

आयकर अपीलीय अधिकरण पुणे न्यायपीठ "ए" पुणे में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "A", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं, श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष  
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / ITA Nos.2070 & 2071/PUN/2016  
निर्धारण वर्ष / Assessment Years : 2007-08 & 2009-10

The Dy. Commissioner of Income Tax,  
Circle 1(1), Pune

.... अपीलार्थी/Appellant

Vs.

Avesta Computers Pvt. Ltd.,  
Kapil Complex,  
Baner Road, Baner,  
Pune – 411045

.... प्रत्यर्थी / Respondent

PAN: AABCA4736F

अपीलार्थी की ओर से / Appellant by : Shri Amit Dua, JCIT  
प्रत्यर्थी की ओर से / Respondent by : Shri Sharad Vaze

सुनवाई की तारीख / Date of Hearing : 29.11.2018	घोषणा की तारीख / Date of Pronouncement: 17.12.2018
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**आदेश / ORDER**

**PER SUSHMA CHOWLA, JM:**

Both the appeals filed by Revenue are against separate orders of CIT(A)-1, Pune both dated 30.06.2016 relating to assessment years 2007-08 and 2009-10 against respective orders passed under section 250 / 143(3) r.w.s. 147 of the Income-tax Act, 1961 (in short 'the Act').

2. Both the appeals filed by Revenue on same issue were heard together and are being disposed of by this consolidated order for the sake of convenience. However, in order to adjudicate the issues, reference is being made to the facts and issues in ITA No.2070/PUN/2016, relating to assessment year 2007-08.

3. The Revenue in ITA No.2070/PUN/2016, relating to assessment year 2007-08 has raised the following grounds of appeal:-

1. *The order of the Ld. Commissioner of Income-tax(Appeals) is contrary to the law and on facts and in the circumstances of the case.*
2. *The Ld. Commissioner of Income-tax(Appeals) erred on the facts and in the circumstances of the case and in law in allowing alternate claim of the assessee for deduction u/s 10A of the Act, once the Ld. CIT(A) had upheld the order of the Assessing officer in denying deduction u/s 10B.*
3. *The Ld. Commissioner of Income-tax(Appeals) erred on the facts and in the circumstances of the case and in law in allowing alternate claim of the assessee for deduction u/s 10A of the Act ignoring the provisions of section 80A (5) of the IT Act, 1961 which mandate that no deduction u/s 10A would be allowable unless so claimed by the assessee in the Return of Income.*
4. *The Ld. Commissioner of Income-tax(Appeals) erred on the facts and in the circumstances of the case and in law in allowing alternate claim of the assessee for deduction u/s 10A of the Act ignoring the decision of the Hon'ble Supreme Court in the case of Goetze India Ltd vs CIT reported in 157 Taxmann 1, wherein it has been held that an assessee can amend a return filed by him for making a claim for deduction only by filing a revised return?*
5. *The Ld. Commissioner of Income-tax(Appeals) erred on the facts and in the circumstances of the case and in law in allowing alternate claim of the assessee for deduction u/s 10A of the Act ignoring decision of the Hon. SC in the case of CIT vs Shelly Products reported in 129 Taxmann 271 wherein it has been held that the assessing authority may grant relief to an assessee, if an assessee by mistake or inadvertence or on account of ignorance, included in his income any amount which is exempted from payment of income-tax, or is not income within the contemplation of law, which is clearly not established in this case.*
6. *On the facts & circumstance of the case, the learned Commissioner of Income-tax (Appeals), Pune grossly erred in ignoring the section 10A(5) of the Act as per which deduction u/s 10A cannot be allowed unless report of an accountant is furnished in prescribed Form No.56F*

*certifying that deduction has been correctly claimed as per law. In this case form No.56F has been filed in the reassessment proceeding before the Assessing Officer and is beyond the prescribed date as form No.56F was not filed with the Return of Income. Claiming deduction u/s 10B in original return by filing form No.56G and making alternate claim u/s 10A by filing form No.56F cannot be permitted.*

7. *The Ld. Commissioner of Income-tax(Appeal) has erred on the facts and circumstances of the case, in allowing the deduction u/s 10B 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.*
8. *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 "HimatasingikeSeide 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.*

4. Though the Revenue has raised several grounds of appeal but the only issue raised is against order of CIT(A) in allowing alternate claim of assessee for deduction under section 10A of the Act.

5. The learned Authorized Representative for the assessee fairly pointed out that the issue raised in the present appeal is covered by the order of Tribunal in the case of Clarion Technologies Pvt. Ltd. Vs. DCIT in ITA No.116/PN/2014, relating to assessment year 2010-11, order dated 30.10.2014. He also pointed out that the CIT(A) has decided the issue in turn, relying on the said ratio laid down by the Tribunal.

6. The learned Departmental Representative for the Revenue on the other hand, placed reliance on the order of Assessing Officer and stated that the assessee was not entitled to the alternate claim of deduction under section 10A

of the Act as the assessee in the return of income had claimed the deduction under section 10B of the Act.

7. We have heard the rival contentions and perused the record. Briefly, in the facts of the case, the assessee was engaged in the business of development of computer software. In the return of income filed for the year under consideration, the assessee has claimed deduction under section 10B of the Act. The unit of assessee was registered with Directorate of Software Technology Park of India (STPI). The Assessing Officer was of the view that the assessee was not entitled to the said claim of deduction under section 10B of the Act as the requirement of section was that the assessee should be 100% Export Oriented Unit (EOU). Consequently, the said deduction claimed by assessee was denied and profits from the said business were brought to tax. The assessee during the course of assessment proceedings had furnished written submissions to the effect that in case deduction under section 10B of the Act is denied to the assessee then deduction under section 10A of the Act be allowed. The Assessing Officer denied the same also to the assessee. The CIT(A) allowed the claim of assessee in turn, relying on the decision of Pune Bench of Tribunal in the case of Clarion Technologies Pvt. Ltd. Vs. DCIT (supra).

