

आय अधकरण, "सी+यायपीठ, चेनई
PELLATE TRIBUNAL 'C' BENCH, CHENNAI

श्री ए. मोहन अलंकामणी, लेखा सदय एवं श्री धुवु आर.एल रेडी, यायक सदय के सम
Before Shri A. Mohan Alankamony, Accountant Member &
Shri Duvvuru RL Reddy, Judicial Member

I.T.A. Nos. 1311 and 1312/Mds/2017
Assessment Years: 2010-11 & 2011-12

M/s. MPS Limited,
RR Tower, IV Super A, 16/17,
Thiru Vi Ka Industrial Estate,
Guindy, Chennai 600 032.
[PAN: AAACM2423L]

The Deputy Commissioner of
Income Tax,
Corporate Circle 4(1),
Chennai 600 034.

(Appellant)

(Respondent)

अपीलाथ क ओर से / Appellant by : Shri R. Vijayaraghavan, Advocate
यायथ क ओर से/Respondent by : Shri G.M. Doss, CIT
सुनवाई क ताराख/ Date of hearing : 19.10.2017
घोषणा क ताराख /Date of Pronouncement : 27.10.2017

आदेश /ORDER

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

Both the appeals filed by the same assessee are directed against different orders of the Id. Commissioner of Income Tax 4, Chennai both dated 16.03.2017 for the assessment years 2010-11 and 2011-12 passed under section 263 of Income Tax Act, 1961 [Act in short]. Following common grounds have been raised in both the appeals:

1. *The order of the Principal Commissioner of Income Tax ["PCIT"] is contrary to law, facts and circumstances of the case.*
2. *Jurisdiction*

erred in assuming jurisdiction/ passing order under section 263 of the Income Tax Act, 1961 (the Act).

- 2.2 *The learned PCIT ought to have appreciated the fact that the issue sought to be revised by him, is subject to more than one view and the Assessing Officer has taken one of the possible views and as such assumption of jurisdiction under section 263 of the Act is void ab initio.*
- 2.3 *The learned PCIT erred in assuming jurisdiction to revise the assessment order on the basis of change of opinion.*
- 2.4 *The learned PCIT ought to have appreciated that the issue sought to be revised has already been settled by the Supreme Court and as such the PCIT ought to have dropped the proceedings initiated under Section 263 of the Act.*
- 2.5 *The learned PCIT having directed the AO to pass appropriate order in line with Supreme Court decision without appreciating that the AO has in effect completed the regular assessment by computing the deduction under Section 10A of the Act as per the ratio laid down by Supreme Court.*
- 2.6 *The learned PCIT ought to have appreciated that the assessment order dated 23rd February 2016 is neither erroneous nor prejudicial to the interest of the revenue.*
- 2.7 *The learned PCIT ought to have appreciated the fact that the Assessing officer had passed the order dated 21st January 2016 only after examining the basis of the claim made u/s.10A of the Act and being satisfied that the assessee is rightfully eligible for such claim.*
3. *The Appellant submits that each grounds of appeal are without prejudice to one another.*
4. *The Appellant craves leave to add, alter, amend, substitute and/or modify in any manner whatsoever all or any of the foregoing grounds of appeal at or before the hearing of the appeal.”*

turn of income for the assessment year 2010-11 on 15.10.2010 admitting total income of NIL. The assessee is engaged in the business of printing, publishing and E-business, photo typesetting, Information processing, Digitized data Capture. The return filed by the assessee was selected for scrutiny and notice under section 143(2) of the Act was issued on 19.08.2010 and duly served. Subsequently, notice under section 142(1) of the Act was also issued on 18.01.2011 calling for various details. After considering the details filed by the assessee, the original assessment was completed on 18.03.2014 under section 143(3) r.w.s. 92CA(3) of the Act. Aggrieved, the assessee preferred appeal before DRP, Chennai. After considering various submissions, the DRP passed its order dated 24.12.2014 and gave directions to the Assessing Officer for passing final assessment order after verification of various aspects. After verification of details, as directed by the DRP, the Assessing Officer completed the final assessment under section 143(3) r.w.s. 92CA(3) of the Act on 23.02.2015 by determining total taxable income of the assessee at .1,74,58,260/- after making disallowance/ addition.

