

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri Sanjay Arora, Accountant Member and
Shri Manomohan Das, Judicial Member

ITA No. 609/Coch/2022
(Assessment Year: 2017-18)

Cabot Technology Solutions Pvt. Ltd. 204, 2 nd Floor, Lulu Cyber Tower Infopark, Kochi 682042 [PAN:AADCC 9320K]	vs.	Principal Commissioner of Income Tax – 1 CR Building , IS Press Road, Kochi 682018
(Appellant)		(Respondent)

Assessee by:	Shri Allen Joseph, CA
Revenue by:	Shri Sajit Kumar Das, CIT- D.R.

Date of Hearing:	18.10.2023
Date of Pronouncement:	31.10.2023

ORDER

Per Sanjay Arora, AM

This is an Appeal by the Assessee agitating the revision of its order under section 143(3) of the Income Tax Act, 1961 ('the Act') dated 20.12.2019 for Assessment Year (AY) 2017-18 by the Principal Commissioner of Income Act (Pr. CIT), vide his order dated 18.01.2022.

2.1 The brief facts of the case are that the assessee, a company in software development business, returned, for the relevant year, an income of Rs.3,67,574 under the regular provisions of the Act and a book-profit of Rs.14,33,474 u/s.115JB of the Act, paying the higher tax on the latter. The same was subject to regular assessment, determining the income under the regular provisions at Rs. 8,10,750 and at the returned book-profit under MAT provisions. The assessment record was subsequently examined by the learned Pr. CIT in exercise of his revisionary

jurisdiction, observing two aspects, as under, on which the assessment was, in his view, infirm inasmuch as it was not preceded by proper enquiry and findings by the Assessing Officer (AO), and the assessee accordingly show caused by him thereon:

(a) Deduction under section 10AA of the Act, claimed and allowed at Rs.125.77 lakhs, as against the book-profit of Rs.87.89 lakhs.

(b) Set off of brought forward business loss and unabsorbed depreciation at Rs.25,82,454 and Rs.26,34,602 respectively, as against only depreciation at Rs.9,57,050 (for AY 2015-16) as per the assessment record.

2.2 The assessee, in reply, admitted to the error in claiming set-off of brought forward business loss and unabsorbed depreciation in a higher sum, even as the same would not impact the tax liability, being still higher u/s.115JB of the Act. As regards deduction u/s. 10AA of the Act, the amendment to the said section by Finance Act, 2017, w.e.f. 01.04.2018, made it amply clear that the deduction thereunder is to be with reference to the 'total income' computed in accordance with the provisions of the Act, so that it was clarificatory and, thus, retrospective, being only in consequence of the decision in *CIT vs. Yokogawa India Ltd.* [reported at [2017] 77 taxmann.com 41 (SC)] pronounced on 16.12.2016. The ld. Pr. CIT set aside the assessment for a *de novo* consideration by the AO *qua* these issues. Aggrieved, the assessee is in appeal.

3. We have heard the parties, and perused the material on record.

3.1 That lack or absence of proper enquiry, i.e., as warranted in the facts and circumstances of the case, is one of the infirmities inflicting an order that would render it erroneous and prejudicial to the interests of the Revenue, liable for revision, is trite law, toward which the ld. Pr. CIT refers to decisions in *Malabar Industrial Co. Ltd. vs. CIT* [2000] 243 ITR 83 (SC) and *Raja & Co. vs. CIT* [2011] 335 ITR 381 (Ker). The same stands since (w.e.f. 01.6.2015) co-opted on the statute (as *Explanation 2(a)* to section 263), so that an order passed without making enquiry or verification which should have been made, is deemed as erroneous and prejudicial to the interests of the Revenue, liable for revision under section 263 of the Act.

3.2 The limited issue before us, as rightly discerned by Shri Joseph, the Id. counsel for the assessee, is if the AO was seized of the matter and had applied his mind thereon, taking a possible view, in which case the revisionary authority shall be precluded in exercising his power of revision *qua* the same. The only material brought to our notice, however, is a notice u/s. 142(1) dated 13.8.2019, calling for a detailed working of the deductions claimed under sections 10A or 10AA of the Act, and in respect of which, as claimed (inasmuch as there is no covering letter, responding thereto, on record), the assessee furnished computation of income. *We are unable to understand this.* The said computation would already be on record, i.e., as part of assessee's return of income. *What, then, did the AO imply when he called for the complete working?* The assessee, in view thereof, ought to have inquired with the AO in the matter, particularly considering the audit report (Form 56F), bearing the details, that would have been furnished in support of the claim u/s. 10AA. Two, the said computation of income, even if regarded as furnished in response to the said notice, inasmuch as the deduction claimed u/s.10AA is on the entire gross total income, it ought to, but is not, accompanied by a statement to the effect that the same does not include any income from the Thevara, Kochi, Unit, the assessee's other unit, and the entire income is from the assessee's first, and the only eligible Unit located at Infopark, Kakkanad, Kochi, even as explained to us, on enquiry, by Shri Joseph. This is the first preliminary enquiry that arises in the matter, i.e., where the assessee's reply is not explicit. Even if we discount this, considering that even the Id. Pr.CIT has not raised this aspect, so that there may be something on record, not brought to our notice, toward the same, we further observe that the AO requires the assessee to file details in respect of deductions under sections *10A or 10AA*. The assessee having not claimed any deduction u/s. 10A of the Act; rather, there being no scope therefor in view of the entire income being claimed exempt u/s. 10AA, where, one may ask, is the need for seeking details of deduction u/s.10A, suggesting a mechanical working by the AO.

3.3 Be that as it may, the assessee has before us placed on record Board Circular No. 7/DV/2013, dated 16.07.2013, clarifying the issue related to the applicability of Chapter IV of the Act and set off of carry forward business loss in respect of deductions under sections 10A, 10AA and 10B of the Act. Para 6 thereof clarifies that provisions of Chapter IV and VI of the Act shall apply in computing income for the purpose deduction u/ss. 10AA and 10AB of the Act subject to the conditions specified therein. Para 5.3 provides guidelines for applicability of sections 70 to 72 of the Act. The Board Circular is dated years prior to the assessment, so that the presumption in law would be that the AO was aware thereof, and which leaves no room for any doubt in the matter. *Why, we wonder, did the assessee, having claimed deduction in accordance therewith, not bring the said Circular to the notice of the ld. Pr. CIT?* We say so as though, true, the AO has not made any enquiry in the matter, for an order to erroneous and prejudicial to the interest of Revenue, it is equally necessary that there must be circumstances that would make the enquiry prudent, and not *de hors* the same, even as explained in *CIT v. Gabriel India Ltd.* [1993] 203 ITR 108 (Bom), the same being the objective fact which must be satisfied on the basis of the material on record. This in fact is captured by the words: ‘which should have been made’ in *Explanation 2(a)* to s. 263(1) *qua* an inquiry or verification by the AO.

3.3 Again, why, we wonder, the decision in *Yokogawa India Ltd.* (supra) by the Hon'ble Apex Court, inasmuch as the same, irrespective of the applicability or otherwise of the subsequent amendment vide FA, 2017, was not relied upon to decide if the assessment for the year under reference, as made, is erroneous or not? This is it would, in any case, hold. Once the matter has been considered by the Apex Court, which would only be for a year prior to AY 2018-19, the year of change, its interpretation shall prevail for the years for which the unamended provision obtains. Reference thereto, inexplicably, is made from the stand-point of the applicability of the subsequent amendment to section 10AA, stating it to be consequent thereto and, thus, clarificatory, which would therefore apply for the years prior to AY 2018-19.

Where, one may ask, is the need to refer to the nature of the subsequent amendment in face of a direct decision by the Apex Court interpreting the unamended provision and, thus, applicable for the current year? There is, again, surprisingly, no reference to the law as explained therein by the Id. Pr. CIT, who proceeds without reference thereto, even as the assessment, if in agreement therewith, is, clearly, not erroneous.

3.4 As regards the second deficiency observed by the Id. Pr. CIT, the assessee has already admitted the mistake in claiming unabsorbed business loss and depreciation inconsistent with the record, in a higher sum. It may, as stated, not impact the taxability, but the amount to be set off and carried forward to the subsequent year is, nevertheless, to be corrected. The said admission by the assessee proves the Revenue's charge of non-application of mind by the AO *qua* the same.

4. In view of the foregoing, we, on the balance, uphold the impugned revision in principle. The AO shall consider the assessee's claim u/s. 10AA strictly in accordance with the decision in *Yokogawa India Ltd.* (supra). The Id. Pr. CIT ought to have in our clear view considered the said decision, brought to his notice by the assessee, issuing a finding one way or the other inasmuch as an assessment in agreement therewith cannot held as erroneous and, accordingly, set aside on that count. On our part, we eschew venturing there-into, with a view to, by doing so, inasmuch as it has not been considered by either party, nor even relied upon before us – except *qua* its implication vis-a-vis the subsequent amendment, not cause prejudice to any side. It is only where in his view the said decision is not applicable that the AO shall, stating his reasons, decide the issue independent of it, and for which he shall have regard to the Board Circulars, as indeed the decisions by the Hon'ble Courts in the matter. He shall decide by issuing definite findings, including *qua* the satisfaction or otherwise of the conditions of section 10AA. Our restoring the matter to the file of the AO despite noting a failure on the part of the Id. Pr. CIT in not considering the assessment in light of the decision in *Yokogawa India Ltd.* (supra), is, we clarify, guided by the

consideration of the absence of any finding by the AO *qua* the satisfaction of the conditions of s.10AA which, falling within the scope and competence of the directions issued thereto per the impugned order and, in fact, not contested before us, would in any case have to be examined by the AO. He shall also set off the brought forward business loss/depreciation in conformity with the record. Needless to add, his adjudication/s shall be upon allowing due opportunity of being heard to the assessee, considering it's representation/s. We decide accordingly.

5. In the result, the assessee's appeal is disposed of on the afore-stated terms.

Order pronounced in the open court on October 31, 2023 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-
(Manomohan Das)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Cochin, Dated: October 31, 2023

n.p. Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The CIT-DR, ITAT, Cochin
5. Guard File

By Order
Assistant Registrar
ITAT, Cochin Bench