8. We find that similar issue has been decided in series of cases by the Tribunal. The latest decision is in the case of case of Approva Systems Pvt. Ltd. Vs. DCIT in ITA No.1051/PUN/2015, relating to assessment year 2011-12, order dated 12.03.2018, wherein it was held as under:-

“13. We have heard the rival contentions and perused the record. The first issue which arises by way of ground of appeal No.3 is whether the assessee is entitled to claim the deduction under section 10B or 10A of the Act. The assessee in the return of income had claimed the deduction under section 10B of the Act. However, during the course of assessment proceedings, the assessee filed an alternate claim that since the unit was registered under STPI, the assessee was entitled to claim the deduction under section 10A of the Act. Both the authorities below have denied the deduction under section 10B of the Act. Further, on one reason or the other had also denied the alternate claim of assessee under section 10A of the Act. However, we find that the Tribunal in assessee’s own case in ITA No.1788/PN/2013, relating to assessment year 2009-10, order dated 13.01.2015 had held that the assessee was not entitled to the claim of benefit under section 10B of the Act, but the assessee was held to be eligible to claim the deduction under section 10A of the Act, for which the matter was restored back to the file of Assessing Officer. The Tribunal in ITA No.1921/PUN/2014, relating to assessment year 2010-11, vide order dated 25.01.2017, following the earlier order of Tribunal in assessment year 2009-10 had also similarly held and had remitted the issue back to the file of Assessing Officer to verify the claim of assessee vis-à-vis eligibility of deduction under section 10A of the Act and passed the order accordingly. The assessee during the course of hearing has placed on record the copy of order passed under section 143(3)/254 of the Act by the Assessing Officer giving effect to the order of Tribunal relating to assessment year 2009-10. The Assessing Officer vide order dated 03.03.2017 has allowed the claim of assessee under section 10A of the Act. The issue thus, stands settled in the case of assessee, wherein as against original claim of deduction under section 10B of the Act in the return of income, the alternate plea of claim of deduction under section 10A of the Act raised during the course of assessment proceedings has been allowed in the hands of assessee.

14. The issue arising in the present appeal before us is identical and following the same parity of reasoning, we direct the Assessing Officer to verify the claim of deduction under section 10A of the Act in the case of assessee and decide the same in line with directions in assessment years 2009-10 and 2010-11. The Assessing Officer shall afford reasonable opportunity of hearing to the assessee and decide the issue in line with the issue being decided in assessment year 2009-10 in the order giving effect to the order of Tribunal dated 03.03.2017.”

9. The issue arising in the present appeal is squarely covered by the decision of Pune Bench of Tribunal in Approva Systems Pvt. Ltd. Vs. DCIT (supra) and we hold that the assessee is entitled to the alternate claim of deduction under section 10A of the Act. The matter is set aside to the file of Assessing Officer for the limited purpose of computing the said deduction in accordance with law. There is no merit in the order of Assessing Officer in holding that the assessee is not entitled to the said deduction under section

10A of the Act, since the assessee in written submissions had claimed the deduction under section 10B of the Act and not 10A of the Act. The assessee is at liberty to raise the issue before the Assessing Officer or CIT(A) and make fresh claim in this regard as held by the Hon'ble Bombay High Court in CIT Vs. Pruthvi Brokers & Shareholders Pvt. Ltd. (2012) 349 ITR 336 (Bom).

10. Another issue which is raised by the Revenue vide grounds of appeal No.7 and 8, wherein the assessee was allowed the deduction under section 10A of the Act before setting off of brought forward losses and unabsorbed depreciation.

11. We find that this issue stands covered in favour of assessee by the ratio laid down by the Hon'ble Bombay High Court in CIT Vs. Black & Veatch Consulting Pvt. Ltd. (2012) 348 ITR 72 (Bom) and the aforesaid deduction under section 10B of the Act is to be computed before adjusting brought forward unabsorbed losses / depreciation. The learned Departmental Representative for the Revenue has pointed out that the issue stands covered by the order of Hon'ble Supreme Court in the case of Himatasingike Seide Ltd. Vs. CIT reported in 286 ITR 255 (SC). However, it has been held by the Hon'ble Bombay High Court that the decision of Hon'ble Supreme Court in Himatasingike Seide Ltd. Vs. CIT (supra) is with relation to pre-amended provisions of section 10A of the Act. However, after the amendment it is not case of exemption but a case of deduction under section 10A of the Act, hence, the said proposition is not to be applied. The grounds of appeal No.7 and 8 raised by Revenue are thus, dismissed.

12. The facts and issues in ITA No.2071/PUN/2016 are identical to the facts and issues in ITA No.2070/PUN/2016 and our decision in ITA No.2070/PUN/2016 shall apply *mutatis mutandis* to ITA No.2071/PUN/2016.

13. In the result, both the appeals of Revenue are dismissed.

Order pronounced on this 17<sup>th</sup> day of December, 2018.

**Sd/-**  
**(D.KARUNAKARA RAO)**  
लेखा सदस्य / ACCOUNTANT MEMBER

**Sd/-**  
**(SUSHMA CHOWLA)**  
न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 17<sup>th</sup> December, 2018.

GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-1, Pune;
4. The Pr.CIT-1, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "ए" / DR 'A', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune