

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'B' BENCH, CHENNAI**

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं  
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य केसमक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND**  
**SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No. 1035/Mds/2015

निर्धारण वर्ष / Assessment Year : 2010-11

M/s. SECOVA eServices Pvt. Ltd.,  
RR Tower III, Second Floor,  
TVK Industrial Estate Guindy,  
Chennai – 600 032.

v. The Deputy Commissioner of  
Income Tax,  
Corporate Circle – 6(1),  
Chennai – 600 034.

PAN : AAHCS3174R

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA Nos. 1171 & 1172/Mds/2015

निर्धारण वर्ष / Assessment Years : 2010-11 & 2011-12

&

**CO No. 76/Mds/2015**

निर्धारण वर्ष / Assessment Year : 2011-12

The Deputy Commissioner of  
Income Tax,  
Corporate Circle – 6(1),  
Chennai – 600 034.

v. M/s. SECOVA eServices Pvt. Ltd.,  
RR Tower III, Second Floor,  
TVK Industrial Estate Guindy,  
Chennai – 600 032.

(अपीलार्थी/Appellant)

PAN : AAHCS3174R

(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Assessee by

: Shri R. Vijayaraghavan, Advocate

राजस्व की ओर से /Revenue by

: Shri N. Madhavan, JCIT

सुनवाई की तारीख/Date of Hearing

: 30.01.2017

घोषणा की तारीख/Date of Pronouncement

: 28.02.2017

**आदेश / O R D E R**

**PER N.R.S. GANESAN, JUDICIAL MEMBER:**

The assessee and the Revenue filed the appeals for the assessment year 2010-11 and the Revenue has also filed the appeal for the assessment year 2011-12. The assessee filed cross objection for the year 2011-12. Since common issue arises for consideration in all the appeals, we heard the same together and disposing off the same by this common order.

2. The first issue arises for consideration in all the three appeals is with regard to communication expenses and foreign travel expenses.

2.1. Shri R. Vijayaraghavan, the Ld. counsel for the assessee submitted that communication expenses and foreign travel expenses are part of the export turnover and the Assessing Officer has included the same as such. According to the Ld. counsel, the communication charges are included in Indian currency and not in foreign currency. The export turnover may not include the communication charges so as to warrant the exclusion of the same from the export turnover.

2.2. On the contrary, Shri N. Madhavan, the Ld. Departmental Representative submitted that the foreign travel expenses and communication expenses are related to providing technical services outside India. Therefore, the Assessing Officer reduced both communication expenses and foreign travel expenses from export turnover and include the same in the total turnover for the purpose of computing eligible deduction under Section 10B of the Act. According to the Ld. D.R., expenses like freight, telecommunication charges, insurance charges and other charges incurred in foreign currency in the course of providing technical services outside India cannot form part of export turnover. Therefore, the CIT (Appeals) has rightly confirmed the addition made by the Assessing Officer.

2.3. We have considered the rival submissions on either side and perused the material available on record. The Assessing Officer excluded the telecommunication charges and foreign travel expenditure from export turnover while computing deduction under Section 10B of the Act, however, included the same in total turnover. This Tribunal is of the considered opinion that the export turnover and the total turnover shall be of the same factors, what was excluded in export turnover cannot be included in the total turnover. Otherwise the

resultant figure may not result the correct result. Moreover, the Special bench of this Tribunal examined the same in ITO v M/s. Sak Soft Limited 313 ITR 353 and found that both the export turnover and the total turnover shall be of the same factors. Therefore, the orders of the lower authorities are set aside and the Assessing Officer is directed to exclude the telecommunication charges and foreign travel charges both from the export turnover and total turnover and thereafter compute the eligible deduction under Section 10B of the Act.

3. The next issue arises for consideration is set off of earlier loss against the eligible profit before granting deduction under Section 10B of the Act.

3.1 Shri R. Vijayaraghavan, the Ld. counsel for the assessee submitted that this issue was examined by the Apex court in CIT v Yokogawa India Limited 2016-TIOL-228-SC-IT. The Supreme Court found that *“the aggregate of the incomes under the other heads and the provisions of set off and carry forward contained under Sections 70, 72 and 74 of the Act would be premature for application. The deductions under Section 10A therefore would be prior to 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.*” In view of this judgment of the Apex court, the Ld. counsel submitted that brought forward losses cannot be set off before computing eligible deduction under Section 10A of the Act. Therefore according to the Ld. counsel, both the authorities below are not justified in setting off the brought forward losses before allowing deduction under Section 10B of the Act.

3.2 We heard Shri N. Madhavan, the Ld. Departmental Representative also. In view of the judgment of the Apex court in Yokogawa India Limited *supra*, the brought forward losses cannot be set off before computing deduction under Section 10B of the Act. Therefore, we are unable to uphold the order of the lower authorities. Accordingly, the order of the lower authorities are set aside and the Assessing Officer is directed to compute the eligible deduction under Section 10B of the Act before setting off the brought forward losses as held by the Apex court in Yokogawa India Limited *supra*.

4. The next ground of appeal is with regard to disallowance of advance written off to the extent of ₹8,06,134/-.

4.1 Shri R. Vijayaraghavan, the Ld. counsel for the assessee submitted that the assessee written off ₹8,06,134/- under the head provision for doubtful debts under the normal provisions of the Income Tax Act. However, the Assessing Officer disallowed the claim of the assessee on the ground that these are all not allowable as deductions. According to the Ld. counsel even though it is a provision for doubtful debts, it was written in the books of account. Therefore it has to be allowed while computing taxable income.

4.2 On the contrary, Shri N. Madhavan, the Ld. Departmental Representative submitted that what was written off by the assessee is a capital loss and not an actual expenditure. Since it is a capital loss, even though it was written off the same cannot be allowed as deduction.

4.3 We have considered the rival submissions on either side and perused the material available on record. It is not in dispute that what was written off by the assessee is a capital loss and not the expenditure. Therefore, this Tribunal is of the considered opinion that the CIT (Appeals) has rightly confirmed the disallowance made by the Assessing Officer. Accordingly the same is confirmed.

5. Now coming to the provision for doubtful debts. The Ld. counsel for the assessee submitted that the assessee shifted the premises to the new location. The advance given by the assessee to the lessor was not return by the lessor. Since, the advance could not be recovered the same was written off in the books of accounts.

5.1 On the contrary, Shri N. Madhavan, the Ld. Departmental Representative submitted that the assessee advanced the money for the purpose of acquiring a property by lease. Therefore it is a capital expenditure. When the assessee incurred a capital expenditure for the purpose of acquiring a business premises and the same could not be recovered, the loss would be on the capital account. Therefore, it would also not be allowed.

5.2 We have considered the rival submissions on either side and perused the material available on record. Admittedly, the advance was made by the assessee for acquiring the lease premises for the purpose of business. Therefore, the loss suffered by the assessee is only on the capital account. Therefore it cannot be allowed while computing the taxable income. Therefore, this Tribunal do not find any

reason to interfere with the orders of the lower authorities. Accordingly, the same is confirmed.

6. The next ground of appeal is with regard to set off earlier losses while computing income under Section 115JB of the Act.

6.1 Shri R. Vijayaraghavan, the Ld. counsel for the assessee submitted that the Assessing Officer may be directed to recomputed the profit under Section 115JB of the Act, while giving effect to the order of this Tribunal.

6.2 Shri N. Madhavan, the Ld. Departmental Representative also firmly submitted that the Assessing Officer may recomputed the income under Section 115JB of the Act.

6.3 We have considered the rival submissions on either side and perused the material available on record. As rightly submitted by the Ld. counsel for the assessee and the Ld. Departmental Representative, the Assessing Officer shall reconsider the issue afresh with regard to set off of earlier year losses while computing profit under Section 115JB of the Act. Accordingly, the orders of the

lower authorities are set aside and the issue is remitted back to the file of the Assessing Officer. The Assessing Officer shall reconsider the issue afresh with law after giving reasonable opportunity to the assessee.

7. The next issue arises for consideration is levy of interest under Section 234C of the Act.

7.1 We heard Shri R. Vijayaraghavan, the Ld. counsel for the assessee and Shri N. Madhavan, the Ld. Departmental Representative. It is not in dispute that levy of interest under Section 234C of the Act is mandatory under the scheme of Income Tax Act. Therefore, the Assessing Officer is directed to recompute the interest under Section 234C of the Act, after giving a reasonable opportunity to the assessee in accordance with law.

8. Now coming to the Revenue's appeal, the first ground of appeal is with regard to exclusion of communication charges and foreign travel expenses from the export turnover and the total turnover.

8.1 We heard Shri N. Madhavan, the Ld. Departmental Representative and Shri R. Vijayaraghavan, the Ld. counsel for the assessee. While discussing the assessee's appeal for the assessment year 2010-11, this Tribunal after referring to the decision of the Special bench of this Tribunal in M/s. Sak Soft Limited and found that both telecommunication charges and travel charges shall be excluded from the export turnover and the total turnover. This Tribunal found that the total turnover and the export turnover shall be of the same factors. Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and the same is confirmed.

9. The Revenue has taken one more ground for the assessment year 2010-11, with regard to set off of business loans and depreciations from the eligible profit. The Apex court in Yokogawa India Limited examined this issue and found that at the time of computing eligible deduction under Section 10A of the Act, application of Section 70, 72 & 74 of the Act would be premature. The Apex court further found that the stage of deduction of losses would be while computing the gross total income of the eligible undertaking under chapter – IV of the Act and not at the stage of computing total income

under chapter – VI of the Act. In view of the above decision of the Apex court, this Tribunal do not find any reason to interfere with the order of the lower authorities and the same is confirmed.

10. To sum up the result, the appeal of the assessee in ITA No.1035 of 2015 is partly allowed while the Revenue appeals in ITA Nos. 1171 & 1172 of 2015 are dismissed. The Cross objection of the assessee is only to support the order of the CIT (Appeals) for the assessment year 2011-12. This Tribunal is of the considered opinion that to support the order of the CIT (Appeals), cross objection is not maintainable. Therefore, the Cross Objection of the assessee in CO No.76 of 2015 becomes infructuous. Accordingly the same is dismissed.

Order pronounced on 28<sup>th</sup> February, 2017 at Chennai.

Sd/-  
(डि.एस. सुन्दर सिंह)  
(D.S. Sunder Singh)  
लेखा सदस्य/Accountant Member

Sd/-  
(एन.आर.एस. गणेशन)  
(N.R.S. Ganesan)  
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,  
दिनांक/Dated, the 28<sup>th</sup> February, 2017.

JR.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A) – 15, Chennai
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.