

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH 'A', CHENNAI

श्री संजय अरोड़ा, लेखा सदस्य एवं श्री जी. पवन कुमार, न्यायिक सदस्य के समक्ष
BEFORE SHRI SANJAY ARORA, ACCOUNTANT MEMBER
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER

आयकर अपील सं./ITA No.41 & 42/Mds/2016
निर्धारण वर्ष / Assessment Year : 2008-09 & 2009-10

Adsorbent Carbons Pvt. Ltd.
C-92, Sipcot Industrial Complex,
Tuticorin – 628 008.
[PAN: AABCV 0223A]

Income Tax Officer,
Ward-I,
Tuticorin.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri R.Vijayaraghavan, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri M.Shiva Srinivas, Jt. CIT

सुनवाई की तारीख/Date of Hearing : 08.12.2016
घोषणा की तारीख/Date of Pronouncement : 06.03.2017

आदेश /O R D E R

Per Sanjay Arora, AM:

This is a set of two Appeals by the Assessee arising out of a common Order by the Commissioner of Income Tax (Appeals)-1, Madurai dated 08.10.2015, dismissing the assessee's appeal contesting its assessment u/s. 143(3) of the Income Tax Act, 1961 ('the Act' hereinafter) for assessment years (AYs) 2008-09 & 2009-10 dated 28.12.2012 and 29.12.2011 respectively.

2. The assessee company, in the business of manufacturing and export activated carbons, through a 100% export oriented unit (EOU), filed its return of

income for the relevant years with the time specified u/s. 139(1) of the Act, claiming deduction u/s. 10B of the Act at ₹ . 10,24,407/- and ₹ . 67,57,158/-, for the two consecutive years respectively. In doing so, the brought forward unabsorbed depreciation and unabsorbed business loss for the earlier years, i.e., AYs 2003-04 to 2006-07, was not adjusted (set off). This constitutes the bone of contention between the parties, with the Revenue claiming the same as not in consonance with the provision of s. 10B as substituted by Finance Act, 2000 w.e.f 01.04.2001, and as further amended by Finance Act, 2001 and Finance Act, 2002. The effect of these amendments, in its view, has been to, notwithstanding its continued placement in Chapter-III of the Act, convert it into a deduction provision. The income of such an Undertaking shall enter the computation process, i.e., for the total income as defined u/s. 2(45) of the Act, and if, upon aggregation under Chapter-VI, adjusting the brought forward losses, any income survives, the same shall, where including any income derived from an eligible undertaking, be deductible u/s. 10B, in accordance with the provisions of the said section. This sums up the Revenue's case, disallowing the claim for deduction u/s. 10-B as no income survived the adjustment (set off) of brought forward unabsorbed depreciation and business loss u/c. VI of the Act, placing reliance on *CIT v. Himatasingike Seide Ltd.* [2006] 286 ITR 255 (Kar), SLP against which stands dismissed by the Apex Court. Aggrieved, the assessee is in appeal.

3. We have heard the parties, and perused the material on record.

Subsequent to the hearing, the ld. counsel for the assessee, Shri R.Vijayaraghavan, brought the decision by the Apex Court in the case of *CIT v. Yokogawa India Ltd. & Others* (in Civil Appeal No. 8498/13 dated 16.12.2016) to our notice. Being by the Hon'ble Apex Court, binding on all the Courts and Tribunals in India, the same was admitted and the Revenue allowed time to respond, if so desired. No response has been received to date. We accordingly

proceed to decide these appeals taking into account the said decision. The same is squarely on the point. The Hon'ble Apex Court, while agreeing that ss. 10A and 10B of the Act are no longer exemption provisions, makes it abundantly clear that the same (deduction) is to be reckoned on a stand alone basis, i.e., *qua* the income of the Undertaking alone, without any reference to the income of any other eligible or non eligible unit of the assessee. And, further, that the stage of deduction there-under shall be while computing the gross total income under Chapter-IV of the Act and not at the stage of computing the total income under Chapter-VI of the Act. The words 'from the total income of the assessee' occurring in s.10B(1) were considered by it as made discordantly, and were accordingly read by it to imply 'the total income of the undertaking', i.e., as used in *first proviso* to s.10B(1). The deduction u/s. 10B(1) shall be worked out accordingly, i.e., prior to setting off the unabsorbed business loss and depreciation of the assessee's eligible undertaking for the assessment year 2001-02 and subsequent assessment years. The AO shall profile these losses separately. We decide accordingly.

4. In the result, the assessee's appeals are allowed.

Order pronounced on March 06, 2017 at Chennai.

Sd/-

(जी. पवन कुमार)

(G. Pavan Kumar)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, March 6th, 2017.

EDN

Sd/-

(संजय अरोड़ा)

(Sanjay Arora)

लेखा सदस्य/Accountant Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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