

आयकर अपीलीय अधिकरण, पुणे न्यायपीठ “बी” पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “B”, PUNE

श्री डी. करुणाकरा राव , लेखा सदस्य
एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष

BEFORE SHRI D.KARUNAKARA RAO, AM
AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.1545/PUN/2016
निर्धारण वर्ष / Assessment Year : 2008-09

ITO, Ward-6(1),
Pune

.... अपीलार्थी/ Appellant

Vs.

Safe Pro Pack Ltd.,
Gat No.1093, Plot No.3,
At Post Shirol,li,
Pune 410 505
PAN : AAICS2466B

.... प्रत्यर्थी / Respondent

Assessee by : Shri C.H. Naniwadekar
Revenue by : Shri Sanjeev Ghei

सुनवाई की तारीख / Date of Hearing : 04.06.2018	घोषणा की तारीख / Date of Pronouncement: 06.06.2018
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आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

This is the appeal filed by the Revenue against the order of CIT(A)-
4, Pune, dated 26-04-2016 for the Assessment Year 2008-09.

2. Grounds raised by the Revenue are as under :

“1. Whether on the facts and in the circumstances of the case, the Ld.CIT(A) is correct in directing the AO to allow deduction u/s.10B of the Act for an amount of Rs.29,31,471/- from total income before setting off brought forward business loss and unabsorbed depreciation and which is in contravention of CBDT Instruction F.No.279/Misc/M-116/2012-ITJ, dated 16-07-2016, which clearly states that brought forward losses are first required to be set off against the income.

2. For these and such other reasons as may be urged at the time of hearing, the order of the CIT(A) may be vacated and that of the Assessing Officer be restored.

3. The appellant craves to leave to add, amend, alter or delete any of the above grounds of appeal during the course of appellate proceedings before the Hon'ble Tribunal.”

3. Briefly stated relevant facts of the case include that the assessee is a company and is in the business of manufacturing of anticorrosive packaging products which have applications in engineering industries. Assessee filed the return of income on 18-09-2008 declaring total income at Nil. During the year under consideration assessee earned income from export sales amounting to Rs.4,30,56,127/-. Assessee claimed exemption u/s.10B of the Act at Rs.34,47,502/- and had paid MAT u/s.115JB of the Act. At the end of the assessment proceedings u/s.143(3) of the Act, the assessed income is determined at Rs.3,33,513/- as against the Nil income returned by the assessee. Contents of Para No.4 of the assessment order are relevant. For the sake of completeness, the same is reproduced here as under :

“04. Submission of the assessee has been considered. It is an undisputed fact that assessee has incurred losses of the stated amount in A.Y. 2006-07 and has carried forward the same without setting it off against profits of eligible business. It is not in dispute that exemption u/s.10B is to be allowed from the total income. The total income is determined after into the provisions of section 28 to 44D of the Act which includes section 32(2) impliedly, the effect to section 32(2) has to be necessarily given before arriving at net profit and gains from business or profession. Further for computing the total income the effect to provisions of section 72 has to be given and what remains finally is a total income of eligible business which will be allowed as exempt u/s.10B of the Act. Hence, assessee’s contention that the loss deserve to be carried forward is misplaced. Accordingly, the same is rejected. In support of this, reliance is placed on the decision of Hon’ble Karnataka High Court in the case of Himatasingika Seide Ltd. (286 ITR 255) and decision of Hon’ble ITAT Delhi Bench ‘C’ in case of Globle Vantedge Pvt. Ltd. Vs. DCIT 37 SOT 1. In view of this income of the assessee eligible from exemption u/s.10B of the Act is computed as under :

*Income from business or profession for A.Y. 2008-09 Rs.29,31,471/-
Less : Brought Forward unabsorbed & business loss Rs. 25,97,956/-*

Net total income eligible for exemption u/s.10B Rs.3,33,513/-

Loss or unabsorbed depreciation allowed to be carried forward

NIL

Thus, the AO allowed the exemption u/s.10B amounting to Rs.3,33,513/- against the claim of Rs.34,47,502/-.

4. In the First Appellate proceedings, the CIT(A) decided the issue in favour of the assessee relying on the decision of Pune Bench of the Tribunal in the case of Vishay Components India Pvt. Ltd. Vs. ACIT – ITA No.561/PN/2014, dated 08-10-2015. The relevant lines from Para No.6 of the order of CIT(A) are extracted here as under :

“6.

.....

