

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, 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. 2073/PUN/2016

निर्धारण वर्ष / Assessment Year : 2009-10

The Deputy Commissioner of Income Tax,
Circle-1(1), Pune

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s.Cummins Research and Technology
India Pvt. Ltd.
4th Floor, Tower-B, Cummins India office Campus,
Survey No.21, Balewadi,
Pune-411 045.
PAN : AACCC1998C

.....प्रत्यर्थी / Respondent

Revenue by : Dr. Vivek Aggarwal

Assessee by : Shri Nikhil Pathak

सुनवाई की तारीख / Date of Hearing : 16.07.2018

घोषणा की तारीख / Date of Pronouncement : 20.07.2018

आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

This appeal is filed by the Revenue against the order of CIT(A)-1,
Pune-1 dated 02.06.2016 for the A.Y. 2009-10.

2. Grounds raised by the Revenue are extracted below :

"1. The Ld. Commissioner of Income-tax(Appeal) has erred on the facts and circumstances of the case, in allowing the deduction u/s.10A of the Act without setting of brought forward business loss and unabsorbed depreciation of earlier years in total disregard to the CBDT Circular No. 7 /DV /2013 dated 16/07/2013.

2. The Ld. Commissioner of Income-tax(Appeal) has erred on the facts and circumstances of the case, by not following the decision of Hon'ble Karnataka High Court in the case of "Himatasingike Seide Ltd. Vs CIT (286 ITR 255)" wherein it has been held that the brought forward losses

and unabsorbed depreciation have to be adjusted before allowing the deduction under section 10A and the same has been upheld by Hon'ble Supreme Court in the case of vide Civil Appeal No.1501 of 2008 [2013-TIOL-53-SC-IT-LB] and dismissed the appeal of the assessee.

3. Briefly stated relevant facts includes that the assessee company is engaged in the business of providing information technology enabled engineering services and filed its return of income on 25.09.2009 declaring total income of Rs.18,62,082/-. Assessee made payment of taxes under the provisions of section 115JB of the Income Tax Act, 1961 payable on the total income which is less than 15% of its book profit. During assessment proceedings, the AO determined total income of assessee at Rs.1,17,45,852/- and made addition of Rs.98,83,770/- by holding that the unabsorbed depreciation and brought forward business loss shall be first set off and thereafter, the allowable deduction u/s.10A should be worked out.

4. Aggrieved with the order of Assessing Officer dated 27.12.2012, the assessee filed appeal before CIT(A). The CIT(A) deleted the addition of Rs.98,83,770/- by placing reliance on the decision of Pune Bench of Tribunal in the case of M/s. KPIT Cummins Infosystems Ltd. Vs. ITO in ITA No.1736/PN/2012 for the A.Y. 2007-08 vide order dated 30.11.2015. CIT(A) discussed the issue vide Para 7 of his order.

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

6. Ld. DR for the Revenue placed reliance heavily on the order of AO. He further submitted that in the instant case, allowing deduction u/s. 10A of the Act without setting of brought forward business loss and

unabsorbed depreciation of earlier years in total disregard to the CBDT Circular No.7/DV/2013 dated 16.07.2013 and placed reliance on the Judgment of Hon'ble Karnataka High Court in the case of Himatasingike Seide Ltd. Vs. CIT reported in 286 ITR 255.

7. On the other hand, Ld. AR for the assessee relied on the order of CIT(A). He submitted that the deduction allowable u/s.10A is required to be worked out on a standalone basis i.e. on an undertaking basis independently before set off of any brought forward losses/depreciation. Ld. AR for the assessee has placed reliance on the following decisions:

i) Trizetto Services India Pvt. Ltd. Vs. DCIT, ITA No.2537/PUN/2016, A.Y.2010-11, decided on 28.03.2018.

ii) CIT Vs. Yokogawa India Ltd, 77 taxmann.com 41 (SC)

iii) M/s. KPIT Cummins Infosystems Ltd. (KPIT Cummins Global Business Solutions Ltd. since merged) Vs. ITO, ITA No. 1736/PN/2012, A.Y. 2007-08, decided on 30.11.2015.

iv) Precision Camshafts Ltd. Vs. ACIT, ITA Nos.70 & 72/PN/2012, A.Y. 2007-08, decided on 10th November, 2015.

8. We heard both the parties and perused the orders of Authorities below. The core issue in the present appeal, which is to be adjudicated, is if the CIT(A) is justified in allowing the deduction u/s.10A of the Act without setting of brought forward business loss and unabsorbed depreciation of earlier years. The CIT(A) decided the issue in favour of the assessee vide the discussion given in Para 7 of his order by placing reliance on the decision in the case of M/s. KPIT Cummins Infosystems Ltd. Vs. ITO (supra). For the sake of completeness, the relevant finding of CIT(A)'s order is extracted as under:

“7. I have carefully considered the facts of the case as well as reply of the appellant. In this case, **it is seen that the issue is covered in favour of the appellant by the decision of Hon'ble Pune Tribunal in the case of M/s. KPIT Cummins Infosystems Ltd., ITA No.1736/PN/2012 for A.Y.2007-08 in its order dated 30.11.2015.** For the sake of clarity, relevant portion of the order is reproduced as under:

