IN THE INCOME TAX APPELLATE TRIBUNAL
"B"BENCH: BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER

ITA No.941/Bang/2016
AssessmentYear: 2011-12

M/s. Gangagen Biotechnologies Pvt. Ltd. No.12, 5th Cross, Raghavendra Layout Opp. MEI Ltd., Yeshwanthpur Bangalore 560 022. **PAN NO :AABCG6628E**	**Vs.**	Principal Commissioner of Income Tax Bangalore-3 Bangalore
APPELLANT		**RESPONDENT**

ITA No.362/Bang/2018
Assessment Year: 2011-12

M/s. Gangagen Biotechnologies Pvt. Ltd. Bangalore 560 022.	**Vs.**	ACIT Circle-3(1)(2) Bangalore
APPELLANT		**RESPONDENT**

Appellant by	**:**	Shri S. Parthasarathi, A.R.
Respondent by	**:**	Dr. Manjunath Karkihalli, D.R.

Date of Hearing	**:**	02.02.2022
Date of Pronouncement	**:**	10.02.2022

O R D E R

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

Both the appeals have been filed by the assessee and both relate to the assessment year 2011-12. The appeal numbered as 941/Bang/2016 relates to appeal filed by the assessee challenging

the revision order passed u/s 263 of the Income-tax Act,1961 ['the Act' for short]. Other appeal relates to the order passed by Ld. CIT(A) against the assessment order passed u/s 143(3) r.w.s. 263 of the Act.

2. We shall first take up the appeal filed by the assessee against the revision order passed u/s 263 of the Act. The assessee is challenging the validity of the revision order.

3. The assessee is engaged in the business of undertaking R&D activity in biotechnology. The assessment in the hands of the assessee was completed u/s 143(3) of the Act on 30.8.2013. The Ld. Principal CIT examined the assessment orders and took the view that the deduction allowed to the assessee by the AO u/s 10B of the Act should not have been allowed. Accordingly, he initiated revision proceedings u/s 263 of the Act on the ground that the assessment order is erroneous and prejudicial to the interests of revenue. The assessee was allowed deduction u/s 10B of the Act for an amount of Rs.1,60,26,546/-. The main reasoning given by the Principal CIT is as below: -

a) The deduction u/s 10B of the Act was allowed by the A.O. without setting off of brought forward losses.
b) The R&D activity in biotechnology is not included in the definition of “computer software” given in section 10B of the Act.

4. After hearing the assessee, the Ld. CIT(A) set aside the assessment order passed by the A.O. u/s 143(3) of the Act and directed the A.O. to disallow the claim u/s 10B of the Act. Aggrieved, the assessee has filed this appeal before us.

5. We heard the parties and perused the record. We notice that the first reasoning given by Ld. Principal CIT was that the A.O. should have set off the brought forward losses before allowing deduction u/s 10B of the Act. Further, we notice that the assessee had placed reliance on the decision rendered by Hon'ble Karnataka High Court in the case of CIT Vs. Tata Elxsi Ltd. (2012) 349 ITR 98 (Karn.) in order to contend that the setting off of brought forward loss is not required for the purpose of computing deduction u/s 10B of the Act. We notice that the Ld. Principal CIT did not follow the binding decision of the jurisdictional High Court by observing that the issue is still not reached finality as the matter is pending before Hon'ble Supreme Court. It is a well settled proposition of law that all the authorities below the jurisdictional High Court have to necessarily follow the decision rendered by the Hon'ble High Court. Accordingly, the Ld. Principal CIT was not justified in refusing to follow the decision rendered by the jurisdictional High Court. In any case, the decision rendered by Hon'ble Karnataka High Court in the case of Tata Elxsi Ltd. (supra) has since been upheld by Hon'ble Supreme Court in the case of CIT Vs. M/s. Yokogawa India Ltd 391 ITR 274. Hence, the deduction u/s 10B should be allowed without setting off of brought forward losses for the year under consideration. Accordingly, this reasoning od Ld. Principal CIT would fail.

6. The next reasoning given by the Ld. Principal CIT is that the R&D activity carried out by the assessee in biotechnology services would not qualify as 'computer software' within the meaning given in sec. 10B of the Act. Before us, the Ld. A.R. submitted that the assessee has started claiming deduction u/s 10B of the Act from assessment year 2005-06 onwards and it has been allowed up to assessment year 2010-11 and also in the subsequent assessment

years. The Ld. A.R. submitted that the Ld. Principal CIT has raked up this issue only during the year under consideration. The Ld. A.R. submitted that the eligibility of the assessee for deduction u/s 10B of the Act was required to be considered only in the first year of claim and once it is accepted in the first year, the benefit should be given in the succeeding years also. Accordingly, the Ld. A.R. submitted that the Ld. Principal CIT was not justified in citing this reason in the year under consideration.

7. We find merit in the said contentions of the Ld. A.R. The Hon'ble Bombay High Court in the case of CIT vs. Western Outdoor Interactive Pvt. Ltd. (349 ITR 309) has held that whether a benefit of deduction is available for a particular number of years on satisfaction of certain conditions and under the provision of Act, then without withdrawing or setting aside the relief granted for the first assessment year in which claim was made and accepted, the AO cannot withdraw the relief for subsequent assessment years. This ratio was laid down in the context of section 10A and the same, in our view, can be applied to sec.10B also. Accordingly, once there is no change in the facts and circumstances of the case from the earlier years from the initial year when the claim has been accepted, then the deduction cannot be disallowed or denied in the subsequent years of claim. In the instant case, the eligibility of the assessee to claim deduction u/s 10B of the Act would have been examined in the first year, i.e., in AY 2005-06 and the deduction was allowed. The deduction so allowed in assessment year 2005-06 has not been withdrawn. In that case, the PCIT was not justified in directing the AO to deny deduction in the intervening year. Hence, the second reasoning given by Ld. Principal CIT also would fail.

8. The foregoing discussions would show that both the reasoning given by Ld PCIT fails and in that case, the assessment order cannot be considered as erroneous and prejudicial to the interests of revenue. Hence, as per the decision rendered by Hon'ble Supreme Court in the case of Malabar Industrial Company Ltd. (2000) 243 ITR 83, the impugned assessment order could not have been revised by Ld. Principal CIT u/s 263 of the Act. Accordingly, we set aside the order passed by ld. Principal CIT.

9. We shall now take up the appeal no.ITA 362/B/2018. We noticed earlier that the same relates to the order passed by Ld. CIT(A) against the assessment order passed u/s 143(3) r.w.s. 263 of the Act. In the earlier paragraphs, we have quashed the revision order passed by Ld. CIT(A) and hence the assessment order dated 25.8.2016 passed by the A.O. for the assessment year 2011-12 u/s 143(3) r.w.s. 263 of the Act would not have legs to stand on its own. Accordingly, the same is required to be quashed, in which case, the appellate order dated 6.12.2017 passed by Ld. CIT(A) would also fall on ground. Accordingly, we quash the order dated 06-12-2017 passed by Ld. CIT(A) and also the assessment order dated 25.8.2016 passed by the A.O. u/s 143(3) r.w.s. 263 of the Act.

10. In the result, both the appeals filed by the assessee are allowed.

Order pronounced in the open court on 10th Feb, 2022.

Sd/-	**Sd/-**
(N.V. Vasudevan)	**(B.R. Baskaran)**
Vice President	**Accountant Member**

Bangalore,
Dated 10th Feb, 2022.
VG/SPS

Copy to:

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

By order

Asst. Registrar, ITAT, Bangalore.