

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

[Before Shri P.M. Jagtap, AM and Shri S.S. Viswanethra Ravi, JM]

I.T.A. No. 2004/Kol/2014

Assessment Year: 2009-10

M/s. Synergy Renewable Energy Pvt. Ltd.Appellant
C/o. ARSK & ASSOCIATES, Chartered Accountants,
22, R.N. Mukherjee Road, 3rd Floor,
Kolkata - 700001
[PAN : AAUFS3471M]

J.C.I.T., Range 3, Parmar Bldgs.....Respondent
54, G.T. Road,
Asansol - 713304

Appearances by:

Shri V.N. Purohit, FCA & Shri H.V. Bhardwaj, ACA appearing on behalf of the Assessee.
Shri Sallong Yaden, Addl. CIT appearing on behalf of the Revenue.

Date of concluding the hearing : November 09, 2017

Date of pronouncing the order : November 29, 2017

ORDER

Per P.M. Jagtap, AM

This appeal filed by the assessee is directed against the order of Ld. CIT (Appeals) Asansol dated 27.08.2014 and the grievance of the assessee is projected therein by way of the following solitary ground:

“Considering the facts of the case and relevant provisions of the I.T. Act, 1961. The Commissioner of Income Tax (Appeals) Asansol [CIT(A)] has erred in holding that before giving benefit of deduction u/s 10B of the I.T. Act, 1961 (the Act) un-absorbed depreciation brought forward had to be set off from the business income of the year as against assessee’s claim that assessee was eligible for exemption u/s 10B of the Act to the extent of Rs. 2,25,99,048.64 against business income of the year Rs. 2,34,31,833.85 before setting off of un-absorbed depreciation and business loss brought forward from earlier.”

2. The assessee in the present case is a company which is engaged in the business of manufacturing of Solar Photovoltaic Modules etc.

and Bio-mass Energy. The return of income for the year under consideration was filed by it on 24.09.2009 declaring a total income at NIL after claiming deduction under section 10B amounting to Rs. 2,25,99,049/-. During the course of assessment proceedings, it was noticed by the A.O. that there was business loss of Rs. 2,29,24,167/- and unabsorbed depreciation amounting to Rs. 1,15,00,448/- carried forward from the earlier years. In the computation of total income, deduction under section 10B was claimed by the assessee on account of its business income without setting off carried forward business loss and unabsorbed depreciation. According to the A.O., the assessee was entitled to claim deduction under section 10B from its business income only after setting off the carried forward business loss and unabsorbed depreciation. He, therefore, set off the carried forward business loss and unabsorbed depreciation to the extent of Rs. 1,14,37,241/- and Rs. 1,15,00,448/- against the business income of the assessee for the year under consideration and since the business income so arrived at after setting off the carried forward business loss and unabsorbed depreciation was NIL, no deduction under section 10B was allowed by the A.O. to the assessee in the assessment completed under section 143(3) vide order dated 27.12.2011.

3. Against the order passed by the A.O. under section 143(3), an appeal was preferred by the assessee before the Ld. CIT (A) and after considering the submissions made by the assessee as well as the material on record, the Ld. CIT (A) allowed the claim of the assessee that the carried forward business loss should be allowed to be set off against the business income of the assessee only after allowing

deduction under section 10B. He, however, held that the unabsorbed depreciation was liable to be set off against the business income before allowing deduction under section 10B and the said deduction thus was to be allowed on account of business income of the assessee for the year under consideration after adjusting the unabsorbed depreciation. Aggrieved by the order of the Ld. CIT (A), the assessee has preferred this appeal before the Tribunal.

4. We have heard the arguments of both the sides on this issue and also perused the relevant material available on record. It is observed that the issue involved in this appeal of the assessee is squarely covered by the decision of Hon'ble Supreme Court in the case of CIT vs Yokogawa India Ltd. 291 CTR 1 wherein one of the questions referred to the Hon'ble Supreme Court for consideration was whether brought forward business losses and unabsorbed depreciation of 10A units or non 10A units can be set off against the profits of another 10A units of the assessee. This question was answered by the Hon'ble Supreme Court in favour of the assessee by holding that though Section 10A, as amended, is a provision for deduction, the stage of deduction would be while computing the gross total income of the eligible undertaking under Chapter IV of the Act and not at the stage of computation of the total income under Chapter VI. It was held by the Hon'ble Supreme Court that the reading of relevant provisions of Section 10A makes it clear that the deduction contemplated therein is qua the eligible undertaking of the assessee standing on its own and without reference to the other eligible or non-eligible units or undertakings of the assessee. It was held that the

benefit of deduction under section 10A thus is given by the Act to the individual undertaking and resultantly flows to the assessee. This decision rendered in the case of Yokogawa India Ltd. (supra) has been subsequently followed by the Hon'ble Supreme Court in the case of CIT vs J.P. Morgan India Pvt. Ltd. 297 CTR 16 to hold that while computing deduction under section 10A, brought forward unabsorbed depreciation and loss are not to be set off against the current year profit of the eligible unit. Since the provisions of section 10A are analogous with the provisions of Section 10B, we respectfully follow the decision of the Hon'ble Supreme Court in the case of Yokogawa India Ltd. (supra) and J.P. Morgan India Ltd. (supra) and direct the A.O. to allow deduction under section 10B to the assessee as computed on the profits of the eligible unit for the year under consideration without setting off the brought forward unabsorbed depreciation.

5. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 29th November, 2017.

Sd/-

(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

Sd/-

(P.M. Jagtap)
ACCOUNTANT MEMBER

Dated: 29/11/2017

Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. Synergy Renewable Energy Pvt. Ltd., C/o. ARSK & ASSOCIATES, Chartered Accountants, 22, R.N. Mukherjee Road, 3rd Floor, Kolkata – 01.

2. JCIT, Range 3, Parmar Bldgs., 54, G.T. Road, Asansol – 713304.

3. The CIT(A)

4. The CIT

5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.
ITAT, Kolkata