आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI D. KARUNAKARA RAO, AM AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No. 2168/PUN/2017

निर्धारण वर्ष / Assessment Year : 2011-12

Ventura (India) Private Limited
Wing-C, Marisoft,
Kalyani Nagar Annex,
Wadgaonsheri,
Pune-411 014.
PAN : AABCE3274C

.....अपीलार्थी / Appellant

बनाम / V/s.

The Assistant Commissioner of Income Tax,
Circle-13, Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Rajendra Agiwal
Revenue by : Shri Hoshang B. Irani

सुनवाई की तारीख / Date of Hearing : 14.11.2019
घोषणा की तारीख / Date of Pronouncement : 14.11.2019

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM :

This appeal preferred by the assessee emanates from the order of the Ld. CIT(Appeals), Pune-5 dated 16.06.2017 for the assessment year 2011-12 as per the grounds of appeal on record.

2. Though the assessee has preferred multiple grounds of appeal however, the crux of the grievance of the assessee is whether the Ld. CIT(Appeals) erred in holding the action of the Assessing Officer of setting off of unabsorbed business losses before allowing deduction u/s.10A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). The assessee prays in this appeal that the Assessing Officer be directed to allow the deduction u/s.10A of the Act before allowing set off of unabsorbed business losses.

3. The brief facts in this case are that the assessee has claimed deduction of Rs.17,74,65,815/- u/s.10A of the Act and thereafter set off its brought forward losses and brought forward depreciation against the residual income from business and profession. The Assessing Officer brought to the notice of the assessee the decision of the Hon'ble Supreme Court of India in the case of Himatsingka Seide Ltd. in Civil Appeal No.1501 of 2008 wherein the Hon'ble Apex Court upheld the decision of the Hon'ble Karnataka High Court in CIT Vs. Himatsingka Seide Ltd. 286 ITR 255 (Kar.) that brought forward losses ought to be set off before claiming deduction u/s.10A. The assessee was asked why the ratio of the above decision should not be applied in its case. The assessee in its submissions before the Assessing Officer stated that the decision of the Hon'ble Apex Court in the case of Himatsingka Seide Ltd. (supra.) was with reference to the pre-amended section 10B when 10A/10B were exemption provisions and the assessment year was 1994-95. The assessee submitted that the scenario changed with the introduction of the amendment in section 10A/10B w.e.f.01.04.2000. The amended provisions provided for a deduction from the total income of the assessee as against exemption from total income that was allowed earlier. The assessee further submitted that various authorities have since held that the decision of the

Karnataka High Court in the case of Himatsingka Seide Ltd. (supra.) which was upheld by the Hon'ble Supreme Court cannot be applied to the amended provisions 10A and 10B. The Assessing Officer relied on the CBDT Circular dated 16.07.2013 and on that basis rejected the assessee's claim for deduction u/s.10A of the Act before setting off of brought forward losses.

4. The matter travelled before the Ld. CIT(Appeals) and detail written submission was filed before him by the assessee wherein the assessee submitted the detailed analysis regarding term of total income in order to bring out the relevant stage of deduction u/s.10A of the Act and set off of unabsorbed depreciation. That further, the assessee relied on the decision of the Hon'ble Bombay High Court in the case of CIT Vs. Black & Veatch Consulting (P). Ltd., (2012) 20 Taxmann. Com 727 (Bom.). The Ld. CIT(Appeals) after considering the submissions of the assessee, assessment order and the facts of the case as per the detailed reasoning in his order which is on record admitted that the Hon'ble Supreme Court in the case of Himatsingka Seide Ltd. (supra.) has decided the issue in favour of the Revenue and thereafter, the Hon'ble Bombay High Court in the case of CIT Vs. Black & Veatch Consulting (P). Ltd. (supra.), has decided the issue in favour of the assessee, but however, the Hon'ble Bombay High Court has not considered the CBDT Circular (supra.) in its order and because of which, the Ld. CIT(Appeals) upheld the order of the Assessing Officer which prima facie based on CBDT Circular dated 16.07.2013.

5. At the time of hearing, the Ld. AR of the assessee vehemently reiterated the submissions placed before the Sub-ordinate Authorities. The Ld. AR further referred to the decisions in the case of CIT Vs. Black & Veatch

Consulting (P). Ltd. (supra.) and also the decision of the Hon'ble Apex Court in the case of CIT Vs. Yokogawa India Ltd., (2017) 145 DTR 0001(SC).

6. Per contra, the Ld. DR placed heavy reliance on the orders of the Sub-ordinate Authorities.

7. We have perused the case records and heard the rival contentions. We have also considered the judicial pronouncements placed before us. The basic issue in this appeal before us is the relevant stage when deduction u/s.10A has to be given effect to at stage of computing profits and gains of business at first instance. The Hon'ble Bombay High Court in the case of **CIT Vs. Black & Veatch Consulting (P). Ltd. (supra.)** has categorically held that "*deduction u/s.10A has to be given effect to at stage of computing profits and gains of business i.e. anterior to application of provisions of section 72 which deals with 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 purposes 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 context 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."

8. The Hon'ble Supreme Court of India in the case of **CIT & Anrs. Vs. Yokogawa India Ltd. (supra.)** held that "*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."* The Hon'ble Apex Court further observed as follows:

> *"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."*

Meaning thereby, the Hon'ble Apex Court is the view that the deduction u/s.10A of the Act should be allowed qua the eligible undertaking standing on its own without reference to the other eligible or non-eligible unit or undertakings. To put it simply, the profits of the eligible units should be considered on standalone basis.

9. We further observe that it is undisputed fact that otherwise, the assessee is eligible for claiming deduction u/s.10A of the Act. The dispute was at what stage this could be provided to the assessee. That now we have taken guidance from the binding judicial pronouncements as mentioned herein above and accordingly following the view as aforesaid, we allow the appeal of the assessee and direct the Assessing Officer to allow deduction u/s.10A of the Act to the assessee before allowing set off of unabsorbed business loss.

10. In the result, **appeal of the assessee is allowed.**

Order pronounced on 14th day of November, 2019.

Sd/-	Sd/-
D. KARUNAKARA RAO	**PARTHA SARATHI CHAUDHURY**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 14th November, 2019.
SB

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

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

// True Copy //

आदेशानुसार / BY ORDER,

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

		Date	
1	Draft dictated on	14.11.2019	Sr.PS/PS
2	Draft placed before author	14.11.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		