IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE S/SHRI ABRAHAM P. GEORGE, AM & GEORGE GEORGE K., JM

I.T.A. Nos. 373&374/ /Coch/2016
Assessment Year : 2008-09 and 2009-10

M/s. ACCCL Transmatic Ltd., TC 17/27, Jera 20, Jagathy, Thiruvananthapuram-695 014.	**Vs.**	The Assistant Commissioner of Income-tax, Circle-1(1), Trivandrum.
(Assessee-Appellant)		**(Revenue-Respondent)**

Assessee by	Shri T.M. Sreedharan, Sr. Adv.
Revenue by	Shri A. Dhanaraj, Sr. DR

Date of hearing	25/05/2017
Date of pronouncement	26/05/2017

O R D E R

Per Bench:

Assessee through these appeals is aggrieved on disallowance of its claim u/s. 10B of the income Tax Act, 1961 and also disallowance of set off of brought forward loss.

2. Though the assessee has mentioned the quantum of brought forward business loss not allowed for the assessment year 2008-09 as Rs.84,43,209/-,

corresponding figure is not available in its grounds for the assessment year 2009-10.

2. Ld. Counsel for the assessee submitted that the claim for deduction u/s. 10B of the Act for the export unit should have been considered independently without setting off loss from other units. According to the Ld. AR, Assessing Officer had erred in setting off of business loss suffered by the assessee on other units against the profits of the assessee earned from the export unit on which deduction u/s. 10B of the Act was claimed. As per the Ld. AR, by virtue of the judgment of the Apex Court in the case of CIT vs. Yokogawa India Ltd. 391 ITR 274, judgment of the Hon'ble Karnataka High Court in the case of CIT vs. Yokogama India Ltd. (supra) stood affirmed and the judgment of the very same High Court in the case of Himmatsingika Saide Ltd. 286 ITR 255 stood reversed. In so far as brought forward loss was concerned, Ld. AR submitted that even though such brought forward loss could not be set off against current year's capital gains or income from other sources, it still had to be allowed for carry forward to future years in accordance with the scheme of section 72 of the Act.

3. Per contra, Ld. DR strongly supported the orders of the lower authorities.

4. We have perused the orders and heard the rival contentions. As to the contention of the assessee that deduction u/s. 10B of the Act has to be given on

a stand alone basis, observation of the Apex Court in the case of CIT vs. Yokogawa India Ltd. (supra) reads as under:

> *"16. From a reading of the relevant provisions of section 10B, it is more than clear to us that the deductions contemplated therein is 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 be individual undertaking and resultantly flows to the assessee. This is also more than clear from the contemporaneous Circular NO. 794 dated 9.8.200 which states in paragraph 15.6 that,*
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> > *" The export turnover and the total turnover for the purposes of sections 10B and 10B shall be of the undertaking located in specified zones or 100% Export Oriented Undertakings, as the case may be, ad this shall not have any material relationship wit the other business of the assessee outside these zones or units for the purposes of this provision."*
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> *17 If the specific provisions of the Act provide (first proviso to Sections 10B(1); 10(1A) and 10B(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 9.8.2000) 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 as to be made independently and, therefore, immediately after the stage of determination of is profits and gains. At that stage the aggregate of the incomes under other heads and the provisions of set off a d carry forward contained in Section 70, 72, and 74 of the Act would be premature for application. The deductions u/s 10B 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 10B has already been dealt with earlier in the overall scenario unfolded by the provisions of section 10B the aforesaid discord can be reconciled by undertaking the expression "total income of the assessee" in section10B as "total income of the undertaking'.*
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> *18 For the aforesaid reasons we answer the appeals and the question arising therein, as formulated at the outset of this order, y holding that*

though Section 10B, as amended, is a provision for deduction, the stage of deduction would be while computing he gross total income of the eligible undertaking under Chapter IV of the Act and not at the state of computation of the total income under Chapter VI. All the appeals shall stand disposed of accordingly."

Through the above judgment of Hon'ble Apex Court has upheld the view taken by the judgment of Hon'ble Karnataka High Court in the case of CIT vs. Yokogama India Ltd. 341 ITR 385 wherein it was held that profits of the eligible unit was to be calculated on a stand alone basis. We therefore, set aside the orders of the lower authorities on this issue and direct the Assessing Officer to give the assessee the benefit of deduction u/s. 10B of the Act for both the years.

5. As for the other issue, which is regarding set off of brought forward business loss, the only pleading of the Ld. Counsel for the assessee is that if such loss is not allowed for set off against current year's income from capital gains and income from other sources, then it should be allowed for further carry forward of in accordance with section 72 of the Act. We are of the opinion that the lower authorities cannot be faulted for their view that brought forward business loss could not be set off against the current year's capital gains/or income from other sources. There can be no doubt that such business loss brought forward from the earlier years cannot be set off against income under other heads as mandated in sub-section (1) of section 72 of the Act. But it has to be allowed to be carried forward upto the time limit given under sub-section 3 of that Section. Accordingly, we direct the Assessing Officer to re-consider this issue and allow

carry forward of brought forward business loss of earlier years, if it is within the period allowed under sub-section 3 of Section 72 of the Act. Ordered accordingly..

7. In the result, appeal filed by the assessee are partly allowed.

Pronounced in the open court on 26-05-2017.

sd/-	sd/-
(GEORGE GEORGE K.)	(ABRAHAM P. GEORGE)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Place: Kochi
Dated: 26th May, 2017
GJ
Copy to:
1. M/s. ACCCL Transmatic Ltd., TC 17/27, Jera 20, Jagathy, Thiruvananthapuram-695 014.
2. The Assistant Commissioner of Income-tax, Circle-1(1), Trivandrum
3. The Commissioner of Income-tax(Appeals), Trivandrum.
4. The Pr. Commissioner of Income-tax, Trivandrum.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)
I.T.A.T., Cochin