

**आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'डी' अहमदाबाद ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“ D ” BENCH, AHMEDABAD**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**  
**And SHRI MAHAVIR PRASAD, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 2336/Ahd/2014  
(निर्धारण वर्ष / Assessment Year : 2006-07)

Decisioncraft Analytics Ltd. (Now merged with Audience Measurement Private Limited), 601, Shapath-II Opp. Rajpath Club Ahmedabad – 380 015.	<b>बनाम/ Vs.</b>	Dy. Commissioner of Income Tax (OSD), Range – I, Ahmedabad.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCC 5157 E</b>		
(अपीलार्थी / <b>Appellant</b> )	..	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थी ओर से / <b>Appellant by</b> :	Shri Krutesh Patel, AR
प्रत्यर्थी की ओर से/ <b>Respondent by</b> :	Shri V. K. Singh, Sr. D.R.

सुनवाई की तारीख / <b>Date of Hearing</b>	09/03/2018
घोषणा की तारीख/ <b>Date of Pronouncement</b>	31/05/2018

**आदेश / O R D E R**

**PER MAHAVIR PRASAD, JUDICIAL MEMBER :**

This appeal of the assessee relating to assessment year 2006-07 is directed against the order of Learned Commissioner of Income Tax (Appeals)-6, Ahmedabad dated 20.06.2014 which is arising out of order u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to

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as, 'Act') dated 25.10.2011 framed by DCIT, Cir-1, A'bad, vide appeal no.CIT(A)-VI DCIT Cir-1/98/11-12.

2. Assessee has taken following Grounds of appeal:

- i. *The ld. CIT(A) erred in law by upholding reopening of assessment by assessing officer.*
- ii. *The ld. CIT(A) erred in law by reducing exemption u/s.10A.*

3. The relevant facts as culled out from the materials on record are as under:-

The assessee-company was filed return of income declaring total loss of Rs.(-)11,13,240/- on 29/12/2006. The assessment u/s.143(3) of the Act was finalized on 26/12/2008 determining total income of Rs.(-) 8,18,387/-.

3.1 Thereafter, the case was taken up for re-assessment after duly recording the reasons for reopening. The approval for initiation of proceedings u/s.147 of the Act was received vide CIT, Ahmedabad-I, Ahmedabad's letter dtd.21/03/2011. The reasons for re-opening are reproduced hereunder:

*"The assessee company engaged in the business of Software Development, had claimed and was allowed Rs.75,51,735/- deductions u/s.10A of the I.T. Act, 1961.*

*It is seen that as per computation statement, the assessee was having income of Rs.64,19,277/- (Rs.70,59,819/- + 23,90,332/- (-) 19,222/- (-) 30,11,652/-) before allowing deduction u/s10A.*

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*Expenses to the tune of Rs.2,94,849/- were disallowed in Assessment Order. Thus the assessee's total income was Rs.67,14,126/-.*

*As seen from the Assessment Order Dated 22-10-2008 Assessment Year 2005-06, the assessee was assessed at loss of Rs.1,08,78,359/- (Rs.1,11,27,359/- (-) Rs.2,49,000/- Capital Loss) which was available for adjustment against profit of subsequent year.*

*Therefore, the said loss was required to be adjusted against the income of Rs.67,14,126/- for Assessment Year 2006-07 and consequently the deduction u/s.10A was not available owing absence of income.*

*The net effect is that the assessee is entitled to carry forward loss of Rs.41,64,233/- (Assessment Year 2005-06) and Nil Assessment Year 2006-07 as on completion of assessment for Assessment Year 2006-07.*

*This has thus resulted in excessive allowance of loss Rs.8,18,387/- for Assessment Year 2006-07 and excess carry forward of loss of Rs.67,14,126/- of Assessment Year 2005-06.*

*The same constitutes escapement of income chargeable tax as per provisions of Explanation - 1 to section 147 of the Act.*

*In light of above, I am of the view that this is a fit case 'income escaping assessment under sec.147 of the I. T. Act.'*

3. *Therefore, a notice u/s.148 of the Act was issued on 24/03/2011 and served on the assessee by RPAD. In response to notice, the assessee was not filed the income within thirty days from the receipts of the notice u/s.148 of the Act. However, the assessee has filed its original return of income on 12/09/2011 in response to notice u/s.148 of the Act. Accordingly, vide letter dtd.14/09/2011, reasons recorded were supplied to the assessee and the assessee was requested to furnish the comments in respect of deduction u/s.10A is not allowed as the same not available owing to absence of income after setting off the carry forward*

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loss against the income of A.Y.2006-07. Thereafter, another letter issued on 23/09/2011 requesting to submit its reply.

*It is pertinent to note here that the assessee has not raised any objection against reasons recorded for reopening.*

*Further, notice u/s.143(2) r.w.s.129 of the Act was issued on 19/10/2011 along with show-cause notice in which the assessee was show caused as to why the deduction u/s.10A is not allowed as the same not available owing to absence of income after setting off the carry forward loss against the income of A.Y.2006-07. In response, the assessee was submitted its submission on 22/ 0/2011.*

*4. It is seen that as per computation statement, the assessee was having income of Rs.64,19,277/- (Rs.70,59,819/- + 23,90, 332/- (-)19,222/- (-) 30,11,652/-) before allowing deduction u/s.10A.*

*Expenses to the tune of Rs.2,94,849/- were disallowed in the Assessment Order. Thus the assessee's total income was Rs.67,14,126/-.*

*As seen from the Assessment Order Dated 22-10-2008 for Assessment Year 2005-06, the assessee was assessed at loss of Rs.1,08,78, 359/- (Rs.1,11,27,359/- (-) Rs.2,49,000/- Capital Loss) which was available for adjustment against profit of subsequent year.*

*Therefore, the said loss was required to be adjusted against the income of Rs.67,14,126/- for Assessment Year 2006-07 and consequently the deduction u/s.10A was not available owing to absence of income.*

*The net effect is that the assessee is entitled to carry forward loss of Rs.41,64,233/- (Assessment Year 2005-06) and Nil for Assessment Year 2006-07 as on completion of assessment for Assessment Year 2006-07.*

*In view of the above, the assessee was show caused as to why the deduction u/s.10A of the Act is not allowed as the same not available*

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owing to absence of income after setting off the carry forward loss against the income of A.Y.2006-07.

