

## IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH 'D' KOLKATA

[Before Hon'ble Shri P.M.Jagtap, AM &amp; Shri S.S.Viswanethra Ravi, JM ]

**ITA No.1948/Kol/2016**  
**Assessment Year : 2007-08**A.C.I.T., Circle-2(2),  
Kolkata

-versus-

M/s R.S.Software (India ) Ltd  
Kolkata

(Appellant)

(PAN: AABCR 7813 G)

(Respondent)

For the Appellant: Shri Arindam Bhattacharjee, Addl. CIT

For the Respondent: Shri Arvind Agrwal, Advocete

Date of Hearing : 12.02.2018.

Date of Pronouncement : 04.04.2018.

**ORDER****Per S.S.Viswanethra Ravi, JM**

This is an appeal by the Revenue against the order dated 29.07.2016 passed by C.I.T-(A)-18, Kolkata for A.Y.2007-08 wherein we quashed the order of the AO passed u/s 154 of the Income Tax Act, 1961 (Act).

2. The only issue is to be decided as to whether the CIT(A) is justified in quashing the rectification order passed by the AO in the facts and circumstances of the case.

3. After hearing both the parties, we find that the assessee claimed deduction u/s 10B of the Act before setting off brought forward unabsorbed depreciation in its computation for the year under consideration. The said claim was processed u/s 143(1) of the Act. Thereafter the AO was of the opinion that the claim of deduction u/s 10B of the Act is available only after setting off brought forward unabsorbed depreciation and accordingly passed a rectification order denying the benefit of claim as computed by the assessee vide order dated 28.03.2013. The CIT(A) by placing reliance in the case of CIT vs Yokogawa India ltd. 246 CTR 226 (Kar) held that the deduction u/s 10B of the Act is available before setting off brought forward un

absorbed depreciation. We find that as rightly pointed out by the Id. AR before us and the order of CIT(A) in holding that deduction u/s 10B of the Act is to be allowed before setting up of brought forward unabsorbed depreciation. The relevant portion of CIT(A) is herein reproduced below :-

*"In this case assessee had claimed exemption u/s 10B which has initially allowed by processing the return u/s 1-13 (J). However subsequently notice u/s 154 was issued and rectification was made vide order dated 28. 03. 2013. In this order it was held that deduction u/s 10B would be given after setting off of brought forward business loss and / or unabsorbed depreciation. Assessee is in appeal against this order and in appeal proceedings it has submitted that rectification u/s 154 cannot be made on a debatable issue. Assessee has relied on a number of case laws in this regard. These are not being repeated as the contentions of the assessee are true. Assessee has submitted a list of following case laws in which court's ITAT has held that deduction u/s 10A/10B is to be allowed before setting off of brought forward losses and j or unabsorbed depreciation.*

*1. ITAT Calcutta 'B' Bench in the case O/ Zenith Exports Ltd. -vs- ACIT order dated 29. 12.2015 under ITA No. 05-06/Ko1/2011*

*2. CIT -vs- Yokogawa India Ltd. reported in 246 CTR 226 [Karnataka]*

*3. [Patspin India Ltd. -vs- CIT reported in 132 TTJ 227 [TAT, Cochin] where the Hon'ble Bench has considered the decision of the judgement of the Hon'ble Chennai ITAT in the case of Ford Business Services Center (P) Ltd. -vs- ACIT reported in 114 TTJ 881[Chennai ] and judgement O/ the Hon'ble Mumbai Tribunal in the case of Enercon Wind Farms [Krishna] Ltd. 21 SOT 29.*

*4 CIT -v s- Black & Veatch Consulting Pvt. Ltd. [Bombay High Court] vide order dated 09.0-1.2012.*

*5. Scientific Atlanta -vs- ACIT, ITAT Special Bench, Chennai reported in 129 TT J 173.*

*I have carefully considered the facts O/ the case and the submissions of the assessee. In the judgments / decisions mentioned above, Court / ITAT have supported assessee's contentions. Hence it is clear that the issue involved is a debatable issue as more than one opinion is possible on this issue. Under the circumstances A. O. was not justified in passing rectification order u/s 154 on this issue. Hence rectification u/s 154 is quashed. "*

4. Therefore in view of the above we find no infirmity in the order of CIT(A). Accordingly the grounds raised by the revenue are dismissed.

5. In the result the appeal of the revenue is dismissed.

**Order pronounced in the open Court on 04.04.2018.**

Sd/-

[P.M.Jagtap]  
Accountant Member

Sd/-

[ S.S.Viswanethra Ravi ]  
Judicial Member

Dated : 04.04.2018.

[RG Sr.PS]

Copy of the order forwarded to:

- 1.M/s R.S.Software (India) Ltd., FMC Fortuna, Flat No.A/2, 1<sup>st</sup> Floor, Kolkata-700020.
2. A.C.I.T., Circle-2 (2), Kolkata.
3. C.I.T.(A)-18, Kolkata
4. C.I.T.-1, Kolkata..
5. CIT(DR), Kolkata Benches, Kolkata.

True Copy

By order,

Senior Private Secretary  
Head of Office/D.D.O., ITAT, Kolkata Benches