

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'B', NEW DELHI**

**Before Ms. Sushma Chowla, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 236/Del./2017 : Asstt. Year : 2012-13**

Competent Software Pvt. Ltd. A-188, Okhla Industrial Area, Phase-1, New Delhi-110020	Vs	Dy. Commissioner of Income Tax, Circle-6(1) New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAACC2314A</b>		

**Assessee by : Sh. Vijay Jindal, CA**

**Revenue by : Ms. Ashima Neb, Sr. DR**

<b>Date of Hearing: 03.10.2019</b>
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<b>Date of Pronouncement: 11.12.2019</b>
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**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the assessee against the order of the Id. CIT(A)-2, New Delhi dated 31.10.2016.

2. The only issue raised in the appeal is whether the claim of the company in setting of an unabsorbed depreciation of AY 2010-11 & 2011-12 against the business profits of the assessee company for the AY 2012-13 is allowable or not.

3. The assessee is engaged in the business of development of electronic data base for clients in USA. During the course of assessment proceedings, the Assessing Officer held that the assessee company has adjusted unabsorbed depreciation of Rs. 1,01,36,347/- for AY 2011-12 and Rs. 8,13,697/- for AY 2010-11, which total amounts to Rs. 1,89,50,044/- against the

business profits of the assessee company. But as per scrutiny orders for AY 2011-12, the assessee company had adjusted its unabsorbed depreciation and business loss of Unit I and II which total amounts to Rs. 1,14,19,082/- against the income from other sources of Rs. 12,82,735/- and carried forward the remaining unabsorbed depreciation of Rs. 101,36,347/-. But the Assessing Officer had rejected the claim of the assessee regarding setting off of unabsorbed depreciation of 10B exempted unit amounting to Rs. 1,14,19,082/- pertaining to exempt unit had been disallowed for the purpose of carry forward as after setting off there remains NIL unabsorbed depreciation for the purpose of carry forward. The Assessing Officer held that the assessment year 2010-11 the unabsorbed depreciation has been disallowed in the order passed u/s 143(3).

4. Thus, we find that the addition was based on the addition made by the Revenue Authorities in the earlier years.

5. Before us, the Ld. AR argued that for the AY 2010-11 the coordinate bench of ITAT in ITA Nos. 6578 & 729/Del/2013 has allowed the claim of the assessee. Similarly, for the AY 2011-12, the Ld. CIT(A) has deleted the addition and the coordinate Bench of ITAT has confirmed the order of the Ld. CIT(A) in ITA No. 625/Del/2016. He further relied on the order of the Hon'ble Supreme Court in the case of CIT vs. Yokogawa India Ltd (2012) 341 ITR 385.

6. The Ld. DR relied on the orders of the Ld. CIT(A). The facts are not been in dispute.

7. Heard the arguments of both the parties and perused the material available on record.

8. The Hon'ble Supreme Court in case of Yokogawa India Ltd (supra) held as under:-

*"15. Sub-section 4 of Section 10A which provides for pro rata exemption, necessarily involving deduction of the profits arising out of domestic sales, is one instance of deduction provided by the amendment. Profits of an 729/Del/2014 eligible unit pertaining to domestic sales would have to enter into the computation under the head "profits and gains from business" in Chapter IV and denied the benefit of deduction. The provisions of Sub-section 6 of Section 10A, as amended by the Finance Act of 2003, granting the benefit of adjustment of losses and unabsorbed depreciation etc. commencing from the year 2001-02 on completion of the period of tax holiday also virtually works as a deduction which has to be worked out at a future point of time, namely, after the expiry of period of tax holiday. The absence of any reference to deduction under Section 10A in Chapter VI of the Act can be understand by acknowledging mat any such reference or mention would have been a repetition of what has already been provided in Section 10A. The provisions of Sections 80HHC and 80HHE of the Act providing for somewhat similar deductions would be wholly irrelevant and redundant if deductions under Section 10A were to be made at the stage of operation of Chapter VI of the Act. The retention of the said provisions of the Act i.e. Section 80HHC and 80HHE, despite the amendment of Section 10A, in our view, indicates that some additional benefits to eligible Section 10A units, not contemplated by Sections 80HHC and 80HHE, was intended by the legislature. Such a benefit can only be understood by a legislative mandate to understand that the stages for working out the deductions under Section 10A and 80HHC and 80HHE are substantially different. This is the next aspect of the case which we would now like to turn to.*

*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 729/Del/2014 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'.*

9. Hence, keeping in view the judgment of the Hon'ble Supreme Court, we hereby hold that 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. Having said that, as the unabsorbed depreciation of the company has been allowed to carry forward for the assessment year 2010-11, 2011-12 and since the matter has attend finality by this time, we hereby hold that the assessee is eligible for the setting off of brought forward unabsorbed depreciation. The Assessing Officer is hereby directed to examine the records and recompute eligible quantum of brought forward unabsorbed depreciation keeping in view the earlier orders of the CIT(A) and ITAT in the case of the assessee on this issue.

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

Order Pronounced in the Open Court on 11/12/2019.

Sd/-

**(Sushma Chowla)**  
**Judicial Member**

**Dated: 11/12/2019**

\*Subodh\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**

		Date	<u>Initial</u>	
1.	Draft dictated on computer	29.11.2019		PS
2.	Draft placed before author	29.11.2019		PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			PS/PS
6.	Kept for pronouncement on			PS
7.	File sent to the Bench Clerk			PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			
11.	Date of uploading			