

**IN THE INCOME TAX APPELLATE TRIBUNAL “J” BENCH, MUMBAI**

**BEFORE SHRI PRASHANT MAHARISHI, AM  
AND  
SHRI SANDEEP SINGH KARHAIL, JM**

**ITA No. 4340/MUM/2016  
(Assessment Year 2007-08)**

**DCIT-11(2)(1)  
Room No.477, Aayakar Bhavan,  
M.K. Marg,  
Mumbai-400 020  
(Appellant)**

**Vs.**

**M/s. Sitel India Pvt. Ltd.,  
501, Boomerang,  
Chandivali Farm Road,  
Andheri (East), Mumbai  
(Respondent)**

**CO No. 2/MUM/2018  
Arising Out of ITA No. 4340/MUM/2016  
(Assessment Year 2007-08)**

**M/s. Sitel India Pvt. Ltd.,  
501, Boomerang,  
Chandivali Farm Road,  
Andheri (East), Mumbai  
(Appellant)**

**Vs.**

**DCIT-11(2)(1)  
Room No.477, Aayakar Bhavan,  
M.K. Marg,  
Mumbai-400 020  
(Respondent)**

**PAN No. AAFCS1297M**

**Assessee by : Shri. Sidhlesh Choughule  
Revenue by : Shri. Vatsala Jha CIT DR**

**Date of hearing: 01.09.2022  
Date of pronouncement : 29.11.2022**

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

1. This appeal is filed by the DCIT 11(2)(1)1 Mumbai [ the ld AO ] against the Appellate order passed by The CIT(A)-58 [the ld. CIT(A)] for A.Y. 2007-08 allowing appeal of the assessee against rectification order passed u//s 154 of The Income Tax Act , 1961 [The Act] by the ld AO



in appeal effect order pursuant to the Appellate Order passed by the Id CIT ( A ) holding that there is no error in the order giving appeal effect passed by Id AO and hence appeal of assessee was allowed .

2. Ld AO preferred appeal raising following grounds:

**ITA No. 4340/MUM/2016**  
(Assessment Year 2007-08)

*“1. Whether on the facts and in the circumstances of the case, the Ld CIT(A) was correct in directing the assessing officer to adjust the losses of 10A Unit against the adjustment u/s 92CA of the Act and 40(a)(i) of the ACT without appreciating the fact that TP adjustment and the disallowance is question in altogether a separate adjustment/disallowance, which cannot be apportioned to a specific unit.?”*

*2. Whether in law, facts and circumstances of the case, the Ld CIT(A) was justified in directing the assessing officer to allow set off of losses which is contrary to his own earlier decision directing to carry forward of losses in the order dt.16.12.2011 effect to which was given by the assessing officer.?”*

*3. The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the A.O. be restored.”*

3. The assessee also filed CO No. 2/MUM/2018 raising following grounds of appeal:

*“ 1. On the facts, and in the circumstance of the case, and the directions issued by the learned Commissioner of*

*Income-tax (Appeals)-58 [‘CIT(A)’] to allow the set off of losses of 10A units against the adjustments made under Section 92CA of the Act and Section 40(a)(i) of the Act, are in accordance with provisions for set-off of losses under Section 70 of the Act.*

*2. On the facts, and in the circumstances of the case, and in law, the directions of the learned CIT(A) to allow the set-off of losses of 10A units against the adjustments made to total income was not contrary to the learned CIT(A)'s order dated 16 December 2011, in as much as the ground of appeal referred to and adjudicated in the said order dated 16 December 2011 pertained to set off of losses of 10A units against profits of other 10A units while computing the deduction under Section 10A of the Act and not carry forward/ set off of losses as per Sections 70 to 72 of the Act.”*

4. The brief facts of the case shows that, assessee is engaged in the business of call centre and IT enabled services providing contact centre services to the customer of its associated enterprises. The assessee has 4 different units in STPI Software Technology Park in Mumbai, Hyderabad, Chennai and Gurgaon. These undertakings are eligible for deductions u/s. 10A of the Act.
5. For A.Y. 2007-08 Assessee filed its return of income on 31.10.2007 declaring net loss of ₹ 8,22,97,184/-. The computation shows that assessee earned profit from its Mumbai and Hyderabad undertaking however, it suffered losses in Chennai and Gurgaon undertakings. With respect to the undertakings, where it earned profit, assessee claimed deduction u/s. 10A of the Act. Where assessee incurred losses, same were carried forward for set off of such loss against future business income.



