

**IN THE INCOME TAX APPELLATE TRIBUNAL,
BANGALORE BENCH 'A'**

**BEFORE SHRI VIJAYPAL RAO, JUDICIAL MEMBER
AND
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

ITA No.1504/Bang/2016
(Asst. Year – 2003-04)

The Asst. Commissioner of Income-tax,
Circle – 5(1)(2),
Bangalore.

. Appellant

Vs.

M/s Personality Ltd.,
No.123, Chord Road,
Rajajinagar,
Bangalore-560 010.

Appellant by : Smt. Swapna Das, JCIT
Respondent by : None

Date of Hearing : 1-6-2017
Date of Pronouncement : 2-6-2017

ORDER

PER SHRI JASON P BOAZ, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of
Commissioner of Income-tax (Appeals) -12, Bangalore dated
16/6/2016 for asst. year 2003-04.

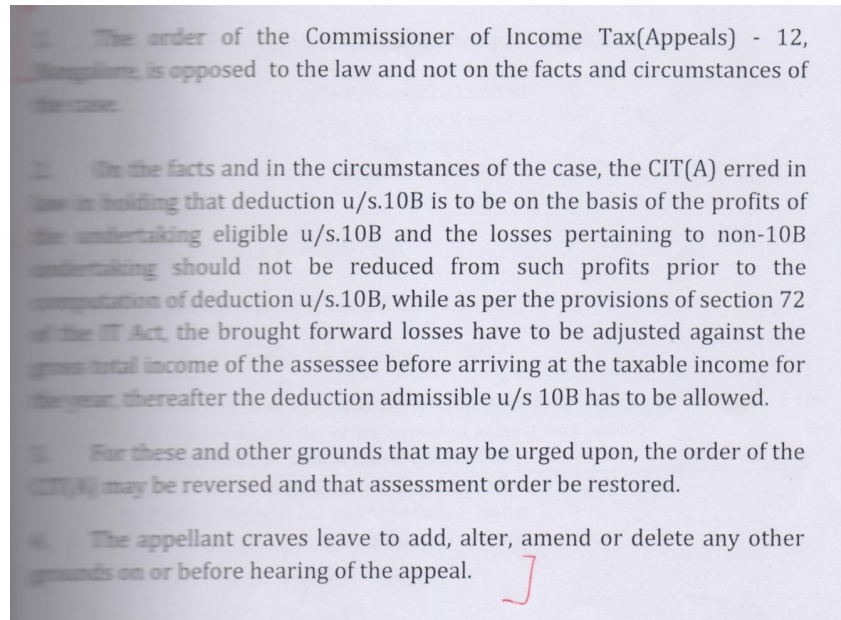
2. Briefly stated, the facts of the case are as under:-

2.1 The assessee, a company engaged in the business of manufacture, trading and export of readymade garments, filed its return for asst. year 2003-04 on 21/10/2003 declaring loss of (-) Rs.52,34,136/-. The return was processed u/s 143(1) of the Income-tax Act, 1961 (in short 'the Act') and the case was subsequently taken up for scrutiny. The assessment was completed u/s 143(3) of the Act vide order dated 23/1/2006 wherein the net loss of the assessee was determined at Rs.2,65,186/-, in view of, inter alia, the disallowance of the assessee's claim for deduction of Rs.49,68,580/- u/s 10B of the Act by the Assessing Officer ('AO') for the stated reasons that there was no positive profit for allowing the said deduction after computing assessee's gross total income.

2.2 Aggrieved by the order of assessment for asst. year 2003-04 dated 23/1/2006, the assessee preferred an appeal before the CIT(A) challenging the AO's action in holding that the gross total income should be arrived at first, before the deduction u/s 10B of the Act can be allowed since the same falls under Chapter III of the Act and not

Chapter VIA of the Act. The Id CIT(A)-12, Bangalore vide the impugned order dated 16/6/2016 allowed the assessee's claim for deduction u/s 10B of the Act by following the decision of the Hon'ble Karnataka High Court in the case of CIT Vs. Yokogawa India Ltd. (2012) 341 ITR 385 (Kar).

3. Revenue, being aggrieved by the order of the CIT(A)-12, Bangalore dated 16/6/2016 for asst. year 2003-04 has preferred this appeal, raising the following grounds:-



3.1 The Id DR for Revenue was heard in support of the grounds raised (Supra) and placed strong reliance on the finding in the order of the AO on this issue.

3.2 Per contra, the Id AR for the assessee submitted that the assessee's claim for being allowed the deduction claimed u/s 10B of the Act is squarely covered in its favour by the decision of the Hon'ble Karnataka High Court in the case of CIT Vs. Yokogowa India Ltd. (Supra). It is submitted that the Id CIT(A), following the aforesaid decision, has rightly directed the AO to compute the deduction u/s 10B of the Act without setting off the business losses of the non section 10B unit and to consider carry forward of non-10B unit losses as per the provision of sec. 72 of the Act separately.

3.3 We have heard the rival contentions and perused and carefully considered the material on record. From a perusal of the details on record it is seen that the AO was of the view that deduction u/s 10B of the Act was to be allowed only after computing the assessee's gross total income and accordingly, since after aggregating the income of

the 100% EOU (section 10B unit) with the losses of non 10B units arrived at a loss of Rs.2,65,186/-, denied the assessee's claim for deduction u/s 10B of the Act.

3.3.1 We find that the issue in dispute before us is squarely covered in favour of the assessee by the decision of the Hon'ble Karnataka High Court in the case of CIT Vs. Yokogawa India Ltd. (2012) 341 ITR 385 (Kar). In its decision the Hon'ble High Court had held that as the income of sec. 10A unit has to be excluded at source itself before arriving at the gross total income, loss under non-section 10A unit cannot be set off against sec. 10A unit u/s 72 of the Act. As the deduction u/s 10A of the Act has to be included from the total income of the assessee, the reimbursed business loss being set off against such profit and gains of the undertaking and a whole could not arise. Section 10A of the Act being analogous with sec. 10B of the Act, the aforesaid decision of the Hon'ble High Court would equally apply to the case on hand. In this view of the matter and respectfully following the decision of the Hon'ble Karnataka High Court in Yokogawa India Ltd. (341 ITR 385). We uphold the impugned order of the Id CIT(A)

in directing the AO to compute the deduction u/s 10B of the Act in the case on hand without setting off the business losses from non section 10B units We hold and direct accordingly. Consequently, the grounds raised by Revenue are dismissed.

4. In the result, the Revenue's appeal for the asst. year 2003-04 is dismissed.

Order pronounced in the open court on **2nd June, 2017.**

**Sd/-
(VIJAYPAL RAO)
JUDICIAL MEMBER**

**Sd/-
(JASON P BOAZ)
ACCOUNTANT MEMBER**

Bangalore
Dated : 2/6/2017
Vms

Copy to :1. The Assessee
2. The Revenue
3.The CIT concerned.
4.The CIT(A) concerned.
5.DR
6.GF

By order

Asst. Registrar, ITAT, Bangalore.