

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER
AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं./I.T.A.No.2861/Chny/2019

(निर्धारणवर्ष / Assessment Year: 2006-07)

M/s. Cenosphere India Pvt.Ltd. 181, 2 nd floor, Gimpex House, Lingu Chetty Street, Chennai-600 001.	Vs	Assistant Commissioner of Income Tax, Corporate Circle-2 Chennai-34.
PAN: AACCS 2764E		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. D.Anand, Advocate
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. G.Johnson, Addl.CIT

सुनवाईकीतारीख/Date of hearing	:	09.02.2022
घोषणाकीतारीख /Date of Pronouncement	:	23.02.2022

आदेश / ORDER

PER G.MANJUNATHA, AM:

This appeal filed by the assessee is directed against order passed by the learned Commissioner of Income Tax (Appeals)- 1, Chennai dated 30.08.2019 and pertains to assessment year 2006-07.

2. The assessee has raised following grounds of appeal:-

1. *The order of the learned Commissioner of Income Tax (Appeals)- 1, in not allowing the appellant ground no's (iv),(v)and (vi) in form no-35 is wrong, illegal and is opposed to law.*

2. *The learned CIT(A) ought to have seen that article 265 of the constitution of India mandates that taxes cannot be imposed save by authority of law and that the learned CIT(A) disallowed the claim of the*

appellant in violation of article 265 of the constitution of India.

3. The learned CIT(A) ought to have seen that deduction under section 10B is to be allowed from total income computed under chapter IV of the Income Tax Act and that brought forward loss is not to be adjusted while claiming deduction under section 10B.

4. The learned CIT(A) ought to have seen that the AO officer while giving effect to the orders of the Hon'ble Tribunal erred in excluding the freight expenses only in export turnover while not reducing the same from total turnover thereby artificially lowering the eligible claim under section 10B of the Income Tax Act.

5. The learned CIT(A) ought to have seen that the AO while calculation the eligible claim of the appellant under section 10B ought not to have excluded the freight expenses under section 10B unless it is excluded from total turnover as held by Special Bench in the case of ITO V. Sak Soft Ltd reported in 313 ITR(AT) 353.”

3. Brief facts of the case are that the assessee is engaged in the business of manufacture and export of flyash filed its return of income for the assessment year 2006-07 on 31.10.2006 declaring Nil total income, after set off of brought forward business loss and unabsorbed depreciation. The assessment for the impugned assessment year has been completed u/s.143(3) of the Income Tax Act, 1961, on 19.12.2018 and determined total income at Rs.71,57,400/- after rejecting

deduction claimed by the assessee u/s.10B of the Income Tax Act, 1961, in respect of profit derived by an undertaking engaged in the business of 100% EOU on the ground that the assessee has converted its existing domestic tax unit into 100% EOU unit and further, the assessee has reconstructed its already existed business into new 100% EOU unit. The assessee carried the matter in appeal before the learned CIT(A), but could not succeed. The learned CIT(A) for the reasons stated in his appellate order dated 31.01.2014, rejected arguments of the assessee and sustained disallowance of deduction claimed u/s.10B of the Income Tax Act, 1961. The assessee filed further appeal before the Tribunal challenging order of the learned CIT(A) and the ITAT., Chennai in ITA No.1094/Mds/2014 dated 30.09.2016 restored matter to the file of the Assessing Officer and directed the AO to reconsider the issue in light of arguments of the assessee that the Development Commissioner has approved the unit, pursuant to directions of Board constituted u/s.14 of the IDAR Act. Consequent to order of the Tribunal, the Assessing Officer has taken up case for verification and during the course of proceedings, he called upon the assessee to justify its claim of

deduction u/s.10B of the Income Tax Act, 1961. Further, after considering relevant submissions of the assessee opined that there is no change in facts and circumstances of the case, even after approval of the Development Commissioner and thus, opined that the assessee is not entitled for deduction u/s.10B of the Income Tax Act, 1961.

4. The assessee challenged order of the Assessing Officer giving effect to the order of the Tribunal before the learned CIT(A). The learned CIT(A) vide his order dated 30.08.2019, for the reasons stated in his appellate order has allowed claim of the assessee towards deduction u/s.10B of the Act, by holding that the Board has ratified approval granted to the assessee for setting up unit under 100% EOU scheme and thus, profit derived from 100% EOU unit is entitled for deduction u/s.10B of the Income Tax Act, 1961. However, rejected grounds nos. 4 to 6 taken by the assessee challenging computation of deduction u/s.10B by excluding certain expenses, including freight charges from export turnover, but not from total turnover. The assessee had also challenged the reasons given by the Assessing Officer in allowing deduction

u/s.10B without set off of brought forward loss of earlier years by holding that these grounds are not emanating from order of the Tribunal in setting aside the issue to file of the Assessing Officer and thus, same cannot be considered at this stage of proceedings. Aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

5. The learned A.R for the assessee submitted that the learned CIT(A) has erred in not entertaining grounds No.4 to 6 taken by the assessee challenging computation of deduction u/s.10B of the Act, without appreciating fact that in the first round of litigation, the Assessing Officer has disallowed total claim of the assessee u/s.10B of the Act, on the ground that the assessee has not satisfied conditions prescribed therein, however, has not examined claim of computation of deduction in light of arguments of the assessee. Therefore, once issue of deduction claimed u/s.10B of the Act has been set aside to the file of the Assessing Officer in toto, then, all issues including entitlement of deduction u/s.10B of the Act, and computation of such entitlement is also open to the Assessing Officer to re-examine claim of the assessee. In this case, the Assessing

