

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE**

**BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

IT(TP)A No.1305/Bang/2011

Assessment year : 2007-08

M/s. Maxim India Integrated Circuit Design Pvt. Ltd., #132/133, West Wing, 2 nd Floor, Domlur Post, Off Old Airport Road, Bengaluru – 560 037. PAN : AAACM 9437 E	Vs.	Income Tax Officer, Ward–12(1), Bengaluru.
APPELLANT		RESPONDENT
Assessee by	:	Shri. Padam Chand Khincha, CA
Revenue by	:	Shri. Pradeep Kumar, CIT (DR)(ITAT), Bengaluru
Date of hearing	:	24.02.2020
Date of Pronouncement	:	13.03.2020

ORDER

Per A. K. Garodia, Accountant Member

This appeal is filed by the assessee and the same is directed against the Assessment Order for the Assessment Year 2007-08, under section 143(3) r.w.s. 144C of the Income Tax Act, 1961.

2. This appeal was already decided by the Tribunal as per its order dated 29.09.2020 and thereafter, the assessee moved a Miscellaneous Petition (MP) and as per the MP No.63/Bang/2019 dated 01.11.2019, this Tribunal order was recalled by the Tribunal for a limited purpose for adjudicating additional grounds of appeal. Hence, now we have to decide only the additional ground raised by the assessee which reads as under:-

1.1 The lower authorities have erred in not granting deduction u/s 10A on disallowance of Rs.53,77,052/- being

interest paid on ECB loan and depreciation of Rs. 43,500/- on computers due exchange gain adjustment.

3. In the course of hearing, it was submitted by learned AR of the assessee that before the DRP, the assessee has raised an issue regarding disallowance of interest on ECB loan amounting to Rs.53,77,052/- from holding company and this disallowance was confirmed by DRP but this issue was not raised before the authorities below that even if this disallowance is confirmed regarding interest on ECB loan and depreciation of Rs.53,500/- on computers due to foreign exchange gain adjustment, then deduction under section 10A of the IT Act, 1961 should be allowed on the basis of assessed income after making these two disallowances. He submitted that this issue is being raised before the Tribunal by way of this additional ground and since this is a legal ground, this should be admitted and decided. He also submitted that as per Circular 37/2016 dated 02.11.2016, it was prescribed that deduction under Chapter VI A is admissible on the profits so enhanced by the disallowances under section 32, sections 40a(ia) and 40A(3) and 43B etc. He submitted that deduction under section 10A should also be allowed on the basis of enhanced income after these two disallowances. Reliance was placed on the judicial pronouncement reported in the case of CIT vs. Gem Plus Jewellery 330 ITR 175. He submitted that as per question No.b raised before Hon'ble Bombay High Court, this was the question as to whether the Tribunal was justified in directing the AO to grant exemption under section 10A on the assessed income which was enhanced due to disallowance of employers' as well as employees' contribution towards PF/ESI and this question was decided in favour of the assessee as per para Nos.11 and 12 of this judgment and it was held that when any disallowance is made by the AO, this is an increase in the business profits of the assessee and the same cannot be excluded for the

purpose of computing deduction allowable to the assessee under section 10A. Learned DR of the Revenue supported the orders of authorities below.

4. We have considered the rival submissions and we admit this additional ground and restore this matter back to the file of the DRP to decide this issue as per law because this issue is raised before us for the first time and no such issue was raised by the assessee before DRP. We therefore, feel it proper that this issue should be decided by the DRP first before we decide the issue. This additional ground of the assessee is allowed for statistical purposes. Ultimate result remains the same that assessee's appeal is partly allowed for statistical purposes.

5. In the result, appeal of the assessee is partly allowed for statistical purposes allowed.

Pronounced in the open court on the date mentioned on the caption page.

(PAVAN KUMAR GADALE)
Judicial Member

Bangalore,

Dated: March, 2020.

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| 1. Appellants | 2. Respondent | 3. CIT |
| 4. CIT(A) | 5. DR, ITAT, Bangalore. | 6. Guard file |

(A.K. GARODIA)
Accountant Member

By order

Assistant Registrar,
ITAT, Bangalore.