6. The AO after referring matter to the learned TPO and on several other issues passed the final assessment order u/s. 143(3) of the Act on 05.01.2011 wherein setting off of the losses was disallowed.
7. The assessee preferred appeal before the CIT(A) who passed an order on 16.12.2011 wherein he directed the AO to not to set off losses of Chennai and Gurgaon unit against profits of Mumbai and Hyderabad units. The assessee filed application on 01.03.2012 for passing an appeal effect order pursuant to the direction of learned CIT(A). The learned AO passed such order on 05.03.2012.
8. Subsequently, the learned AO issued notice u/s. 154 on 16.10.2013 holding that the set off of business loss of ₹ 08,22,97,184/- being the loss of Chennai and Gurgoan undertakings, which was directed by the learned CIT(A) to be set off, resulted into business loss being set off against the income from other sources and therefore, there is a mistake apparent from the record which needs to be rectified.
9. The assessee filed reply on 26.10.2013 that the set up of the losses of 10A units is against transfer pricing adjustment and disallowances confirmed by the learned CIT(A) in order giving effect and same is in accordance with the provisions of Section 70 and 71 of the Act.
10. The learned Assessing Officer rejected plea of assessee and rectified the order giving effect dated 05.03.2012 by passing the order u/s. 154 of the Act on 12.11.2013 disallowing the set off of losses of 10A units against other income.
11. The assessee aggrieved with that, preferred an appeal before the learned CIT(A). The learned CIT(A) passed an order on 14.03.2016 following the decision of the Hon'ble Bombay High Court in case of Hindustan Unilever Limited 191 taxmann 119, CIT Versus Patni Computers Systems Limited and Galaxy CIT Versus Galaxy Surfactants Ltd held that the loss of eligible units are held to be business loss. Such losses are to be allowed to be set off against the other business income of the assessee and if same are not sufficient, it could also be set off against othetr income. Further, there is no prohibition that



adjustment of transfer pricing resulting into income, not available for such set off. Thus, CIT(A) allowed the appeal of the assessee.

12. The Assessing Officer preferred the appeal before us. The learned Departmental Representative supported the order of the Id. AO the learned AR supported the order of the Id. CIT(A).

13. We have carefully considered the rival contentions and orders of the lower authorities. Fact shows that order giving effect to the order of the Id. CIT(A) was passed on 08.03.2012. According to that order, the loss incurred by the assessee of ₹ 08,22,97,184/- was set off against other business income of ₹10,54,26,341/-. Therefore, in fact the business loss incurred by the assessee is set off against the business income of the assessee for the same year. The Id. CIT(A) has followed three decisions of Hon'ble jurisdiction of High Court. The learned DR could not show us any reason why the provisions of section 70 cannot be given effect to and how the order of the Id. CIT(A) is erroneous.

14. In view of this, we confirm the order of the Id. CIT(A) and dismiss the appeal of the Id. Assessing Officer.

15. Accordingly, ITA No. 4340/MUM/2016 filed by the AO is dismissed. The CO filed by the assessee is merely supportive in nature and therefore same is dismissed.

16. In the result, appeal of the AO and CO of the assessee are dismissed.

Order pronounced in the open court on 29.11.2022.

Sd/-  
(SANDEEP SINGH KARHAIL)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 29.11.2022

*Sudip Sarkar, Sr.PS*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)



4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai