

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER AND
SH. NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

ITA No. 5346/Del/2019
(Assessment Year : 2008-09)

ACIT Circle – 5(1), New Delhi PAN : AAACB 2769 E (APPELLANT)	Vs.	Birla Soft India Ltd. 8 th Floor, Birla Tower, 25, Barakhamba Road, New Delhi-110 001 (RESPONDENT)
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Assessee by	Shri Sheetal Kumar, Adv.
Revenue by	Shri Zahid Parvez, Sr. D.R.

Date of hearing:	09.06.2022
Date of Pronouncement:	09.06.2022

ORDER

PER ANIL CHATURVEDI, AM :

The present appeal filed by the Revenue is directed against the order dated 11.03.2019 of the Commissioner of Income Tax (Appeals)-2, New Delhi relating to Assessment Year 2008-09.

2. The relevant facts as culled from the material on records are as under :

3. Assessee had filed its return of income for A.Y. 2008-09 on 30.09.2008 declaring loss of Rs.12,29,14,677/-. The assessment

was completed u/s 143(3) r.w.s 144C vide order dated 22.10.2012 wherein the total income was determined at Rs.53,51,26,850/- and he also disallowed loss amounting to Rs.10,91,88,584/- pertaining to STP units claiming 10A exemption. Aggrieved by the order of AO, assessee carried the matter before ITAT. ITAT vide order dated 26.04.2013 in ITA No.284/Del/2013 granted partial relief and restored the issue back to AO with certain directions. The AO thereafter passed order u/s 254/143(3) r.w.s 144C of the Act vide order dated 25.03.2015 determining the total loss at Rs.1,37,26,545/-. While determining the aforesaid loss, AO had allowed to carry forward a set off losses of STP and Non-STP units amounting to Rs.8,16,47,511/- only as against the claim of the assessee amounting to Rs.10,91,88,584/-

4. Aggrieved by the order of AO, assessee carried the matter before CIT(A). CIT(A) while deciding the issue in assessee's favour in para 6.4 of the order noted that the action of the AO was not in accordance with direction given by Hon'ble ITAT. He further noted that Hon'ble Apex Court in the case of **CIT vs. Yukogawa India Ltd. [2017] 77 taxmann.com 41 (SC)** had held that deduction u/s 10A would be prior to the commencement of the exercise under Chapter – VI of the Act and at the stage of determination of eligible profits and deduction u/s 10A, aggregation of income under other heads and set off would be pre-mature. He therefore, following the aforesaid decision of Hon'ble Apex Court held that the deduction is to be allowed at the time of determination eligible profits of STP

units after set off against loss from other eligible units. He thus allowed the claim of the assessee. Aggrieved by the aforesaid order of CIT(A), Revenue is now in appeal and has raised the following grounds:

1. *“Whether on the facts and the circumstances of the case and in law, the ld CIT(A) was right in allowing deduction under section 10A of the Act, 1961 at the time of determining eligible profits of STP units.*
2. *The appellant craves leave for reserving the right to amend, modify, alter add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.”*
5. On the date of hearing, an adjournment application dated 08.06.2022 was moved by the office of AR seeking adjournment on the ground that additional time was required to prepare the matter for appropriate representation. Looking at the facts of the case that the issue has been decided by CIT(A) by following Hon’ble Apex Court decisions, we reject the adjournment application and proceed with deciding the issue after hearing both the parties.
6. Before us, Learned AR supported the order of CIT(A) on the other hand Learned DR supported the order of AO.
7. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to the setting off losses of STP units to be set off against profit of non-STP units. We find that CIT(A) while deciding the issue in favour of the assessee had followed the decision of

Hon'ble Apex Court in the case of CIT vs. Yukogawa India Ltd. (supra). Before us, no fallacy in the findings of CIT(A) has been pointed out by Revenue nor has Revenue brought on record any contrary binding decision in its support. We therefore find no reason to interfere with the order of CIT(A) and **thus the ground of Revenue is dismissed.**

8. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 09.06.2022

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 09.06.2022

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

ASSISTANT REGISTRAR
ITAT NEW DELHI