*The Hon’ble ITAT, Pune in the case of Vishay Components India (P) Ltd. (supra) has dealt the same issue, which is the centre of dispute in the instant case, at length. In Vishay Components India (P) Ltd. (supra), the ratio of Hon’ble Karnataka High Court in the case of Himatasingike Seide Ltd. (supra) has also been distinguished. Hon’ble ITAT, Pune has also dealt the CBDT Circular dated 16-07-2013 and held that deduction u/s.10B of the Act is to be computed in the hands of the assessee before adjusting brought forward unabsorbed depreciation/losses. Hon’ble ITAT, Pune, in holding so, relied upon the decision of the Hon’ble Bombay High Court in the case of CIT Vs. Black & Veatch Consulting (P) Ltd. (supra). **Hence, in view of the decision of jurisdictional High Court in case of CIT Vs. Black & Veatch Consulting (P) Ltd. (supra) the appellant is entitled to carry forward its business loss and unabsorbed depreciation and therefore the AO is directed to allow deduction u/s.10B of the Act for an amount of Rs.29,31,471/-. With this ground No.1 and 2 stands adjudicated.**”*

5. Aggrieved with the order of CIT(A) the Revenue is in appeal before us with the grounds extracted above.

6. At the outset, mentioning that it is a covered issue, Ld. Counsel for the assessee submitted that the appeal is filed with the issue relating to the calculation of deduction u/s.10B of the Act qua the proper stage of granting set off of losses/unabsorbed depreciation in the computation for quantifying the allowable deduction u/s.10B of the Act. He submitted that this is a case where the AO reduced the said unabsorbed depreciation and loss from the total income of the assessee before quantifying the allowable deduction u/s.10B of the Act. AO

relied on the judgment of Karnataka High Court in the case of Himatasingike Seide Ltd. reported in 286 ITR 255. In the process, he ignored the fact that the said judgment applies to the period before the provisions of the Act are amended. Further, Ld. Counsel brought to our notice that the CIT(A) granted relief to the assessee relying on judgment of jurisdictional High Court in the case of CIT Vs. Black & Veatch Consulting (P) Ltd., dated 09-04-2012. Further, in support of his case, Ld. Counsel for the assessee relied on the judgment of Hon'ble Supreme Court in the case of CIT & Anr. Vs. Yokogawa India Ltd. reported in 291 CR 0001 (SC) and filed the copy of the order.

7. Ld. DR for the Revenue relied on the order of the AO dutifully.

8. After hearing both the sides on the limited issue of quantifying the allowable deduction u/s.10B of the Act and perused the orders of the Revenue and the decisions relied on by the Ld. Counsel for the assessee before us. On going through the facts of the case, we are of the view that the issue now stands decided in favour of the assessee by the decisions of the Tribunal as well as the binding judgment of Hon'ble Apex Court in the case of CIT & Anr. Vs. Yokogawa India Ltd. (supra). For the sake of completeness of this order, we proceed to extract the finding given by the Hon'ble Apex Court on this issue as follows :

“17. If the specific provisions of the Act provide [first proviso to Sections 10A(1); 10A (IA) and 10A (4)] that the unit that is contemplated for grant of benefit of deduction is the eligible undertaking and that is also how the contemporaneous Circular of the department (No.794 dated 09.08.2000) understood the situation, it is only logical and natural that the stage of deduction of the profits and gains of the business of an eligible undertaking has to be made independently and, therefore, immediately after the stage of determination of its profits and gains. At that stage the aggregate of the incomes under other heads and the provisions for set off and carry forward contained in Sections 70, 72 and 74 of the Act would be premature for application. The deductions under Section 10A therefore would be prior to the commencement of the exercise to be undertaken under Chapter VI of the Act for arriving at the total income

of the assessee from the gross total income. The somewhat discordant use of the expression "total income of the assessee" in Section 10A has already been dealt with earlier and in the overall scenario unfolded by the provisions of Section 10A the aforesaid discord can be reconciled by understanding the expression "total income of the assessee". In section 10A as 'total income of the undertaking'.

18. For the aforesaid reasons we answer the appeals and the questions arising therein, as formulated at the outset of this order, 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. All the appeals shall stand disposed of accordingly."

8.1 Further, we find the Pune Bench of the Tribunal in the case of *Trizetto Services India Pvt. Ltd. Vs. DCIT - ITA No.2537/PUN/2016*, dated 28-03-2018 for the A.Y. 2010-11 has dealt with the similar issue and held the same in favour of the assessee. While doing so, the Tribunal relied on the judgment of Hon'ble Supreme Court in the case of *CIT & Anr. Vs. Yokogawa India Ltd. (supra)*. We therefore, proceed to extract the finding given by the Tribunal and the same reads as under :

"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."

Considering the above settled legal proposition on this issue, we are of the opinion that the order of CIT(A) is fair and reasonable and it does not call for any interference. Accordingly, the grounds raised by the Revenue are dismissed.

9. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on this 06th day of June, 2018.

Sd/-

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य / JUDICIAL MEMBER

(D. KARUNAKARA RAO)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 06th June, 2018
सतीश

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. The CIT(A)-4, Pune
4. The Pr.CIT-3, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B Bench" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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