4. We have heard the rival contentions and perused the record. The issue arising in the present appeal is in relation to the computation of deduction under ITA No.1736/PN/2012 KPIT Cummins Infosystems Ltd section 10A of the Act, whether the same is to be computed before set off of brought forward losses and unabsorbed depreciation relating to earlier years. The assessee had claimed 100% deduction under section 10A of the Act for the year under consideration before setting off of the aforesaid brought forward losses and unabsorbed depreciation. The assessee had declared business income at Rs.7.35 crores, against which it had claimed deduction under section 10A of the Act at Rs.7.09 crores and against balance income of Rs.26,40,767/-, brought forward losses were adjusted and the income was declared at Rs.Nil. The Assessing Officer was of the view that the deduction under section 10A of the Act was permissible out of total income which could be computed only after applying all the provisions of the Act, including set off of brought forward losses. In view thereof, the deduction claimed by the assessee only out of profits and gains of the business without first setting off of brought forward losses, was held to be not allowable and the total income of the assessee was thus, re-computed. The CIT(A) vide para 3.3 onwards considered the issue at length and observed that the assessee admittedly, was having only one unit / undertaking, on which deduction under section 10A of the Act was allowable and brought forward losses and unabsorbed depreciation also related to the same undertaking. The CIT(A) was of the view that before computing deduction under section 10A of the Act, brought forward losses and unabsorbed depreciation had to be set off and only on the balance income, if any, the deduction under section 10A of the Act was to be computed.

5. We find that identical issue of sequences of allowing the benefit of deduction under section 10B of the Act and the adjustment of brought forward losses / unabsorbed depreciation, arose before Pune Bench of Tribunal in M/s. Vishay Components India Pvt. Ltd. Vs. Addl.CIT & Anr. (supra). The Tribunal ITA No.1736/PN/2012 KPIT Cummins Infosystems Ltd after considering the facts of the case, which are identical to the facts before us, observed as under:-

"27. We have heard the rival contentions and perused the record. The issue arising vide ground of appeal No.3 is in relation to the computation of deduction under section 10B of the Act after the amendment to section w.e.f. 01.04.2001. The persons invoking the said provisions are entitled to a deduction under the Act, as compared to the pre-amended provisions of the section, under which the income comprising under the said section was exempt from the total income. The issue arising before us is whether while computing deduction under section 10B of the Act, in cases where the assessee has unabsorbed losses or depreciation, brought forward from earlier years, then whether the said

unabsorbed business losses / depreciation are to be adjusted from the gross total income before allowing the deduction under section 10B of the Act or the said losses or the deduction under section 10B of the Act is to be allowed in the hands of the assessee without considering the brought forward unabsorbed losses / depreciation, which can be set off against the other income of assessee. Both the authorities below had denied the claim to the assessee, in view of the ratio laid down by the Hon'ble Supreme Court in Himasingka Seide Ltd. Vs. CIT (supra). The perusal of the judgment of Hon'ble Karnataka High Court in the said case reflects that the years under appeal related to assessment years 1988-89 to 1990-91 i.e. the years where the benefit under section 10B of the Act was for being exempt from total income. However, the year under appeal before us is assessment year 2005-06, wherein the said section has been amended and the deduction now is allowable to the assessee as against the said income being exempt in the earlier years. The issue is settled by the Hon'ble Bombay High Court in CIT Vs. Black & Veatch Consulting Pvt. Ltd. (2012) 348 ITR 72 (Bom), wherein it was held as under:-

"The deduction under s. 10A, has to be given effect to at the stage of computing the profits and gains of business. This is anterior to the application of the provisions of s.72 which deals with the carry forward and set off of business losses. A distinction has been made by the Legislature while incorporating the provisions of Chapter VI-A. Section 80A(1) stipulates that in computing the total income of an assessee, there shall be allowed from his gross total income, in accordance with and subject to the provisions of the Chapter, the deductions specified in ss.80C to 80U. S.80B(5) defines for the purpose of Chapter VI-A "gross total income" to mean the total income computed in accordance with the provisions of the Act, before making any deduction under the Chapter. What the Revenue in essence seeks to attain is to telescope the provisions of Chapter VI-A in the content of the deduction which is allowable under s.10A, which would not be permissible unless a specific statutory provision to that effect were to be made. In the absence thereof, such an approach cannot be accepted. Thus ITAT was correct in holding that the brought forward unabsorbed depreciation and losses of the unit the Income which is not eligible for deduction under s.10A of the Act cannot be set off against the current profit of the eligible unit for computing the deduction under s.10A of the IT Act."

*Since the facts of the case are identical, relying upon the above decision of Pune Tribunal, the **AO is directed to allow deduction u/s. 10A of the I.T. Act, 1961 without setting off unabsorbed depreciation and brought forward business losses of earlier years. Accordingly, he is directed to delete the addition of Rs.98,83,770/-.** Thus, ground No. 1 to 5 are allowed."*

9. 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,

order dated 28-03-2018 for the A.Y. 2010-11 had an occasion to decide an identical issue in favour of the assessee. The said finding of the Tribunal is also extracted here 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.”

From the order of the AO, it is evident that the judgment in the case of Himatasingike Seide Ltd. Vs CIT (supra) was followed without appreciating the fact that the said judgment was delivered in the context of pre-amended provisions of section 10A of the Act. Presently, the Apex Court judgment in the case of CIT Vs. Yokogawa India Private Ltd. is applicable to the facts of this case. Considering the settled nature of the issue, we are of the opinion that the issue now stands covered against the Revenue and in favour of the assessee. Thus, we uphold the order of CIT(A). Accordingly, the grounds raised by the Revenue are dismissed.

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

Order pronounced on 20th day of July, 2018.

Sd/- Sd/-
(विकास अवस्थी /VIKAS AWASTHY) (डी. करुणाकरा राव/D. KARUNAKARA RAO)
न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 20th July, 2018.
Satisf

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (A), Pune-1.
4. The Pr. CIT-1, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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