

THE INCOME TAX APPELLATE TRIBUNAL
“D” Bench, Mumbai
Before Shri Shamim Yahya (AM) & Shri Ravish Sood (JM)

I.T.A. No. 4935/Mum/2017 (Assessment Year 2011-12)

ACIT 15(2)(2) Room No. 357 3 rd Floor Aayakar Bhavan M.K. Road Mumbai-400 020.	Vs.	M Model Global Services Pvt. Ltd. 3 rd Floor, Building No. 3 Mindspace, Airoli, Plot No. 3 Kalwa TTC Industrial Estate MIDC, Thane Belapur Road Airoli Navi Mumbai-400 708. PAN : AAACC9165F
(Appellant)		(Respondent)

Assessee by	Shri Abhshek Tilak & Ms. Poonam Shinde
Department by	Shri D.G. Pansari
Date of Hearing	17.6.2019
Date of Pronouncement	28.6.2019

ORDER

Per Shamim Yahya (AM):-

This appeal by the Revenue is directed against the order of learned CIT(A) dated 24.4.2017 and pertains to A.Y. 2011-12.

2. Grounds of appeal read as under :-

- 1) *“Whether on the facts and in circumstances of the case and in Law, the Ld CIT(A), Mumbai was justified in allowing deduction of profits of the 10A unit on a standalone basis without aggregation of income and set off of losses, without appreciating the fact that after the amendment of section 10A by finance Act 2000, the profits of the 10A unit are no longer eligible for exemption but eligible for deduction from total income and total income is liable to be computed as per the provisions of Section 2(45) r.w.s. of the Act and therefore by allowing deduction of the IDA unit profit exclusively, the Ld CIT(A) has in effect, treated the profit of the 10A unit as exempt, contrary to amended provisions of section 10A of the Act.*
- 2) *“Whether on the facts and in the circumstances of the case and in Law, the Ld CIT(A), Mumbai was justified in allowing deduction of*

profits of the 10A unit on a standalone basis without aggregation of income and set off of losses, and thereby ignoring the ration of judgment of Hon'ble Bombay High Court in the case of CIT-10 Vs M/s. Galaxy Surfactants Ltd rendered in February 2012, wherein the Hon'ble Jurisdictional High Court has clearly held that the provisions of section 70,71,72 would apply in computing the profits of 10A undertakings as there is no clause akin to section 80IA(5) or 80IA(6) enacted in section."

3) *"The appellant prays that the order of CIT(A) on the above ground be set aside and that of the assessing officer be restored."*

3. Brief facts of the case are as under :-

During the year under consideration, the assessee-company had carried out business operations from various units located across different cities in India. The details of these units and income/loss generated from these units along with deduction claimed by it u/s.10A/10AA were as under:

Particulars	STP units (Amount in Rs.)	Other units (i.e. STP, SEZ & DTA units) (Amount in Rs.)	Total (Amount in Rs.)
Profits / (loss) of units	17,72,26,283	(15,05,83,667)	
Less: Deduction u/s 10A	(17,33,22,943)	NIL	
Balance profits/(loss)	39,03,339	(15,05,83,667)	
Business profits/(loss)			(14,66,80,327)
Income from other sources			59,68,619
Balance loss carried forward			(14,07,11,708)
Gross Total Income			NIL

It was seen by the A.O. that the assessee-company had claimed deduction u/s.10A/10AA/10B without setting off of losses of the eligible/ineligible units. As per the provisions of the section 10A/10AA/10B of the Act, a deduction of the profit derived from the eligible undertaking was to be allowed out of the total income of the assessee-company. The assessee-company was asked to

show cause as to why the deduction u/s. 10A/10AA/10B should not be allowed out of the total income computed after giving effect of the provisions of chapter IV of the Act. In response, the assessee submitted its reply which has been briefly summarized by the A.O. at page 4 of the assessment order. The submissions of the assessee were considered by the A.O. but he did not find them tenable due to the reasons discussed in detail by the A.O. at pages 4 to 13 of the assessment order. The A.O. disallowed the claim of the assessee of allowing deduction u/s. 10A/10AA before setting off of current and brought forward losses and unabsorbed depreciation.

4. Upon assessee's appeal learned CIT(A) referred to ITAT's order in assessee's own case and decided the issue in favour of the assessee by holding as under :-

"I have considered the facts and the submissions given by the appellant. I find that on similar facts and circumstances, the Hon'ble jurisdictional Tribunal in the appellant's own case in ITA No.8560/M/2011 for A.Y.2007-08 vide order dated 16.02.2016 had decided the issue in favour of the appellant by holding as under:

"3. We have heard both the parties and perused the orders of the Revenue Authorities as well as the cited judgement of the Hon'ble jurisdictional High Court in the case of Hindustan Unilever (supra). On perusal of CIT(A)'s order, we find, the CIT(A) unfairly distinguished the said judgment and restricted the deduction by partly allowing the appeal of the assessee. In our opinion, the assessee is entitled to deduction u/s 10A so far as the profits of the eligible unit is concerned and the loss of other unit (Mumbai unit) should be allowed to be carried forward after set off against income from other sources as required by the in its cross objection. Accordingly, ground raised by the Revenue is dismissed and the cross objection of the assessee is allowed.

Also, the Hon'ble Commissioner of Income-tax (Appeals)-22 [CIT(A)-22] vide order dated 11.07.2016 for AY 2010-11 has decided ; this issue in the favour of the appellant. Thus, respectfully following the decisions of the Hon'ble jurisdictional Tribunal and that of the Hon'ble CIT(A)-22 in the appellant's own case, the appellant's ground of appeal is allowed".

5. Against the above order Revenue is in appeal before us. We have heard both the counsel and perused the records. At the outset learned Counsel of the

assessee submitted that the issue is squarely covered in favour of the assessee by the decision of ITAT in assessee's own case for A.Y. 2010-11 vide order dated 3.12.2018. Learned Counsel of the assessee submitted that the decision now referred by the Revenue in the grounds of appeal has already been dealt with the ITAT in the aforesaid order. Learned counsel further submitted that this issue is also now covered in favour of the assessee by following case laws:-

- Principal CIT Vs. Makino India Pvt. Ltd. (393 ITR 291 (SC))
- CIT Vs. Yokogawa India Ltd. (391 ITR 274)(SC)

6. Per contra learned Departmental Representative would not dispute the above proposition.

7. Upon careful consideration we find that this issue is squarely covered in favour of the assessee by the decision of ITAT in assessee's own case as under:-

"8. We notice that the Ld. CIT (A) has decided this issue in favour of the assessee by following the decision of the coordinate Bench rendered in the assessee's own case for the A.Y. 2007-08. So far as the judgment of the Hon'ble Bombay High Court in the case of Commissioner of Income Tax-10, Mumbai vs. Galaxy Surfactants Ltd., 343 ITR 108 (Bom.), relied upon by the revenue is concerned, the Hon'ble High Court has held in the said case that loss of 100% Export Oriented Unit which is entitled to deduction under section 10B of the Act can be set off against profits of other units under the same head. Thus we see that the aforesaid case has been decided on different facts. Since, the decision of the Ld. CIT(A) is in accordance with the decision of the coordinate Bench rendered in the assessee's own case based on the judgment of the jurisdictional High Court, we do not find any infirmity in the impugned order to interfere with. We accordingly uphold the findings of the Ld. CIT (A) and dismiss this ground of appeal of the revenue".

8. The orders of Hon'ble Apex Court referred by learned Counsel of the assessee referred above also support the proposition in favour of the assessee. Respectfully following the precedent, we uphold the order of learned CIT(A).

9. In the result, Revenue's appeal stands dismissed.

Order has been pronounced in the Court on 28.6.2019.

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 28/6/2019

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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