

आयकर अपीलीय अधिकरण पुणे न्यायपीठ “एक सदस्य” पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
SMC BENCH, PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / ITA No.2537/PUN/2016
निर्धारण वर्ष / Assessment Year : 2010-11

Trizetto Services India Pvt. Ltd.,
Office No.601 & 602, 6th Floor,
D-Building, Weikfield,
IT-CITI Info Park,
Nagar Road, Pune – 411 014
PAN : AABCT8862F

.... अपीलार्थी/Appellant

Vs.

DCIT, Circle-7,
Pune

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri K. Venkatachalam &
Shri Nachikat Barve
प्रत्यर्थी की ओर से / Respondent by : Dr. Vivek Aggarwal

सुनवाई की तारीख / Date of Hearing : 12.03.2018	घोषणा की तारीख / Date of Pronouncement: 28.03.2018
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आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

This appeal is filed by the assessee against the order of CIT(A)-5, Pune dated 29-07-2016 for the Assessment Year 2010-11.

2. Grounds raised by the assessee read as under :

“1. Ground 1: Set off of brought forward loss before considering deduction under section 10A of the Act

On the facts and in the circumstances of the case, and in law, the learned CIT(A) has erred in upholding the action of the Assessing Officer ('AO') in setting off the brought forward loss of INR 36,77,529 against income under the head 'profits and gains from business and profession' of the Appellant before grant of deduction under section 10A of the Income-tax Act, 1961 ('the Act').

Prayer:

The Appellant prays to direct the AO to first grant deduction under Section 10A against the income under the head 'profits and gains from business and profession' and set-off the brought forward loss of INR 36,77,529 against the remaining business income.

2. Ground 2: Set off of brought forward unabsorbed depreciation

On the facts and in the circumstances of the case, and in law, learned CIT(A) has erred in upholding the action of the AO in stating that the Appellant cannot set off brought forward unabsorbed depreciation against income from other sources of INR 36,08,764 as per the provisions of section 32(2) r.w.s. 71 of the Act.

Prayer:

The appellant prays to direct the AO to allow the set off the brought forward unabsorbed depreciation against income from other sources of INR 36,08,764.

3. Ground 3: Carry forward of business loss and unabsorbed depreciation

On the facts and in circumstances of the case, and in law, learned CIT (A) has erred in upholding the action of the AO in stating that business loss of INR 18,77,382 and unabsorbed depreciation of INR 31,91,446 is not available for carry forward and set off in future years.

Prayer:

The Appellant prays to direct the AO to allow carry forward of business loss of INR 18,77,382 and unabsorbed depreciation of INR 31,91,446 for set off against taxable income in future years

4. Ground No. 4: MAT credit under section 115JAA

On the facts and in circumstances of the case, and in law, learned CIT (A) has erred in stating that the Appellant cannot set off brought forward unabsorbed depreciation against income from other sources, and as a result the appellant is not eligible to claim the MAT Credit under Section 115JAA of INR 1,54,13,812 for AY 2010-11.

Prayer:

The appellant prays to direct the AO to allow carry forward of MAT credit of INR 1,54,13,812 for AY 2010-11 for utilization against tax payable in future years.

5. The Appellant craves leave to add, to alter, to vary, to omit, to substitute, to amend or to withdraw any or all of the above grounds of appeal, at any time before or at, the time of hearing of the appeal, so as to enable the Hon'ble Tribunal to decide this appeal according to law."

3. Briefly stated relevant facts are that the assessee is a company engaged in the Software Development and filed return of income declaring total income of Rs.73,03,916/-. Assessee made a claim of deduction

u/s.10A of the Act before setting off of the brought forward losses of Rs.36,77,529/-. Rejecting the same, AO changed the manner of computation of income and allowed the claim of deduction u/s.10A of the Act after the said losses are set off. In the process, AO allowed the lesser deduction u/s.10A of the Act. Eventually, AO determined the total income at Rs.9,06,96,157/- u/s.115JB of the Act. Under normal provisions, the total income is determined at Rs.36,08,764/-. In the assessment, in support of his decision, AO relied on the judgment of Karnataka High Court in the case of Himatasingike Seide Ltd. Vs. CIT 286 ITR 255 (Kar.) which is relevant for the proposition that brought forward depreciation has to be adjusted against the eligible profits before computing the allowable deduction. Further, AO is of the opinion that any brought forward unabsorbed depreciation cannot be set off against the income from other sources as per section 32(2) r.w.c.71 of the Act. Contents of Para 4 of the AO are relevant in this regard. Further, AO denied the benefit of carry forward and set off of unabsorbed depreciation and business losses against the income of the subsequent years. Assessee is also aggrieved with the decision of the AO relating to granting MAT credit too.

4. During the First Appellate Proceedings, the CIT(A) partly allowed the appeal of the assessee. CIT(A) approved the decisions of the AO relating to the core issues narrated above and raised in the above grounds. CIT(A) approved the manner of computation of allowable deduction u/s.10A of the Act as done by the AO. Further, regarding the set off of the brought forward unabsorbed depreciation against the income from other source, the CIT(A) upheld the AO's view who stated that assessee cannot set off the brought forward unabsorbed depreciation against the income from other sources of Rs.36,08,764/-. In this regard, it is the prayer of the assessee before us that the AO need to be directed to allow the set off of the brought

forward unabsorbed business losses against income from other sources amounting to Rs.36,08,764/-. Further, assessee is aggrieved against the direction of the CIT(A) in upholding the AO's action who stated that the business losses of Rs.18,77,382/- and unabsorbed depreciation of Rs.31,91,446/- is not available to carry forward the set off in future years. In this regard, the assessee seeks direction to the AO to allow carry forward of the said business losses and unabsorbed depreciation for set off in future years. Assessee also desires grant of the claim of MAT credit u/s.115JAA of the Act to the extent of Rs.1,54,13,812/- for A.Y. 2010-11.

5. Before us, Ld. Counsel for the assessee brought our attention to the grounds and submitted that Ground Nos. 1, 2 and 3 are linked and the same need to be decided in the light of the ratio laid down by the Apex Court's judgment in the case of CIT Vs. Yokogawa India Ltd. 391 ITR 274 (SC). Reading out the relevant portions from the said judgment, Ld. Counsel for the assessee submitted that the said judgment has brought out finality on the contentions of issues relating to the claim of deduction u/s.10A of the Act and the stage of computation of the deduction if the same is done after the set off of the brought forward losses or before such set off. Referring to the amendment brought in by the Finance Act, 2000 w.e.f.,01-04-2001, Ld. Counsel for the assessee submitted that the Apex Court held that the provisions of section 10A of the Act constitute deduction provisions and stage of computation of allowable deduction u/s.10A of the Act would be while computing the gross total income of eligible undertaking under Chapter IV of the Act and not at the stage of computation of total income under the Chapter VI of the Act. In other words, the deduction u/s.10A of the Act should be granted first and the set off of the losses will be allowed against the balance of total income, if any, left after the claim of said deduction. As per the Ld. Counsel for the

assessee, the Ground No.1 raised by the assessee stands covered in his favour by the said judgment of Apex Court (supra).

6. Per Contra, on the said issue, Ld. DR for the Revenue relied heavily on the orders of the AO and the CIT(A) and attempted to distinguish the Apex Court judgment stating that the said judgment is delivered on different facts, unlike in the case of the assessee which constitutes solitary undertaking.

7. During the rebuttal time, Ld. Counsel for the assessee submitted that if Ground No.1 is allowed in favour of the assessee in view of the said Apex Court judgment, the adjudication of Ground Nos. 2 and 3 relating to set off and carry forward of business losses and unabsorbed depreciation against the income from other sources, becomes consequential. The fact that the CIT(A) did not adjudicate the same on the ground of infructuousness as mentioned in Para 7 of the order of CIT(A) was also brought to our notice.

8. We heard both the parties and perused the orders of the Revenue as well as the Apex Court judgment in the case of CIT Vs. Yokogawa India Private Ltd. (Supra). It is a settled legal proposition on the issue raised in Ground No.1, i.e. set off of brought forward losses before considering deduction u/s.10A of the Act. The legal proposition laid down by the Hon'ble Apex Court (supra) reads as under :

“Conclusion : “After amendment of section 10A by Finance Act 2000 with effect from 1-4-2001, said section has become a provision for deduction but stage of deduction would be while computing gross total income of eligible undertaking under Chapter IV of Act and not at stage of computation of total income under Chapter VI of Act.”

The said Apex Court judgment is categorical in stating that the deduction u/s.10A should be first computed and allowed before setting off brought forward losses. The stage of granting the said deduction is

categorically specified and the same is to be allowed at the stage while computing the gross total income of eligible undertaking under Chapter IV of the Act and not at the stage of computation of total income under Chapter VI of the Act. Considering the binding nature of the Apex Court judgment, we are of the view that Ground No.1 in the appeal is required to be decided in favour of the assessee. Accordingly, Ground No.1 is allowed.

9. The issue raised in Ground Nos.2 and 3 relates to set off of the brought forward unabsorbed depreciation against the income from other sources and carry forward of the same and the business losses to the subsequent years. In principle, allowing the claim of unabsorbed depreciation and business losses against the current year's income of the assessee and allowing the carry forward of the unabsorbed business losses and unabsorbed depreciation are permissible in law. The AO is directed to grant the same as per the law. Accordingly, Ground Nos. 2 and 3 raised by the assessee are allowed as indicated above.

10. Ground No.4 relates to the MAT credit u/s.115JAA of the Act. Ground mentions that the CIT(A) erred in stating that the assessee cannot set off any brought forward unabsorbed depreciation against income from other sources and as a result, assessee is not eligible to claim MAT credit u/s.115JAA of the Act.

11. In this regard, we perused the order of the AO and find that there is no categorical finding on this issue in the assessment order. Further, on perusal of the First Appellate Authority order, we find the contents of Para No.9 is relevant and relevant lines read as under :

“9. Regarding the plea of MAT credit of Rs.1,42,98,704/- the AO is directed to verify the claim of the Appellant and allow the same, if it is as per the provisions of the Act. For statistical purpose this ground is treated as allowed.”

Considering the above stated position, we are of the opinion that the Ground No.4 raised by the assessee is premature. As such, nothing is brought to our notice that the claim of the assessee was rejected on this issue in the verification proceedings granted by the CIT(A).

12. After hearing both the sides, we find the direction given by the CIT(A) is fair and reasonable and it does not call for any interference. AO is directed to grant MAT credit as per law. Therefore, the Ground No.4 raised by the assessee is dismissed.

13. In the result, appeal of the assessee is partly allowed.

Order pronounced on this 28th day of March, 2018.

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(D.KARUNAKARA RAO)
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे / Pune; दिनांक Dated : 28th March, 2018.
Satisb

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-5, Pune
4. आयकर आयुक्त / The CIT-5, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "एक सदस्य" / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune