IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'I-2' NEW DELHI
BEFORE SHRI S.V. MEHROTRA, ACCOUNTANT MEMBER
AND
SMT SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA NO. 3264/DEL/2013
(ASSESSMENT YEAR-2007-08)

Steria India Ltd. (Estwhile Xansa India Ltd.) Seaview Special Economic Zone, Building 4, Plot No. 20 & 21, Sector-135, Gautam Budh Nagar Noida AAACX0385L **(APPELLANT)**	Vs	ACIT Circle-18(1) New Delhi **(RESPONDENT)**

ITA NO. 3672/DEL/2013
(ASSESSMENT YEAR-2007-08)

DCIT Circle-18(1) New Delhi **(APPELLANT)**	Vs	Xansa India Ltd. (Now known as Steria India Ltd.,) C-2, Sector-1 Noida AAACX0385L **(RESPONDENT)**

Appellant by	**Sh. Gaurav Garg, CA**
Respondent by	**Sh. T. M. Shivakumar, CIT(DR)**

Date of Hearing	**04.10.2016**
Date of Pronouncement	**09.12.2016**

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed against the order dated 27/12/2010 passed u/s 143(3). First we will take up Revenue's appeal wherein the issue is related to deletion of Rs.18,04,65,151/- by the CIT(A) in respect of disallowance of 25% of substance allowance and second issue is related to allowing the claim of the assessee u/s 10A of the Income-tax Act at Rs.139,09,19,895/- as against 31,85,34,611/- allowed by the Assessing Officer both the issues.

2. The Ld. AR submits that both the issues are covered against the Revenue. In assessee's own case for the earlier years vide consolidated order dated 26/9/2016 passed by ITAT Delhi Bench being ITA No. 2283/DEL/2011.

3. The Ld. DR submits that the Assessing Officer has recorded facts that the assessee do not have any documentary evidence as to how 25% of substances allowance paid by the assessee company. Thus, the Ld. DR submitted that the judgment in the earlier assessment year was on the basis of entire amount which was settled in the later years, therefore, the ITAT order will not be applicable in the present assessment year. The Ld. DR also relied on the Section 10(14) of the Act is for special allowance and is applicable in assessee's case. As regards Section 10A of the Act, the Ld. DR submitted the case law of the Hon'ble Delhi High Court

in case of CIT Vs. KEI Industries Ltd. (2015) 57 taxmann.com 412 (Delhi).

4. The Ld. AR submitted that the ITAT order dated 26/9/2016 clearly covers the present issues in the present assessment year.

5. We have heard both the sides it is pertinent to note that in assessee's own case for Assessment Year 2004-05, 2005-06, 2006-07, 2007-08 , 2008-09 & 2009-10 which is a subsequent years, the ITAT Delhi Bench held both the issues in favour of the assessee and against the revenue. The ITAT held as under:

> *"29. On perusal of the above decision it is apparent that the 1st appellate authority has considered the provisions of Section 195 of the income tax act and held that this payment of subsistence allowance is only a reimbursement of expenditure which is not chargeable to tax in India and hence no withholding tax was required to be deducted from such payment and hence provisions of section 40a(i) does not apply. Even otherwise he held that such payment of subsistence allowance if not fully spent for the official purposes of the employees then it would be chargeable to tax in the hands of the employees only, and as it is an expenditure of the employer incurred wholly and exclusively for the purposes of the business, which cannot be disallowed in parts. We also concur with the reasons given that such subsistence allowance is supported by the evidence of the actual expenditure incurred for official purposes to the extent of 75% and for the balance 25%, employees have submitted a declaration of having spent in the said amount in the course of travel abroad. Therefore, we do not subscribe to the argument of the Ld. Departmental representative that 25% of expenditure has been claimed by the assessee without any evidence as*

employees have claimed such expenses from assessee by furnishing a declaration that this expenditure has been incurred by them. Reimbursement of expenses to the employees by employer on the basis of self-declaration for small amounts, for which it is difficult and sometimes cumbersome to obtain supporting by employees, is common prevalent practice and it is not an disallowable expenditure. Therefore, also we reject the contention of revenue that balance 25% expenditure is without any basis and evidence. He also held that the payment is business expenditure as it is paid by way of salary or remuneration to the employees. Similarly he set aside the disallowance for the purpose of verification of the assessing Officer in case if the total amount of expenditure on subsistence allowances not related to the previous year and then to make disallowance of the expenditure to that extent, if it is related to the earlier years. Ld. Departmental representative could not point out any quantification made by the Ld. AO about the amount expenditure related to previous year and earlier years. Therefore when the assessment order does not mention about the vouchers and declaration which are pertaining to earlier years, then in that case that verification needs to be done by the A.O. only, hence there is no infirmity in the order of Ld. CIT(A) in directing ld. AO to verify the claim of the assessee form that aspect and quantify the disallowance, if any. In view of this, we confirm the order of the first appellate authority deleting the disallowance of subsistence allowance expenses and dismiss ground no. 3 of the appeal of the revenue."

There are no distinguishable facts in the present case as well.

6. In result, ITA No. 3672/Del/2013 of the Revenue is dismissed.

7. As relates to assessee's appeal, the Ld. AR submitted that unobserved depreciation whether can be reduced from the income from other sources by the Assessing Officer. The Ld. AR submitted that unobserved depreciation can be set out with any income. The Ld. AR relied upon the Hon'ble Karnataka High Court judgment in case of CIT Vs. Yokogawa 341 ITR 385. The Ld. AR submitted that Section 10A deduction is in the form of disallowance only. The Ld. AR also relied upon the ITAT Delhi Bench order in case of Canam International (P) Ltd. Vs. ACIT 37 ITR (T) 38.

8. The Ld. DR quoted Section 32(2) and further stated that depreciation merged with next year for which Section 10A is claimed is not proper as depreciation automatically is deducted from the profit. In the present case profits were sufficiently large to absorb depreciation. It partakes current year depreciation. Section 10A & 10B are exemption Sections and are not at par with Chapter VI of the Act. The computation should be in precise manner. The Ld. DR relied on the Delhi High Court judgment in the case of CIT Vs. KEI Industries.

9. The Ld. AR in his rejoinder relied on the Hon'ble Supreme Court's order in case of CIT Vs. Mother India Refrigerators 155 ITR 711 (SC). The Ld. AR further submits that Section 32(2) falls in allowance and Section 72(2) clearly set out that the allowance should be given first effect. Set off depreciation in any manner can be utilized and thus it loses characterizing business. The Ld. AR

submitted that order of KEI Industries does not apply in the present case. The Ld. AR also relied upon the orders of ITAT Delhi Bench in case of DCIT Vs. NIIT Ltd. (ITA No. 1112/Del/2012 dated 08.05.2015) and CIT Vs. TEI Technologies (P.) Ltd. 361 ITR 36 of Hon'ble Delhi High Court.

10. We have heard both the sides, the reliance of Hon'ble Karnataka High Court judgment in case of Yokogawa India Ltd. clearly makes point that how the set off of unabsorbed depreciation has to be taken into account. As the income of the Section 10A unit has to be excluded at source itself before arriving at the gross total income, the loss of the non-section 10A unit cannot be set off against the income of the Section 10A unit under Section 72. The loss incurred by the assessee under the head "Profits and gains of business or profession" has to be set off against the profits and gains, if any, of any business or profession carried on by such assessee. Therefore, as the profits and gains under Section 10A is not be included in the income of the assessee at all, the question of setting off the loss of the assessee of any profits and gains of business against such profits and gains of the undertaking would not arise. Similarly, as per section 72(2), unabsorbed business loss is to be first set off and thereafter unabsorbed depreciation treated as current year's depreciation under Section 32(2) is to be set off. As deduction under Section 10A has to be excluded from the total income of the assessee the question of unabsorbed business loss being set off against such profit and gains of the undertaking would

not arise. The same view was followed by the Hon'ble Jurisdictional Delhi High Court in case of TEI Technologies (P.) Ltd. Thus, the said issue is allowed in favour of the asssessee.

11. In the result, appeal of the assessee is allowed.

The order is pronounced in the open court on 09th of December, 2016.

Sd/- Sd/-

(S.V. MEHROTRA) **(SUCHITRA KAMBLE)**
ACCOUNTANT MEMBER **JUDICIAL MEMBER**

Dated: 09/12/2016

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

		Date	
1.	Draft dictated on	04.10 2016	PS
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4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	9.12.2016	PS/PS
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7.	File sent to the Bench Clerk	9.12.2016	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		