

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

**BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND SHRI A. K. GARODIA, ACCOUNTANT MEMBER**

ITA No.1505/Bang/2016
Assessment year : 2003-04

The Assistant Commissioner of Income Tax, Circle-5(1)(2), Bengaluru-560011.	Vs.	M/s. Omni Matrix Pvt. Ltd., B-9, Industrial Estate, 6 th Block, Rajajinagar, Bengaluru-560044. PAN : AAACO3130G
APPELLANT		RESPONDENT

Revenue by	:	Smt. H. L. Soumya Achar, JCIT
Assessee by	:	None

Date of hearing	:	21.09.2017
Date of Pronouncement	:	28.09.2017

ORDER

Per Sunil Kumar Yadav, Judicial Member

This appeal is preferred by the Revenue against the order of the CIT(A) *inter alia* on following grounds:

1. *The order of the Commissioner of Income Tax(Appeals) - 12, Bangalore, is opposed to the law and not on the facts and circumstances of the case.*
2. *On the facts and in the circumstances of the case, the CIT(A) erred in directing the Assessing Officer to re-compute deduction u/s.10B without setting off the brought forward unabsorbed depreciation from income of 100% EOU unit. Further the brought forward unabsorbed depreciation of earlier years should be set off against the income non-EOU unit and carry forward of any remaining loss has to be done as per the provisions of section 32 and section 72 of the Income Tax Act, 1961.*

3. *For these and other grounds that may be urged upon, the order of the CIT(A) may be reversed and that assessment order be restored.*
4. *The appellant craves leave to add, alter, amend or delete any other grounds on or before hearing of the appeal.*

2. During the course of hearing, the learned counsel for the assessee has contended that impugned issue is squarely covered by the judgment of the Apex Court in the case of CIT Vs. Yokogawa India Ltd., [2012] 341 ITR 385 (Kar). The CIT(A) has adjudicated the issue following the judgment of jurisdictional High Court in the case of CIT Vs. Yokogawa (supra). Now the judgment of jurisdictional High Court has been approved by the Apex Court. Therefore there is no infirmity in the order of the CIT(A).

3. Having carefully examined the order of the CIT(A), we find no infirmity therein as the issue was adjudicated in terms of the judgment of Apex Court in the case of CIT Vs. Yokogawa (supra) . Accordingly, we confirm the order of the CIT(A).

4. In the result, appeal of the Revenue stands dismissed.

Pronounced in the open court on 28th September, 2017.

Sd/-
(A. K. GARODIA)
Accountant Member

Sd/-
(SUNIL KUMAR YADAV)
Judicial Member

Bangalore.
Dated: 28th September, 2017.
/NShylu/*

Copy to:
1. Appellants 2. Respondent
3. CIT 4. Guard file

By order

Sr. Private Secretary,
ITAT, Bangalore.