

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.: **3204 & 3205/CHNY/2019**

निर्धारण वर्ष /Assessment Years: 2009-10 & 2012-13

The ACIT,
Corporate Circle 1(2),
Chennai – 600 034.

M/s. California Software
v. **Company Ltd.,**
Robert V Chandran Tower, 7th
Tower, 149, Velacherry,
Tambaram Main Road,
Pallikaranai, Chennai – 600 100.
PAN: AABCC 8506B

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri R. Bhoopathy, Addl. CIT
: Shri R. Kumar, Advocate

सुनवाई की तारीख/Date of Hearing : 03.02.2022

घोषणा की तारीख/Date of Pronouncement : 15.02.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VP:

These appeals by the Revenue are arising out of the common order of Commissioner of Income Tax (Appeals)-4 (i/c) in ITA Nos.36/2013-14 & 176/2015-16/CIT(A)-4/AYs 2009-10 & 2012-13 dated 13.09.2019. The assessments were framed by the ACIT, Company Circle 1(3), Chennai for the assessment year 2009-10 u/s.143(3) r.w.s. 92CA of the Income Tax Act, 1961 (hereinafter the

'Act'), vide order dated 31.03.2013 and by the DCIT, Corporate Circle 1(2), Chennai for the assessment year 2012-13 u/s. 143(3) of the Act, vide order dated 18.03.2015.

2. These two appeals filed by the Revenue are delayed by 4 days and the Revenue has stated identical reason and for this they have filed condonation petition along with affidavit. In the affidavit para 4, they have stated the reasons for delay. When these reasons were confronted to Id.counsel for the assessee, he readily agreed for condonation of delay. After hearing both the sides, we find the cause as reasonable and hence, we condone the delay and admit both the appeals.

ITA 3204/Chny/2019

3. The only issue in this appeal of Revenue is as regards to the order of CIT(A) allowing deduction u/s.10A of the Act despite the fact that the gross total income returned by the assessee was a loss.

4. Brief facts are that the AO during the course of assessment proceedings noticed from the computation statement of the assessee that it had claimed deduction u/s.10A of the Act before

arriving at the gross total income. He noted that during the year under consideration, the assessee has both STPI unit and non-STPI unit. Out of the STPI unit, assessee has a unit at Chennai and at Bangalore and both are claiming deduction u/s.10A of the Act. He noted that the unit at Chennai had incurred a loss while unit at Bangalore had incurred a profit. Therefore according to the AO, there would be only one computation of income and there would be a book loss. The assessee has returned total loss of Rs.2,90,51,657/- but claimed deduction u/s.10A of the Act at Rs.3,39,35,719/-. The AO disallowed the claim of deduction u/s.10A of the Act. Aggrieved, the assessee preferred appeal before CIT(A).

4.1 The CIT(A) after considering the submissions of the assessee and following the decision of Bangalore Bench of ITAT in the case of Yokogawa India Ltd in ITA No.1802/Bang/2005 allowed the claim of assessee by observing in para 11.1 as under:-

11.1 It is seen from the written submission of the assessee that the Hon'ble ITAT Bangalore Bench has held in favour of the assessee on the similar grounds and deduction u/s 10A was allowed before setting off of the losses of the other units. Reference Web Spectrum Software (P) Ltd., in ITA No.387/Bang/2006 order dated 26.06.2007. The Company Web Spectrum (P) Ltd got amalgamated with California Software Company Ltd. Hence based on this precedent also the exemption u/s 10A is to be allowed at the level of the undertaking and not at the total income at the assessee level. In the case of the Relq Software (P) Ltd., vs. Income Tax Office also the Hon'ble ITAT Bangalore Bench has held in favour of assessee on

similar facts. Respectfully following the aforesaid judgments the deletion made by the AO u/s.10A of the I.T. Act is hereby directed to be deleted.

This ground is therefore allowed.”

Aggrieved, Revenue came in appeal before the Tribunal.

5. We have heard rival contentions and gone through facts and circumstances of the case. Before us, the Id.counsel for the assessee only stated that the issue is squarely covered by the decision of Hon’ble Supreme Court in the case of CIT vs. Yokogawa India Ltd., [2017] 391 ITR 274, wherein the Hon’ble Supreme Court finally held as under:-

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.

5.1 No contrary decision was cited by the Id. Senior DR. Hence, respectfully following the decision of Hon’ble Supreme Court in the case of Yokogawa India Ltd., *supra*, we confirm the order of CIT(A) in allowing deduction. Hence, the appeal filed by the Revenue is dismissed.

ITA 3205/Chny/2019

6. The only issue in this appeal of Revenue is as regards to the order of CIT(A) deleting the addition made by the AO on disallowance of commission paid to Yes Bank while computing actual

cost of acquisition of shares. The Revenue has also raised the issue that CIT(A) has no power to set aside the issue to the AO u/s.251 of the Act. For this, Revenue has raised the following two grounds:-

“2. The Ld.CIT(A), has erred in not calling for a remand report on the issue of commission paid to Yes Bank and on the actual cost of acquisition of shares?

3. The Ld.CIT(A), has erred in directing the AO to verify the documents and allow the issue of commission paid to Yes Bank and on the actual cost of acquisition of shares which is not in accordance with the power given u/s 251 of the IT Act, 1961.”

7. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the CIT(A) has sent the matter for verification of commission paid to Yes Bank but held the same as admissible deduction while computing total gains. The Id. Senior DR, only raised the issue that the CIT(A) has no power but on merits no ground is raised or no argument is made before us. We have gone through the findings of CIT(A) which reads in Para 16.1 as under:-

16.1 The AO had made two adjustments one on the sale consideration received and the other against cost of acquisition claimed. The addition made was Rs.2,00,64,001/- which comprises of the commission paid to Yes Bank (Rs.1,66,85,000) and cost of shares (Rs.33,79,001). Before me, the AR submitted the copy of invoice and agreement entered into with Yes Bank for providing services for sale of shares. Regarding cost of shares, the AR further submitted that the cost of shares is the actual cost incurred and not necessarily face value of shares. Prima facie, the commission paid to Yes Bank supported by agreement and bills and payment through banking channels would be an admissible deduction being expenses incurred in connection with the transfer of assets. However, this agreement was not furnished to the AO at the time of assessment proceedings. The AO is

therefore directed to verify and allow the claim of amount paid to Yes Bank as an admissible deduction while computing capital gains. Similarly, in respect of cost of the shares, the AO should verify the cost incurred over and above the face value of the shares while acquiring the shares and after due verification allow the actual cost incurred in acquiring the shares by the appellants company. The ground is allowed for statistical purpose.”

7.1 As the CIT(A) has set aside the issue to the file of the AO for verification, as pointed by Id. Senior DR, we amend the findings of CIT(A) instead of sending back to AO, he himself can verify the amounts paid to Yes Bank on account of commission claimed as deduction while computing capital gains. We direct the CIT(A) to verify and then allow the claim of assessee as per law. The appeal of the Revenue is allowed for statistical purpose.

8. In the result, the appeal filed by the Revenue in ITA No.3204/Chny/2019 is dismissed and in ITA 3205/Chny/2019 is allowed for statistical purpose.

Order pronounced in the court on 15th February, 2022 at Chennai.

Sd/-

(जी. मंजुनाथ)

(G. MANJUNATHA)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 15th February, 2022

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF. |