In response, the assessee was submitted its submission on 22/10/2011 which is reproduced as under:-

“1. The Company has filed its return of income for Asset Year 2006-07, after claiming exemption u/s.10A for Rs.75,51,735/-. This return was selected for regular assessment and order passed u/s.143(3) determined total income as a loss of Rs.818,387.

However, after your notice, we realized that we have claimed deduction u/s.10A by mistake which was erroneously accepted by Department. We have carried forward loss of Rs.111,27,359/- for Assessment year 2005-06, which was available for set off current year income.

Therefore, we do not have any objection for disallows deduction u/s.10A. We further request you that kindly allows off of the loss of Assessment Year 2005-06. We are enclosed revised statement of total income.

*Statement of Total income*

<i>Particulars</i>	<i>Amount</i>
<i>Income under head Business and</i>	<i>64192</i>
<i>Add: Disallowance made under assessment u/s.143(3)</i>	<i>294,849</i>
<i>Total Income under Business and</i>	<i>67,14,</i>
<i>Less : Business loss/unab dep set off</i>	<i>(67,14,</i>
<i>Total income under PGBP</i>	<i>Nil</i>
<i>Income from other sources</i>	<i>19222</i>
<i>Less: unabsorbed Depreciation set Off</i>	<i>(19222</i>
<i>Total income</i>	<i>Nil</i>

*Note*

*The Assessee is entitled for carry forward of business loss and unabsorbed depreciation of Rs.41,45,011/- and Capital Loss of Rs.249,000/-.”*

*The contentions of the assessee-company have been considered. The assessee is accepted its mistake and no objection for disallowance u/s.10A of the Act.*

*The deduction u/s.10A of the Act cannot give only from the total income computed in accordance with the provisions of the Act including the provisions relating to set off of carried forward losses. The method of computation adopted by the Assessee is neither in accordance with the provisions of the Act nor in consonance with the ratio of the decisions of various High Courts. As per the settled position of law, all the brought forward losses and depreciation are first required to be set off against the business profits of the current year before computing any deduction/exemption under the Act. For the year under consideration, deduction under section 10A of the Act was allowable only to the extent of 90 per cent of newly established undertaking and before claiming any exemption or deduction, the brought forward losses and depreciation are reduced from the gross business profits and only the net profits so arrived are considered for computing the deduction under the relevant provisions.*

*Further, reliance in this regard is placed on the decision of Sword Global (I) Pvt. Ltd. 122 ITD 103(Chennai).*

*In view of the above discussion, it is concluded that the brought forward loss for A.Y. 2005-06 is adjusted against the income of Rs.67,14,126/- for Assessment Year 2006-07 and consequently the deduction u/s.10A of the Act is not available owing to absence of income. Therefore, the assessee is not eligible for deduction u/s.10A of the Act.”*

4. Thereafter, assessee preferred first statutory appeal before the Id. CIT(A) who dismissed the appeal of the appellant without any success.
  
5. Now appeal is before us.

6. We have gone through the relevant record and impugned order. So far as Ground No.1, pertaining to reopening of assessment is concerned. In this case, assessment order u/s.143(3) was passed on 26-12-2008. Notice u/s.148 was issued on 24-03-2011, i.e. within 4 years from the end of the assessment year. Reasons for re-opening were recorded and were furnished to the appellant. Appellant did not raise any objection against the re-opening. The contention of the appellant (that since there was no failure on its part, re-opening is bad-in-law) is not tenable, as re-opening was with 4 years from the end of the assessment year. Therefore, we do not find any irregularity or infirmity in the order passed by the Id. CIT(A). Hence, this ground of appeal is dismissed.

7. Now appeal is before us.

8. We have carefully heard the rival submission the central question that arise for consideration in the present appeal is whether loss of Rs. 108,78,359/- for A.Y. 2005-06 is available for set off against the profit of the subsequent year or whether it is required to be set off against income arising from unit eligible for benefit of u/s. 10A of the Act or not. It is the case of the assessee that issue is covered in favour of the assessee by the judgment of the Hon'ble Supreme Court in the case of CIT vs. Yokogawa India Ltd. in Civil Appeal No. 8498 of 2013 in the light of the claim of the assessee that the issue is covered in its favour. We consider it expedient to set aside and restore the issue to the file of the A.O. for

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redetermination of the issue having regard to the facts of the case. In the light of decision of the Hon'ble Supreme Court in Yokogawa India Ltd (supra).

9. In the result, the appeal is allowed for statistical purpose.

<b>This Order pronounced in Open Court on</b>	<b>31/05/2018</b>
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**Sd/-**  
**(PRADIP KUMAR KEDIA)**  
**ACCOUNTANT MEMBER**  
Ahmedabad; Dated 31/05/2018

**Sd/-**  
**( MAHAVIR PRASAD )**  
**JUDICIAL MEMBER**

*Rajesh, Sr.PS*

*True Copy*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-6, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad