

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B" MUMBAI

BEFORE SHRI VIKAS AWASTHY (JUDICIAL MEMBER)
AND
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)

ITA No. 2271/MUM/2011
Assessment Year: 2006-07

BA Continuum India Private
Limited *(Since merged with BA
Continuum Solutions Pvt. Ltd.)*,
Building No. 5, K. Raheja Mind
Space, Hitech City, Madhapur,
Hyderabad-500081.

PAN No. AACCC 3062 D
Appellant

ITO, Ward 9(1)(2),
Room No. 226,
Vs. Aayakar Bhavan, MK Road,
Mumbai-20.

Respondent

Assessee by : Mr. Nishant Thakkar, Adv.
Revenue by : Mr. Salil Mishra, CIT-DR

Date of Hearing : 15/06/2023
Date of pronouncement : 17/08/2023

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 16.12.2010 passed by the Ld. Commissioner of Income-tax (Appeals)-19, Mumbai for assessment year 2006-07, raising following grounds:

1. *That on the facts and circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) has erred in upholding the order of the Assessing Officer ('AO') in not allowing the deduction under section 10A of the Income-tax Act, 1961 ('Act') on the standalone*



business profits of the year before adjustment of the brought forward business losses and unabsorbed depreciation amounting to Rs. 58,943,598 and 123,408,595 respectively with the income of the current year.

2. *That on the facts and circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) erred in upholding the order of the AO of disallowing payments/provisions towards lease line and communication expenses, IT allocation expenses and travel expenses amounting to Rs. 154,302,109 paid/payable to its affiliate companies under section 40(a)i) of the Act.*

2. Briefly stated facts of the case are that the assessee company i.e. M/s CFC India Services Pvt. Ltd., was a subsidiary of Country wise Financial Corporation (now merged with M/s BA Continuum Solutions Pvt. Ltd) and is engaged in the business of providing information technology services (software development application maintenance, testing and support services) and IT Enabled Services (date entry and transaction processing services ; telephony and call centre services) to Countrywide Group companies. The assessee company is 100% export oriented unit and is registered under the STP Scheme for development of computer software/IT enabled services. The offices of the assessee company are located in Mumbai and Hyderabad. For the year under consideration, the assessee company filed return of income on 23.11.2006 declaring total income at Rs.18,48,378/- under regular provisions of the Income-tax Act, 1961 (in short 'the Act') and book profit u/s 115JB of the Act at Rs. Nil. In the return of income filed, the assessee company declared income from VPO operations at Rs.81,79,98,000/- ;



income from software services at Rs.36,02,54,000/- and declared net profit at Rs.29,92,28,000/-. The assessee company claimed deduction u/s 10A of the Act at Rs.6,05,74,580/-, after claiming set off of brought forward business loss of last year i.e. AY 2005-06. During the course of assessment proceedings, the assessee revised its computation of the total income and enhanced claim of deduction u/s 10A amounting to Rs.23,75,27,069/- as against original claim of Rs.6,05,74,380/-. The said revision was done on the ground that the assessee is eligible for deduction u/s 10A before set off of brought forward business loss and depreciation. The said claim was denied by the Assessing Officer in the assessment order passed u/s 143(3) of the Act dated 30.12.2009 and assessed total income at Rs.5,55,73,544/- under regular provisions of the Act and book profit u/s 115JB at Rs.3,36,82,375/-. On further appeal, the Ld. CIT(A) allowed part relief to the assessee. Aggrieved, the assessee is before the Income-tax Appellate Tribunal (ITAT), raising the grounds as reproduced above.

4. Before us, the assessee has filed a Paper Book containing pages 1 to 226.

4.1 Before us, the Ld. Counsel of the assessee submitted that assessee is not interested in pursuing the ground No. 2 of the appeal and accordingly same is dismissed as not pressed.



