

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.148/Bang/2020
Assessment Year: 2011-12

M/s. Syngene International Limited Plot Nos.2 & 3, Bommasandra Industrial Area IV Phase Jigani Link Road Bommasandra Bangalore 560 099 PAN NO : AABCS9936M	Vs.	JCIT Special Range 6 Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri Padamchand Khincha, A.R.
Respondent by	:	Shri Sumer Singh Meena, D.R.

Date of Hearing	:	11.07.2022
Date of Pronouncement	:	11.07.2022

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against the order of CIT(A)-10, Bengaluru dated 29.11.2019. The assessee has raised following grounds of appeal:-

Based on the facts and circumstances of the case, Syngene International Limited (hereinafter referred to as "the Appellant"), respectfully submits the following grounds in respect of the order passed by the Learned Commissioner of Income-tax (Appeals) - 10 ["CIT(A)"] under section 250 of the Income-tax Act, 1961 (hereinafter referred to as "the Act")

1. Disallowance of relief claimed under section 10B of the Act

- 1.1 *The Learned CIT(A) has erred in law and in fact in disallowing the relief claimed under section 10B of the Act;*
- 1.2 *The Learned CIT(A), having accepted the Appellant's submission on being engaged in the business of manufacturing, has erred in law and on facts, in denying the relief claimed under section 10B of the Act on the contention that the renewal of licenses were not in place without appreciating that the renewal of licenses were in place.*

2. Disallowance of relief claimed under section 10AA of the Act

- 2.1 *The Learned CIT(A) has erred in law and on facts in disallowing the relief claimed under section 10AA of the Act.*
- 2.2 *The Learned CIT(A), having accepted the Appellant's submission on being engaged in the business of manufacturing or production of article or thing or rendering of services, has erred in law and on facts, in denying the 10AA of the Act merely stating that Units were formed by split-up and reconstruction without appreciating the fact that there was no split-up and reconstruction of existing units.*
- 2.3 *The Learned CIT(A) has erred in law and on facts in disregarding the Appellant submission that the test of split-up and reconstruction needs to be undertaken only in the year of formation of the Unit based on the decision of the Jurisdictional Karnataka High Court in the case of CIT vs Nippon Electronics India Private Limited [1990] 181 ITR 518 and other judicial precedents.*
- 2.4 *Without prejudice to the above, the Learned CIT(A) has erred in law and on facts in not considering that the provisions of SEZ law would prevail over the provisions of the Act and the reconstruction of SEZ Units would not lead to denial of deduction under section 10AA of the Act.*

3. Alternative claim of deduction under section 80-IB(8A) of the Act

3.1 *Without prejudice to tile above, the Learned CIT(A) has erred in law and on fact in not allowing the alternative claim of deduction under section 80-IB(SA) of the Act.*

4. *Disallowance of claim for additional depreciation made under section 32(1)(iia) of the Act*

4.1 *The Learned CIT(A) has erred in law and on facts in not allowing the additional depreciation on plant and machinery as claimed by the Appellant.*

4.2 *The Learned CIT(A) having accepted the Appellant's submission on being engaged in the business of manufacture, has erred in law and on facts, in denying the claim of additional depreciation merely stating that relevant details in respect of the claim were not furnished.*

4.3 *The Learned CIT (A) has failed to take note of the details of additional depreciation schedule submitted during the appellate proceedings and asset wise details on which depreciation claimed under section 32(1)(iia) furnished during the course of the assessment proceedings, which clearly substantiates the details of assets eligible for additional depreciation under section 32(1)(iia) of the Act.*

Addition under section 14A of the Act

5.1 *The Learned CIT(A) has erred in law and on facts in making an addition under section 14A of the Act by applying Rule 8D of the Income-tax Rules, 1962 ("the Rules")*

5.2 *The Learned CIT(A) has erred in law and on facts In disregarding the submission made by the Appellant that it had not incurred any expenses in connection with the exempt dividend income earned during the year.*

5.3 *The Learned CIT(A) has erred in law and on facts in concluding that the Appellant had " not apportioned expense towards exempt income without identifying any incorrectness in the books of the Appellant.*

- 5.4 *The Learned CIT(A) has erred in confirming the disallowance under section 14A of the Act which is high and arbitrary.*
- 5.5 *Without prejudice to the above that disallowance under section 14A of the Act should not be made, the Learned CIT(A) has erred in restricting the disallowance under section 14A of the Act read with Rule 8D of the Rules to the extent of the exempt income of INR 53,64,000 without considering the rectification order passed by the Assessing officer dated September 15, 2015 wherein the disallowance has been restricted to INR 31,01,676.*

Deduction u/s 10B of the Act:-

2. With regard to ground Nos.1 to 1.2, after hearing both the parties, we are of the opinion that similar issue came up for consideration before this Tribunal in assessee's own case in ITA No.147/Bang/2020 vide order dated 13.6.2022 in which it was held as under on this issue:-

"2.4. We have heard the rival submissions and perused the materials available on record. In this case, approval was given for EO Unit-2 was valid from 24.8.2011 to 31.3.2007. This was extended for a further period of 5 years from 31.3.2007 to 31.3.2012 by Development Commissioner, Cochin SEZ Sub Office for 100% EOU's vide letter dated 16.3.2007. Further, vide letter dated 19.3.2012, the approval was further extended for a period of 5 years from 31.3.2012. This is evident from the copy of letter dated 16.3.2007 placed at page Nos.269 to 272 of assessee's paper book. This approval of EO Unit was in force during the relevant previous year 2009-10 corresponding to assessment year 2010-11. In view of the above, there is no merit in the contention of Ld. CIT(A) that the approval of EO Unit-2 has not produced before him. Accordingly, we vacate those findings of Ld. CIT(A) on this issue in denying the exemption u/s 10B of the Act. Accordingly, we remit this issue to the file of AO for the purpose of quantification of deduction of exemption u/s 10B of the Act."

2.1 In view of the above order of the Tribunal, we are inclined to remit this issue to the file of the AO on similar direction.

Deduction u/s 10AA of the Act:-

3. With regard to ground Nos.2 to 2.2, after hearing both the parties, we are of the opinion that similar issue came up for consideration before this Tribunal in assessee's own case in ITA

No.147/Bang/2020 cited (supra) in which it was held as under on this issue:-

“3.23 We have heard the rival submissions and perused the materials available on record. The reason for disallowance of claim u/s 10AA of the Act was on the reason that assessee has not proved that it has been formed without split up and reconstruction of earlier unit. There was an amendment to section 10AA of the Act by Finance Act, 2007 with retrospective effect from 10.2.2006 and which is applicable to the present assessment year 2010-11. The contention of the Ld. A.R. is that this issue was already considered by the Hon’ble High Court of Karnataka in assessee’s own case for earlier assessment years 2003-04 to 2004-05 & 2006-07 to 2009-10. However, on perusing the judgement of Hon’ble High Court in ITA No.184/2016 dated 2.12.2020 for the assessment year 2005-06, the observation of the Hon’ble High Court is as under:-

“It is pertinent to mention that in the memo of appeal filed before the Tribunal, the revenue has not assailed the findings recorded in favour of assessee that there has been no splitting up of business, therefore, the question of remitting the matter to the Tribunal does not arise”.

3.1 In view of the above order of the Tribunal, we are inclined to remit this issue to the file of the AO on similar direction.

Deduction u/s 80IB(8A) of the Act:-

4. With regard to ground Nos.3 to 3.1, after hearing both the parties, we are of the opinion that similar issue came up for consideration before this Tribunal in assessee’s own case in ITA No.147/Bang/2020 cited (supra) in which it was held as under on this issue:-

“4. Next ground in this appeal is with regard to the claim of deduction u/s 80IB(8A) of the Act. Without prejudice to the Ground No.2, the Ld. A.R. submitted that Ld. CIT(A) erred in not allowing the assessee’s alternative claim u/s 80IB(8A) of the Act. This ground is infructuous in view of our findings in ground No.2 of allowability of deduction u/s 10AA of the Act. Accordingly, this ground is dismissed as infructuous.”

4.1 In view of the above order of the Tribunal, we dismiss these grounds as infructuous.

Disallowance of addition on depreciation:-

5. With regard to ground Nos.4 to 4.3, after hearing both the parties, we are of the opinion that similar issue came up for consideration before this Tribunal in assessee's own case in ITA No.147/Bang/2020 cited (supra) in which it was held as under on this issue:-

“5.11 This claim of additional depreciation has been disallowed as the assessee not filed necessary documents to justify the claim of additional depreciation. On the other hand, Ld. A.R's contention is that the assessee has furnished all details in the first year itself and this is the second year of claim. As such, there is no necessity of furnishing of further details. He also argued that once the normal depreciation has been granted in this assessment year, granting of additional depreciation is automatic and relied on various judgements. In our opinion, it is the duty of the assessee to furnish the necessary details as called for by the authorities, so as to claim the deduction. In the absence of such details, the lower authorities have no other option to deny the deduction claimed by assessee. Accordingly, in the interest of justice, we remit this issue to the file of AO with the direction to the assessee to furnish the necessary details as required by the authorities. The AO has to examine the same and decide accordingly. This issue is remitted back to the file of AO for fresh consideration.”

5.1 In view of the above order of the Tribunal, we are inclined to remit this issue to the file of the AO on similar direction.

Deduction u/s 14A of the Act:-

6. With regard to ground Nos.5 to 5.5, after hearing both the parties, we are of the opinion that similar issue came up for consideration before this Tribunal in assessee's own case in ITA No.147/Bang/2020 cited (supra) in which it was held as under on this issue:-

“6.10 We have heard the rival submissions and perused the materials available on record. With regard to invoking provisions of section 14A r.w. Rule 8D(2)(iii) of the Act is for

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administrative and company expenses when the assessee derives exempted income. In the instant case, the assessee made huge investments which is given rise to exempted income. Investment decisions are very complex and strategic and obviously, the assessee would have incurred certain administrative expenses such as salary, general expenses, printing and stationery, therefore, it cannot be said that no expenditure was incurred for making the said investments. Hence, we confirm the disallowance made by the AO by invoking the provisions of section 14A of the Act r.w. Rule 8D(2)(iii) of the Act. However, it cannot exceed the exempted income. With this observation, we allow this ground taken by the assessee.”

6.1 In view of the above order of the Tribunal, we are inclined to remit this issue to the file of the AO on similar direction.

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

Order pronounced in the open court on 11th Jul, 2022

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 11th Jul, 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.