. In the case of **Commissioner of Income Tax, Chennai Vs. SRA Systems Limited** in (2021) 129 taxmann.com 118 (Madras), the Court upheld the order passed by the Income Tax Appellate Tribunal dated 16.05.2008 in I.T.A.No.2255/Mds/06 that the assessee would be entitled to deduction under Section 10A and disallowance made by the Assessing Officer was not correct. The Court followed its decision in **M/s.Comstar Automative Techonologies Private Limited** referred to supra. In **Commissioner of Income Tax, Chennai Vs. SRA Systems Limited** reads as under : -



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".....

7. *The order passed by the Income Tax Appellate Tribunal was challenged by the Department in T.C.A.No.1916 of 2008 and the Hon'ble Division Bench of this Court by its judgment dated 26.10.2018 confirmed the order of the Income Tax Appellate Tribunal dated 16.05.2008 made in I.T.A.No.2255/Mds/06 for the Assessment year 2002-03 and dismissed the appeal. In view of the judgment of the Hon'ble Division Bench of this Court, it is clear that the applicability of Clauses (ii) and (iii) of Sub Clause (2) to Section 10B of the Act, the impugned order passed by the Income Tax Appellate Tribunal is proper. In view of the order passed by the Income Tax Appellate Tribunal dated 16.05.2008 in I.T.A.No.2255/Mds/06 and the judgment passed by the Hon'ble Division Bench of this Court on 26.10.2018 in Tax Case Appeal No.1916 of 2008, the assessee Company would be entitled to deduction under Section 10A and disallowance made by the Assessing Officer was not correct. Since the order passed under Section 263 itself has been set aside, the cause of action for re-assessment does not survive.*
4. *Mr.R.Sivaraman, learned counsel appearing for the respondent~assessee submitted that following the judgments referred above, the questions of law may be decided in favour of the assessee and the appeal may be dismissed.*
5. *In view of the submissions made by the learned counsel on either side, following the decision of this court dated 02.03.2021 made in T.C.A.No.975 of 2010 [cited supra], the Questions of Law are decided against the Revenue and in favour of the assessee. The appeal is liable to be dismissed.*



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Accordingly, the Tax Case Appeal is dismissed. No costs."

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6. Both the learned counsel for the appellant and also learned counsel for the respondent have submitted that as on date, the issue stands covered in favour of the appellant in terms of above decision.

7. However, the learned Senior Standing Counsel appearing for the respondent Department would submit that several appeals are pending in a batch of appeals before the Hon'ble Supreme Court in ***Civil Appeal Nos.9175 of 2018 etc., batch*** in the case of ***Commissioner of Income Tax Vs. M/s.Hewlett Packard Global Soft Limited***. He further submitted that in terms of the decision of the Hon'ble Supreme Court in the case of ***Kunayammed and Others Vs. State of Kerala and another*** reported in ***2000 (6) SCC 359***, it cannot be said that the issue has attained finality.

8. In our considered view, since the issue is covered in favour of the appellant and considering the fact that the similar fact was decided in favour of the appellant by the Income Tax Appellate Tribunal 'B' Bench, Chennai vide order dated 23.07.2012, which is the appellant's own case relating to the



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assessment year 2007-08 in I.T.A.No.1180/Mds/2012, we are inclined to
answer the appeal in favour of the appellant.

9. Accordingly, this Tax Case Appeal is disposed of. No costs.

(R.S.K., J.)
J.)

(C.S.N.,

06.08.2024

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No
vji
To

The Assistant Commissioner of Income Tax,
Company Circle-I(3),
Chennai - 600 034.



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**R.SURESH KUMAR, J.
and
C.SARAVANAN, J.**

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