आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL , 'C' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन,न्यायिक सदस्य एवं ए. मोहन अलंकामणी, लेखा सदस्य के समक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकरअपीलसं./**I.T.A.No.2846/CHNY/2017**
(निर्धारणवर्ष / Assessment Year: 2013-14)

The DCIT, Corporate Ward – 1(2), Chennai - 34	Vs	M/s. Congruent Solutions Pvt. Ltd., 1st Floor, North Wing, Central Square – 1, C28 – C35, Cipet Road, Thiru Vi Ka Industrial Estate, Guindy, Chennai – 600 032.
		PAN: AAACC1386L
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से /Appellant by	:	Shri R. Clement Ramesh Kumar, Addl.CIT
प्रत्यर्थी की ओर से /Respondent by	:	Shri R. Vijayaraghavan, Advocate

सुनवाई की तारीख/Date of hearing	:	14.08.2018
घोषणा की तारीख /Date of Pronouncement	:	17.10.2018

आदेश / O R D E R

Per A. Mohan Alankamony, AM:-

This appeal by the Revenue is directed against the order passed by the Ld. Commissioner of Income Tax (Appeals)-1, Chennai dated 20.09.2017 in ITA No.31/CIT(A)-1/2016-17 for the assessment year 2013-14 passed U/s.250(6) r.w.s. 143(3) of the Act.

2. The Revenue has raised three grounds in its appeal however the crux of the issue is that the Ld.CIT(A) has erred in granting deduction U/s.10AA amounting to Rs.83,28,184/- in its entirety without taking into consideration the unabsorbed depreciation of the other units other than the eligible units.

3. The brief facts of the case are that the assessee is a private limited company engaged in the business of development and export of software & providing IT enabled services to pension plan, filed its return of income for the assessment year 2013-14 on 26.09.2013 admitting loss of Rs.1,08,24,319/- and subsequently the assessee filed revised return on 27.03.2015 admitting loss of Rs.3,14,15,301/-. The case was selected for scrutiny and notice U/s.143(2) & 142(1)of the Act was issued on 31.08.2015 & 21.09.2015 respectively. Finally assessment order was passed U/s. 143(3) of the Act on 11.03.2016 wherein the Ld.AO made several additions and also disallowed deduction U/s.10AA of the Act.

4. During the course of scrutiny assessment, it was observed by the Ld.AO that the assessee had claimed deduction U/s.10AA of the Act for the sum of Rs.83,28,184/-. However it was observed by the

Ld.AO that the assessee had incurred net loss of Rs.2,30,87,117/- after taking into account of all the units owned by the assessee. Therefore the Ld.AO was of the view that the assessee is not eligible for deduction U/s.10AA of the Act and accordingly disallowed the claim of deduction U/s.10AA of the Act. The Ld.CIT(A) allowed the appeal of the assessee relying on the identical issue dealt by the Hon'ble Apex Court in the case CIT vs. Yokogawa India Ltd., reported in 291 CTR 0001 wherein it was held that deduction contemplated U/s.10A of the Act are to be determined for the eligible undertaking of the appellant standing on its own and without reference to other eligible or non-eligible units or undertakings of the appellant.

5. We find merit in the order of the Ld.CIT(A). The Ld.CIT(A) relying in the decision of the Hon'ble Apex Court cited supra, has directed the Ld.AO to grant deduction U/s.10AA of the Act to the eligible unit of the assessee which has earned profit and by not taking into account of the loss suffered by the other units owned by the assessee because both section 10AA and 10A of the Act are in the same footing. The Hon'ble Apex Court while rendering the decision in the case of M/s. Yokogawa India Ltd., cited supra has observed as follows:-

16. From a reading of the relevant provisions of Section 10A it is more than clear to us that the deductions contemplated therein is qua the eligible undertaking of an assessee standing on its own and without reference to the other eligible or non-eligible units or undertakings of the assessee. The benefit of deduction is given by the Act to the individual undertaking and resultantly flows to the assessee. This is also more than clear from the contemporaneous Circular No. 794 dated 9.8.2000 which states in paragraph 15.6 that,

> "The export turnover and the total turnover for the purposes of sections 10A and 10B shall be of the undertaking located in specified zones or 100% Export Oriented Undertakings, as the case may be, and this shall not have any material relationship with the other business of the assessee outside these zones or units for the purposes of this provision."

17. If the specific provisions of the Act provide [first proviso to Sections 10A(1); 10A (1A) 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."

Respectfully keeping in view of the decision of the Hon'ble Apex Court cited supra, we do not find any infirmity in the order of the Ld.CIT(A) and hence we uphold the same.

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

Order pronounced on the 17th October, 2018 at Chennai.

Sd/-	Sd/-
(एन.आर.एस. गणेशन) (N.R.S. Ganesan) न्यायिक सदस्य/Judicial Member	(ए. मोहन अलंकामणी) (A. Mohan Alankamony) लेखा सदस्य/Accountant Member

चेन्नई/Chennai,
दिनांक/Dated 17th October, 2018

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant	2. प्रत्यर्थी/Respondent	3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT	5. विभागीय प्रतिनिधि/DR	6. गार्ड फाईल/GF