3. Without giving recourse to the CBDT Circular dated 16.07.2013 and not considered on the issue of deduction under section 10A of the Act while passing the assessment order in terms of the extant instructions, the Id. PCIT believed that the assessment order was erroneous in so far as it was

Revenue and by assuming jurisdiction under

section 263 of the Act, the assessee was served with notice of hearing. After considering the arguments of the AR, the Id. PCIT has observed as under:

“9. In the present case, it is to be noted that the assessment order passed by the Assessing Officer is an order in which the Officer has not applied his mind at all to the extant instructions. He had not discussed the same anywhere in the assessment order. In fact, a reading of the assessment order shows that the Assessing Officer failed to make any computation of deduction u/s 10A of the Act whatsoever as per the CBDT instructions, which are binding on him. Further, in terms of the Hon’ble Supreme Court decision, he has not applied his mind to the determination of profits of each undertaking. In short, the issue of determination of deduction u/s 10A of the Act as to the profits of each undertaking has not been dealt with in the proper perspective.”

Accordingly, the Id. PCIT has held that the computation of deduction u/s 10A of the Act made in the assessment order dated 23.02.2015, which resulted in loss of Revenue, has to be held as an erroneous one. Hence, he set aside the assessment order and directed the Assessing Officer to pass an appropriate order afresh by keeping in mind the recent decision of the Honble Supreme Court dated 16.12.2016 after giving opportunity of hearing to the assessee.

4. Aggrieved, the assessee is in appeal before the Tribunal. It was the submission of the Id. Counsel for the assessee that the Id. PCIT has not given any findings on what extend the determination of deduction under section 10A of the Act allowed by the Assessing Officer was erroneous and resulted in loss of revenue. After examining the claim made under section

atisfied, the assessee was allowed eligible deduction and computed the income of the assessee and thus, prayed that the order passed under section 263 of the Act should be quashed.

5. On the other hand, the Id. DR strongly supported the order passed by the Id. PCIT. It was the submission that the Id. PCIT has not disputed that the assessee is not eligible for claiming deduction under section 10A of the Act, but, the Assessing Officer has not dealt with the proper perspective of determination of deduction under section 10A of the Act.

6. We have heard both sides perused the materials available on record and gone through the orders of authorities below. By following the decision of Special Bench in the case of ITO v. Sak Soft Ltd. 121 TTJ 865 as well as by excluding the unrealized sales, telecommunication charges and expenditure incurred in foreign currency both in export turnover as well as total turnover, the Assessing Officer gave relief to the assessee under section 10A of the Act. However, the Id. PCIT was of the opinion that the directions given by the CBDT, which is binding on him, the Assessing Officer has not elaborately discussed with regard to the determination of profits of each undertaking while computing the income of the assessee under various heads of income in accordance with the provisions of Chapter IV of the Act by aggregating income in accordance with the provisions of Chapter VI of the Act and to determine the eligible deduction in accordance with the

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r sections 10A, 10B etc. of the Act, while computing the total income of the assessee. Therefore, the Id. PCIT held that the computation of deduction under section 10A of the Act made in the assessment order erroneous and directed the Assessing Officer to pass an appropriate order afresh with reference to the recent judgement of the Honble Supreme Court dated 16.12.2016 in the case of CIT v. Yokogawa India Ltd. (supra). The assessment order passed by the Assessing Officer is very cryptic and no details are brought on record. Hence, we find no reason to interfere with the order passed by the Id. PCIT and sustain the same. Thus, both the appeals filed by the assessee are dismissed.

7. In the result, both the appeals filed by the assessee are dismissed.

Order pronounced on the 27th October, 2017 at Chennai.

Sd/-
(A.MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, 27.10.2017

Vm/-

आदेश क० प्रतिलिपि अर्पण/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. वार्षिकीय प्रमुख/DR & 6. गार्डफ़ाईल/GF.