

*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "SMC" KOLKATA*

Before **Shri S.S, Godara, Judicial Member**

ITA No.1526/Kol/2018 Assessment Year:2010-11
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M/s Synergy Electric Pvt. Ltd. "Trishul" Ground Floor, 35, Rowland Road, Kolkata-20 [PAN No.AARCS 8436 Q]	बनाम/ V/s.	Income Tax Officer Ward-12(3), Aayakar Bhawan, Kolkata-69
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri V.N. Purohit, FCA
प्रत्यर्थी की ओर से/By Respondent	Shri P. Majumdar, Addl. CIT-SR-DR
सुनवाई की तारीख/Date of Hearing	25-10-2018
घोषणा की तारीख/Date of Pronouncement	31-10-2018

आदेश /O R D E R

This assessee's appeal for assessment year 2010-11, arises against the Commissioner of Income-tax (Appeals)-4, Kolkata's order dated 29.06.2018 passed in case No.997/CIT(A)-4/2014-15 involving proceedings u/s. 143(3) of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file perused.

2. The assessee's sole substantive ground raised in the instant appeal pleads that both the lower authorities have erred in law as well as on facts in wrongly adjusting brought forward losses and depreciation amounting to ₹123,19,711/- against the business profits of the current assessment year before allowing sec. 10B deduction thereby not allowing the corresponding relief claimed to the tune of ₹59,56,861/-. Both the Learned Representatives reiterate their respective pleadings against and in support of lower authorities' action. I find the impugned issue of adjustment of

brought forward losses against the current year's business profit to be no more *res integra*. A co-ordinate bench's decision in assessee's own case **ITA No.2004/Kol/2014** for the very preceding assessment year 2009-10 decided on 29.11.2017 has reversed the lower authorities identical action as follows:-

“4. We have heard the arguments of both the sides on this issue and also perused the relevant material available on record. It is observed that the issue involved in this appeal of the assessee is squarely covered by the decision of Hon'ble Supreme Court in the case of CIT vs Yokogawa India Ltd. 291 CTR 1 wherein one of the questions referred to the Hon'ble Supreme Court for consideration was whether brought forward business losses and unabsorbed depreciation of 10A units or non 10A units can be set off against the profits of another 10A units of the assessee. This question was answered by the Hon'ble Supreme Court in favour of the assessee 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. It was held by the Hon'ble Supreme Court that the reading of relevant provisions of Section 10A makes it clear that the deduction contemplated therein is qua the eligible undertaking of the assessee standing on its own and without reference to the other eligible or non-eligible units or undertakings of the assessee. It was held that the benefit of deduction under section 10A thus is given by the Act to the individual undertaking and resultantly flows to the assessee. This decision rendered in the case of Yokogawa India Ltd. (supra) has been subsequently followed by the Hon'ble Supreme Court in the case of CIT vs J.P.Morgan India Pvt Ltd. 297 CTR 16 to hold that while computing deduction under section 10A, brought forward unabsorbed depreciation and loss are not to be set off against the current year profit of the eligible unit. Since the provisions of section 10A are analogous with the provisions of Section 10B, we respectfully follow the decisions of the Hon'ble Supreme Court in the case of Yokogawa India Ltd (supra) and J.P. Morgan India Ltd. (supra) and direct the AO to allow deduction under section 10B to the assessee as computed on the profits of the eligible unit for the year under consideration without setting off the brought forward unabsorbed depreciation.”

3. Learned Departmental Representative's case before me is that the said co-ordinate bench's decision has not considered hon'ble apex court's judgment in CIT vs. Himatasingike Seide Ltd. (2006) 286 ITR 255 (SC) and this Tribunal's Special Bench in Global Vantedge P Ltd. vs. DCIT (2010) 1 ITR (Trib) 326 (Del) I find that the co-ordinate bench has gone by hon'ble apex court's decision (supra) in accepting

assessee's case hereinabove. The Revenue's arguments supporting both the lower authorities' action is declined therefore.

4. This assessee's appeal is allowed accordingly.

Order pronounced in open court on 31/10/2018

Sd/-
(S.S. Godara)
Judicial Member

Kolkata,

*Dkp/Sr.PS

दिनांक:- 31/10/2018 कोलकाता

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-M/s Synergy Electric Pvt. Ltd., "Trishul", Gr. Floor, 35, Rowland Road, Kolkata-20
2. प्रत्यर्थी/Respondent-Income Tax Officer, Ward-12(3), Aayakar Bhawan, Kolkata-69
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।