Officer has once again, rejected claim of the assessee on the ground that the assessee has not satisfied conditions prescribed for claiming deduction, and also did not examine claim of the assessee, including computation of eligible profits for deduction u/s.10B of the Act. Therefore, when the learned CIT(A) allowed claim of the assessee, has erred in not considering remaining grounds taken by the assessee challenging computation of eligible profits for deduction u/s.10B of the Income Tax Act, 1961. He, further submitted that otherwise, issue of exclusion of expenses from export turnover and total turnover is fully covered in favour of the assessee by the decision of the Hon'ble Supreme Court in the case of CIT Vs. HCL Technologies Ltd. (2018) 404 ITR 078 (SC). Further, the issue of allowing deduction before setting up off of brought forward loss is also covered in favour of the assessee by the decision of the Hon'ble Supreme Court in the case of CIT Vs Yokogawa India Ltd. (2017) 391 ITR 0274(SC).

6. The learned DR, on the other hand, supporting order of the learned CIT(A) submitted that if you go through grounds taken by the assessee, there is no agitation from the assessee

challenging findings of the learned CIT(A) in rejecting ground Nos.4 to 6 and thus, there is no grievance for the assessee to agitate order of the learned CIT(A) on this issue. However, he fairly agreed that both grounds taken by the assessee challenging computation of eligible profit for deduction u/s.10B of the Act is squarely covered by the decision of the Hon'ble Supreme Court as claimed by the assessee.

7. We have heard both the parties, perused material available on record and gone through orders of the authorities below. The facts borne out from records clearly indicate that the Assessing Officer has totally denied deduction claimed u/s.10B of the Income Tax Act, 1961, without going into verify computation of eligible profits on the ground that the assessee did not satisfy conditions prescribed for claiming deduction u/s.10B of the Act. Therefore, one has to examine claim of the assessee in light of order of the Assessing Officer in rejecting claim of deduction u/s/10B of the Act. Admittedly, the Tribunal has set aside issue to file of the Assessing Officer for de novo consideration without giving any findings as to eligibility or other aspects of computation of eligible profits. Therefore, once the issue has been set aside for de novo consideration, then in

our considered view, all issues related to deduction claimed u/s.10B, including eligibility of assessee for claiming such benefit and further, computation of eligible profit for the purpose of claiming deduction u/s.10B are open to the Assessing Officer for fresh examination. Therefore, in our considered view, the learned CIT(A) has erred in not considering grounds No.4 to 6 taken by the assessee challenging computation of eligible profit for the purpose of deduction u/s.10B of the Act, even though, the learned CIT(A) held that the assessee is eligible for claiming deduction u/s.10B of the Act, in respect of profit derived from 100% EOU unit. Therefore, to that extent, we are not inclined to approve findings of the learned CIT(A).

8. Having said so, let us examine claim of the assessee. The assessee has challenged computation of eligible profits for the purpose of deduction u/s.10B of the Act, on two grounds. The first and foremost arguments of the assessee is that once freight and other expenses are reduced from export turnover, then same needs to be excluded from total turnover. We find that the issue of exclusion of expenses from export as well as total turnover is squarely covered by the decision of the

Hon'ble Supreme Court in the case of CIT Vs. HCL Technologies Ltd.(supra), where the Hon'ble Supreme Court has clearly held that any expenditure excluded from export turnover also needs to be excluded from total turnover for the purpose of computation of deduction u/s.10B of the Act. Similarly, issue of allowing deduction u/s.10B of the Act, before setting up of brought forward loss and unabsorbed depreciation from earlier years, is also fully covered in favour of the assessee by the decision of the Hon'ble Supreme Court in the case of CIT Vs Yokogawa India Ltd. (supra), where the Hon'ble Supreme Court has very categorically held that eligible profit of an undertaking u/s.10A or 10B of the Act, should be allowed as deduction without setting off of brought forward business loss or unabsorbed depreciation. Since, the issue is fully covered in favour of the assessee, we are of the considered view that claim of the assessee that exclusion of certain expenses from export turnover also needs to be excluded from total turnover is in accordance with law. Similarly, claim of the assessee that eligible profit should be allowed as deduction u/s.10B without setting off of brought forward business loss or unabsorbed depreciation is also in accordance with law. Therefore, we are

of the considered view that the learned CIT(A) has erred in not considering grounds taken by the assessee challenging computation of eligible profits for the purpose of deduction u/s.10B of the Income Tax Act, 1961. However, fact remains that both the authorities, including Assessing Officer as well as learned CIT(A) have not gone into the aspect of computation of eligible profit in light of arguments of the assessee. Therefore, we set aside the issue to the file of the Assessing Officer for limited purpose of examination of computation filed by the assessee and we direct the Assessing Officer to compute eligible profit for the purpose of deduction u/s.10B of the Act, in light of decision of the Hon'ble Supreme Court in the case of in the case of CIT Vs. HCL Technologies Ltd. (supra) and the decision of CIT Vs. Yokogawa India Ltd.(supra).

9. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 23rd February, 2022

Sd/-

(वी. दुर्गा राव)

(V.Durga Rao)

न्यायिक सदस्य /Judicial Member

चेन्नई/Chennai,

दिनांक/Dated 23rd February, 2022

DS

Sd/-

(जी. मंजुनाथ)

(G.Manjunatha)

लेखा सदस्य / Accountant Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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