5. As far as Ground No. 1 of the appeal of the assessee is concerned the Ld. CIT(A) declined the claim of the assessee for not setting off of the business loss of the depreciation from the profit of eligible unit, while computing deduction u/s 10A of the Act. The relevant finding of the Ld. CIT(A) is reproduced as under:

“13. I have very carefully considered the matter. In the return of income as filed, the appellant itself claimed deduction unders. 10A from its total income, after set-off of carried forward business loss and unabsorbed depreciation. Thereafter, while the assessment proceedings were in progress the appellant revised its computation of its total income, through a revised statement of Computation, claiming deduction on the standalone profit before adjustment of any brought forward loss of earlier years. There is no dispute that the unabsorbed depreciation and brought forward loss pertain to its software unit under the STPI Scheme. Hence we are concerned, with unabsorbed depreciation and business loss of the eligible unit. The decision in Changepond Technologies (P) Ltd as relied on by the appellant is distinguishable in that in the said case the Bench was concerned with set-off of brought forward loss of non-s. 10A unit. In fact, an identical issue had come up for consideration before the Hon'ble ITAT, Delhi Bench in Global Vantage (P) Ltd. Vs. DCIT (2010) 37 SOT 01, wherein the Hon'ble Bench, has distinguished the decision as rendered in Changepond Technologies (P) Ltd. Tho said decision can be of no help to the appellant since the dispute here is whether unabsorbed depreciation and business loss of same eligible unit ie.of 10A unit, brought forward from earlier years can be set off from the profits of the same eligible unit for the purpose of determining allowable deduction under s. 10A. Drawing attention to sub-section (6) of s. 10A, the Hon'ble Delhi Bench in Global Vantage (P) Ltd. Vs. DCIT (2010) 37 SOT 01 has observed that this section is of an over-riding nature, specifically providing that during each of the assessment year in the tax holiday period, this provision will be applied as if undertaking is an independent unit and is the one and only source of income. The Hon'ble Delhi Tribunal, relying on the decision of Hon'ble High Court of



Karnataka in Himata-Singike-Seide Ltd. (2006) 286 IT 255, has held that the unabsorbed depreciation or unabsorbed loss in respect of eligible 10A unit or division or undertaking is to be set-off against the profit of the same eligible 10A unit or undertaking for the purpose of determining the amount of deduction available under s. 10A of the Act. It is pertinent to point out here that the Hon'ble Delhi Bench has observed that the decision of the ITAT, Bangalore Bench, in the case of KPIT Cummins Infosystems (Bangalore) Pvt. Ltd. Vs. ACIT (2009) 120 TTJ (Bangalore) 956, was rendered in favour of the assessee without applying the ratio of decision of the Hon'ble Karnataka High Court in the case of Himata-Singike-Seide Ltd (2006) 286 ITR 255. The Hon'ble Delhi Tribunal has also further observed that the decision of the Hon'ble ITAT, Mumbai Bench, in the case of Eneron Wind Farms (Krishna) Ltd. Vs. ACIT (2008) 21 SOT 29, was rendered in respect of setting off the business loss brought forward from A.Y. 1999-2000, and hence stands on a different footing, in the light of insertion of words "ending before 1.4.2001" in sub-section (b) of s. 10A by the Finance Act 2000. After the amendment w.e.f. 1.4.2001, on ward, the brought forward loss pertaining to the specific undertaking for deduction under s. 10A are allowed to be carried forward and set-off against the income of such undertaking in the future assessment year and set off within the block period itself.

13.1 In the light of the above stated position, the action of the A.O. in setting-off the brought forward loss and unabsorbed depreciation of the eligible unit, against the profit of the same eligible unit for the purpose of computing available deduction under s. 10A, is accordingly upheld."

5.1 Before us, the Ld. Counsel of the assessee has relied on the decision of the Hon'ble Bombay High Court in the case of **CIT v. Techno Tarp and Polymers Pvt. Ltd. Income Tax Appeal No. 2134 of 2013** and decision of Hon'ble Supreme Court in the case of **CIT v. Yokogawa India Ltd. [2017] 77 taxmann.com 41 (SC)**, wherein it is held that deduction u/s 10A would be eligible on gross total income under Chapter IV of the Act and not at the stage of



total income under chapter VI of the Act. Thus deduction u/s 10A has to be computed before set off of carry forward business loss if any. The relevant finding of the Hon'ble Supreme Court (supra) is reproduced as under:

“13. The retention of Section 10A in Chapter III of the Act after the amendment made by the Finance Act, 2000 would be merely suggestive and not determinative of what is provided by the Section as amended, in contrast to what was provided by the un-amended Section. The true and correct purport and effect of the amended Section will have to be construed from the language used and not merely from the fact that it has been retained in Chapter III. The introduction of the word ‘deduction’ in Section 10A by the amendment, in the absence of any contrary material, and in view of the scope of the deductions contemplated by Section 10A as already discussed, it has to be understood that the Section embodies a clear enunciation of the legislative decision to alter its nature from one providing for exemption to one providing for deductions.

14. The difference between the two expressions ‘exemption’ and ‘deduction’, though broadly may appear to be the same i.e. immunity from taxation, the practical effect of it in the light of the specific provisions contained in different parts of the Act would be wholly different. The above implications cannot be more obvious than from the case of Civil Appeal Nos. 8563/2013, 8564/2013 and civil appeal arising out of SLP(C) No. 18157/2015, which have been filed by loss making eligible units and/or by non-eligible assesseees seeking the benefit of adjustment of losses against profits made by eligible units.

15. Sub-section 4 of Section 10A which provides for pro rata exemption, necessarily involving deduction of the profits arising out of domestic sales, is one instance of deduction provided by the amendment. Profits of an eligible unit pertaining to domestic sales would have to enter into the computation under the head “profits and gains from business” in Chapter IV and denied the benefit of deduction. The provisions of Sub-section 6 of Section 10A, as amended



by the Finance Act of 2003, granting the benefit of adjustment of losses and unabsorbed depreciation etc. commencing from the year 2001-02 on completion of the period of tax holiday also virtually works as a deduction which has to be worked out at a future point of time, namely, after the expiry of period of tax holiday. The absence of any reference to deduction under Section 10A in Chapter VI of the Act can be understood by acknowledging that any such reference or mention would have been a repetition of what has already been provided in Section 10A. The provisions of Sections 80HHC and 80HHE of the Act providing for somewhat similar deductions would be wholly irrelevant and redundant if deductions under Section 10A were to be made at the stage of operation of Chapter VI of the Act. The retention of the said provisions of the Act i.e. Section 80HHC and 80HHE, despite the amendment of Section 10A, in our view, indicates that some additional benefits to eligible Section 10A units, not contemplated by Sections 80HHC and 80HHE, was intended by the legislature. Such a benefit can only be understood by a legislative mandate to understand that the stages for working out the deductions under Section 10A and 80HHC and 80HHE are substantially different. This is the next aspect of the case which we would now like to turn to.

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 undertaking and resultantly flows to the assessee. This is also more than clear from the contemporaneous Circular No. 794 dated 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’.*

18. *For the aforesaid reasons we answer the appeals and the questions arising therein, as formulated at the outset of this order, by holding that though Section 10A, as amended, is a provision for deduction, the stage of deduction would be while computing the gross total income of the eligible undertaking under Chapter IV of the Act and not at the stage of computation of the total income under Chapter VI. All the appeals shall stand disposed of accordingly.”*

5.2 Since, the issue in dispute involved in the present appeal before us, is identical to the facts of case of Yokogawa India Ltd. (supra), therefore respectfully following the Hon’ble Supreme Court (supra), we set aside the finding of the Ld. CIT(A) on the issue in dispute and direct the Assessing Officer to grant deduction u/s 10A of the Act as per the finding of the Hon’ble Supreme Court in the



case of Yokogawa India Ltd. (supra). The ground No. 1 of the appeal is allowed.

6. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 17/08/2023.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;

Dated:17/08/2023

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai



		Date	Initials	
	Original dictation pad is enclosed at the end of file			
1.	Draft dictated on:	11.08.2023		Sr. PS/PS
2.	Draft placed before author:	16.08.2023		Sr. PS/PS
3.	Draft proposed & placed before the second member:			JM/AM
4.	Draft discussed/approved by Second Member:			JM/AM
5.	Approved Draft comes to the Sr. PS/PS:			Sr. PS/PS
6.	Order pronounced on:			Sr. PS/PS
7.	File sent to the Bench Clerk:			
8.	Date on which file goes to the Head Clerk:			Sr. PS/PS
9.	Date on which file goes to AR			
10.	Date of Dispatch of order			