

आयकर अपीलिय अधिकरण
मुंबई पीठ "सी"
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री एस. रिफौर रहमान, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH " C", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI S.RIFAUR RAHMAN , ACCOUNTANT MEMBER
आअसं.246/मुं/2022 (नि.व. 2016-17)
ITA NO.246/MUM/2022 (A.Y.2016-17)

Inventurus Knowledge Solutions Pvt. Ltd.
801, Mindspace Business Park Pvt. Ltd.,
Building No.5 & 6, Thane Belapur Road,
Airoli East, Navi Mumbai – 400 708.

PAN: AABCI-5573-J

..... अपीलार्थी /Appellant

बनाम Vs.

PCIT,MUMBAI -6
CIRCLE 15(1)(2)
Aaykar Bhavan, M.K.Road,
Mumbai 400 020.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri S.C.Tiwari, Advocate

प्रतिवादी द्वारा/Respondent by : Shri Jayant Jhaveri

सुनवाई की तिथि/ Date of hearing : 09/03/2022

घोषणा की तिथि/ Date of pronouncement : 03/06/2022

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Principal Commissioner of Income Tax, Mumbai -6 [in short 'the PCIT'] dated 31/03/2021 passed u/s.263 of the Income Tax Act, 1961 [in short ' the Act'], for the assessment year 2016-17.

2. This appeal of the assessee is time barred by eight months. The assessee has filed an application seeking condonation of delay in filing of the appeal. The delay in filing of appeal has been attributed to the unprecedented situation caused by COVID-19 Pandemic. The Hon'ble Apex Court taking suo-motu cognisance of the hardship caused by COVID-19 Pandemic to the litigants extended the period of limitation under General Law of Limitation and under Special Laws [Re: Cognisance for Extension of Limitation, 117 taxamann.com 66]. The assessee has filed present appeal within extended period of limitation, hence, there is no delay in filing of the present appeal.

3. Shri S.C.Tiwari appearing on behalf of the assessee submitted that PCIT while exercising revisional jurisdiction u/s. 263 of the Act has erred in holding that the assessee has claimed deduction u/s. 10AA of the Act @100% in respect of units located in Mumbai and Hyderabad. The Id.Authorized Representative for the assessee submitted that the assessee is engaged in the business of providing IT enabled services from its units located in Special Economic Zone (SEZ) at Mumbai and Hyderabad. The assessee claimed deduction u/s. 10AA of the Act in respect of aforesaid Units. The assessee has four Units. In respect of Unit No.202, the assessee claimed 50% deduction as it is in the 8th year of operation . Unit No.201,203 and 205 are eligible for deduction @100%. Unit No.201 is in second year of operation and is a loss making Unit. Unit No.203 is also in second year. The assessee claimed deduction @100% on the said unit. The Unit No.205 is in the first year of operation and hence deduction @100% was claimed. Unit No.206 has not commenced production in the assessment year 2016-17, hence, no deduction was claimed in respect of said unit. The Id.Authorized Representative for the

assessee submitted that all these details were available before the Assessing Officer. During scrutiny assessment proceedings the Assessing Officer had made necessary enquiries, hence, it is not a case of lack of enquiry. In proceedings before the PCIT the assessee had again furnished all the relevant documents i.e. Form No.56F in respect of Unit No.203 at Mumbai and Units No. 201, 202 and 205 at Hyderabad. The PCIT without examining the documents furnished by the assessee has passed the impugned order. The Id.Authorized Representative for the assessee further pointed that even on merits the case of assessee is squarely covered by the decision of Hon'ble Supreme Court of India in the case of CIT vs. Yokogawa India Ltd. reported as 391 ITR 274 and in the case of PCIT vs. Rangsons Electronics Pvt. Ltd., 398 ITR 619. The Id.Authorized Representative for the assessee to further buttress his submissions placed reliance on the decision in the case of Kelvinator of India Ltd., 123 Taxaman433 to contend that when assessment order u/s. 143(3) is passed a presumption can be raised that such an order is passed on application of mind.

4. Per contra, Shri Jayant Jhaveri representing the Department vehemently defended the impugned order and submitted that during scrutiny assessment proceedings the Assessing Officer did not call for any details. No questionnaire was issued while issuing notice under section 143(2) of the Act. The Id.Departmental Representative submitted that the issue under section 263 of the Act is not assessee's eligibility to claim deduction under section 10AA of the Act but the quantum of deduction claimed. There is no reference in the assessment order with respect to assessee's claim under section 10AA of the Act. From the details given in Form No.56F the gross total income of the undertaking cannot be determined.

4.1 The Id.Departmental Representative referring to para 17 of the decision in the case of CIT vs. Yokogawa India Ltd.(supra) asserted that the deduction is claimed on the gross total income. However, in the instant case the Assessing Officer has not determined gross total income on which deduction under section 10AA is to be computed. Hence, the PCIT has rightly exercised jurisdiction under section 263 of the Act.

5. The Id.Counsel for the assessee rebutting the submissions made on behalf of the Revenue contended that the correctness of accounts and Form 56F has not been doubted by the PCIT. Once the accounts have been accepted and the correctness of claim made in Form 56F has been accepted invoking of revisional jurisdiction under section 263 is uncalled for.

6. We have heard the submissions made by rival sides and have examined impugned order and documents on record. We have also considered the decision on which Id.Counsel for the assessee has placed reliance. A perusal of the impugned order shows that PCIT has exercised his revisional powers as the Assessing Officer has allegedly not made detailed enquiries to examine assessee's claim of deduction u/s. 10AA of the Act. The PCIT in para 4.2 of the order has observed that even during the revisional proceedings the assessee has not brought anything specific on record to prove details with respect to commencement of business and/or the year from which the assessee has been claiming deduction u/s. 10AA of the Act nor such details were furnished during the course of assessment proceedings.

7. The assessee had filed its return of income for the impugned Assessment Year declaring loss of (-) Rs.2,74,,34,536/-. The case of the assessee was selected for complete scrutiny under CASS. The assessee is engaged in

providing IT enabled services with its units located in SEZ at Mumbai and Hyderabad. As per the chart furnished by the assessee, the assessee is having six units. Units at Hyderabad include Unit No. 201,202 and 205. The assessee is having three units in Mumbai, Unit No.203,204 and 206. The details of the units and the deduction claimed therein are as under:

Details of Unit wise computation of total income for assessment year 2016-17.

Hyderabad Unit:

S.No.	Particulars	Unit 201	Unit 202	Unit 205
A	Business Profit after Addition & Deletions	(19,320,701)	284,299,372	153,472,994
B	Add:- Other sources income from FD	-	-	-
C	Gross Total Income C=(A+B)	(19,320,701)	284,299,372	153,472,994
D	Less: Deduction u/s 10AA		(142,149,686)	(153,472,994)
E	Balance Taxable Income/Loss E=(C-D)	(19,320,701)	142,149,686	-

Mumbai Unit:

S.No.	Particulars	Unit 203	Unit 204 STPI	Unit 206
A	Business Profit after Addition & Deletions	72,720,907	(123,476,750)	29,179,539
B	Add:- Other sources income from FD	-	2,392,772	-
C	Gross Total Income C=(A+B)	72,720,907	(121,083,978)	(29,179,539)
D	Less: Deduction u/s 10AA	(72,720,907)	-	-
E	Balance Taxable Income/Loss E=(C-D)	-	(121,083,978)	(29,179,539)

During the course of scrutiny assessment proceedings the Assessing Officer issued notice u/s. 143(2) as well as notice u/s. 142(1) of the Act. In response to the said notice the assessee inter-alia furnished Form No.56F in respect of following Units:

Mumbai - Unit No.203

Hyderabad - Unit No.201,202 and 205

Since, Hyderabad Unit No.201 was loss making unit no deduction u/s. 10AA of the Act was claimed in respect of said unit. Similarly, no deduction was claimed in respect Mumbai Unit No.204 and 206. From the perusal of Form No.56F furnished by the assessee before Assessing Officer following relevant information can be derived:

Hyderabad Unit No.201:

- (i) Date of initial registration in SEZ : 07/11/2014
- (ii) Date of commencement of manufacture/or production : 05/01/2015
- (iii) Number of consecutive year for which deduction is claimed : 2 yrs.
- (iv) Profit derived by the undertaking : Nil
- (v) Deduction claimed : Nil

Hyderabad Unit No.202

- (vi) Date of initial registration in SEZ : 15/07/2008
- (vii) Date of commencement of manufacture/or production : 01/09/2008
- (viii) Number of consecutive year for which deduction is claimed : 8 yrs.
- (ix) Profit derived by the undertaking : Rs. 28,42,99,372/-
- (x) Deduction claimed : 50% of the profit.

Hyderabad Unit No.205

- (i) Date of initial registration in SEZ : 10/04/2015
- (ii) Date of commencement of manufacture/or production : 10/06/2015
- (iii) Number of consecutive year for which deduction is claimed : 1 yr.
- (iv) Profit derived by the undertaking : Rs. 15,34,72,994/-
- (v) Deduction claimed : 100% of the profit.

Mumbai Unit No.203

- (i) Date of initial registration in SEZ : 23/08/2013
- (ii) Date of commencement of manufacture/or production : 02/06/2014
- (iii) Number of consecutive year for which deduction is claimed : 2 yrs.
- (iv) Profit derived by the undertaking : Rs. 7,27,20,907/-
- (v) Deduction claimed : 100% of the profit.

Thus, from the information furnished by the assessee during assessment proceedings, the information relevant for claiming deduction u/s. 10AA is clearly discernible. Therefore, the observation made by PCIT in para4.2 of the impugned order is contrary to the facts and documents on record. These very documents were also furnished by the assessee before PCIT. The PCIT without considering these relevant documents proceeded to pass the order u/s.263 of the Act.

8. As regards specific enquiries of assessee's claim of deduction u/s. 10AA during the assessment proceedings, we find that no effort was made by Assessing Officer to examine the issue in particular. However, the assessee had furnished details before the Assessing Officer in response to notice dated 09/08/2018 u/s. 143(2) of the Act which inter-alia includes Audited Accounts and Form 56F for claiming deduction u/s. 10AA of the Act. The Assessing Officer has passed order without referring to any of the documents furnished by the assessee in response to notice issued u/s.143(2) of the Act. In assessment order para – 3, the Assessing Officer only mentioned that the assessee filed submissions online and also in "Tapal". The details of the documents furnished by the assessee are not mentioned in the assessment

order. The assessment order is silent in so far as assessee's claim of deduction u/s.10AA of the Act.

9. The PCIT in the present case after having making observations that the Assessing Officer has not conducted enquiry, has also failed to make enquiries or even to examine the documents furnished by the assessee. The primary objection of the PCIT after referring to the findings of Hon'ble Supreme Court of India in the case CIT vs. Yokogawa India Ltd. (supra) is, *"Thus, as cleared by the judicial pronouncement, the set-off of brought forward loss are to be considered only after allowing the deduction u/s.10A but has nowhere held that deduction in excess of income has to be allowed and the resultant loss to be allowed to be carried forward."*

10. The Hon'ble Supreme Court of India in the case of CIT vs. Yokogawa India Ltd. (supra) has held as under:

" 16. From a reading of the relevant provisions of Section 10A it is more than clear to us that the deductions contemplated therein is qua the eligible undertaking of an assessee standing on its own and without reference to the other eligible or non-eligible units or undertakings of the assessee. The benefit of deduction is given by the Act to the individual undertaken and resultantly flows to the assessee. This is also more that clear from the contemporaneous Circular No. 794 date 9.8.2000 which states in paragraph 15.6 that:

"The export turnover and the total turnover for the purposes of sections 10A and 10B shall be of the undertaking located in specified zones or 100% Export Oriented Undertakings, as the case may be, and this shall not have any material relationship with the other business of the assessee outside, these zones or units for the purposes of this provision."

17. *If the specific provisions of the Act provide [first proviso to Sections 10A(1); 10A (1A) and 10A(4)] that the unit that is contemplated for grant of benefit of deduction is the eligible undertaking and that is also how the contemporaneous Circular of the department (No.794 dated 09.08.2000) understood the situation, it is only logical and natural that the stage of deduction of the profits and gains of the business of an eligible undertaking has to be made independently and, therefore, immediately after the stage of determination of its profits and gains. At that stage the aggregate of the incomes under other heads and the provisions for set off and carry forward contained in Sections 70, 72 and 74 of the Act would be premature for application. The deductions under Section 10A therefore would be prior to the commencement of the exercise to be undertaken under Chapter VI of the Act for arriving at the total income of the assessee from the gross total income. The somewhat discordant use of the expression "total income of the assessee" in Section.10A has already been dealt with*

earlier and in the overall scenario unfolded by the provisions of Section 10A the aforesaid discord can be reconciled by understanding the expression "total income of the assessee" in Section 10A as 'total income of the undertaking'

From the bare perusal of the aforesaid decision it can be seen that Hon'ble Apex Court has held that deduction u/s. 10A of the Act has to be allowed to each unit independently. In the instant case, the assessee has six units. The assessee has claimed deduction u/s. 10AA of the Act in respect of three eligible units. The deduction u/s. 10AA of the Act has been computed by assessee in line with manner detailed in Yokogawa India Ltd.(supra). In the other two eligible units the assessee has suffered losses which the assessee is entitled to carry forward. One STPI unit which is non-eligible unit the assessee has suffered losses. On grossing of taxable income/loss of each unit there is net loss of Rs.2,74,34,531/- , which the assessee has carried forward. The provisions of Act itself provide for carry forward of business losses, if they are not set off against the income of relevant year, in accordance with the provisions of Act. From the details furnished by the assessee it is evident that the assessee has not claimed carry forward of loss arising from the deduction claimed u/s. 10AA of the Act. The loss carried forward by the assessee is in respect of loss making units. Thus, the objection raised by PCIT with respect to carry forward of loss is not tenable.

11. Even if, we hold that the Assessing Officer failed to make enquiries, the issue raised by the PCIT in proceedings u/s. 263 of the Act is squarely covered in favour of the assessee by the decision rendered in the case of Yokogawa India Ltd. (supra).

12. For exercising revisional powers u/s. 263 of the Act twin conditions i.e. order passed by the Assessing Officer should be erroneous and prejudicial to the interest of Revenue should be satisfied. In the present case, the order

passed by the Assessing Officer is not per-se erroneous, hence, the twin conditions *sine-qua-non* for invoking revisional jurisdiction are not satisfied. Hence, the impugned order fails in the test of judicial scrutiny. Ergo, the impugned order is quashed and appeal by assessee is allowed.

Order pronounced in the open court on Friday the 3rd day of June, 2022.

Sd/-

(S.RIFAUR RAHMAN)

लेखाकार सदस्य/ACCOUNTANT MEMBER

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 03/06/2022

Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar/
Sr.Private Secretary
ITAT, Mumbai