

आयकरअपीलीयअधिकरण  
मुंबईपीठ“ई”,मुंबईपीठ  
श्रीविकासअवस्थी, न्यायिकसदस्यएवं  
श्रीगगन गोयल, लेखाकारसदस्यकेसमक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH “E”, MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRIGAGAN GOYAL, ACCOUNTANT MEMBER  
आअसं. 8818/मुं/2011 (नि. व.2007-08)  
ITA NO.8818/MUM/2011(A.Y.2007-08)

M/s. Sureprep (India) Private Limited,  
4<sup>th</sup> Floor, Dhantak Plaza,  
Makwana Road, Marol,  
Andheri(E), Mumbai – 400 034.  
PAN: AAHCS-9039-H

..... अपीलार्थी/ Appellant

बनाम Vs.

Commissioner of Income Tax -8,  
Room No.259,2<sup>nd</sup> Floor,  
Aaykar Bhavan, M.K.Road,  
Mumbai – 400 020.

..... प्रतिवादी/ Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Dalpat Shah &Ms. Arti Shah  
प्रतिवादी द्वारा/ Respondent by : Ms. Samrudhi Dhananjay Hande &  
Shri P.D. Chougule  
सुनवाई की तिथि/ Date of hearing : 25/08/2023  
घोषणा की तिथि/ Date of pronouncement : 31/10/2023

**आदेश/ORDER**

**PER VIKAS AWASTHY, JM:**

This appeal by the assessee is directed against the order of Commissioner of Income Tax-8, Mumbai [in short ‘the CIT’] dated 21/11/2011, for the assessment year 2007-08, passed u/s. 263 of the Income Tax Act, 1961 [in short ‘the Act’].

2. Shri Dalpat Shah appearing on behalf of the assessee submitted that the assessee is providing outsourcing services, more particularly preparation of US Tax Return and development of software in connection therewith. The

assessee is registered with Software Technology Park of India. The assessee claimed deduction u/s. 10A of the Act amounting to Rs.25,04,380/ on profit and gains of eligible undertaking.. The Assessing Officer accepted the assessee's claim of deduction u/s. 10A of the Act. Thereafter, the CIT issued show cause notice dated 13/06/2011 u/s. 263 of the Act on the ground that brought forward depreciation has to be treated as current years depreciation in view of the provisions of section 32(2) of the Act and the same should have been reduced before computing deduction u/s. 10A of the Act. Since, the same has not been done, the assessment order passed u/s. 143(3) of the Act dated 16/12/2009 is erroneous and prejudicial to the interest of Revenue. He referred to the said show cause notice at page 81 of the paper book. He further pointed that the issue is squarely covered by the decision of Hon'ble Supreme Court of India in the case of CIT vs. Yokogawa India Ltd., 391 ITR 274. The Id. Authorized Representative of the assessee submitted that since the assessee had claimed deduction u/s. 10A of the Act in line with the provisions explained by the Hon'ble Apex Court and the Assessing Officer has accepted the same, there is no error in the assessment order.

3. Per contra, Ms. Samrudhi Dhananjay Hande representing the Department vehemently supporting the impugned order submitted that the issue in appeal is distinguishable, hence, the law explained in the case of M/s. Yokogawa India Ltd.(supra) would not apply in the present case. The Id. Departmental Representative stated that while calculating profits, first depreciation/brought forward depreciation has to be reduced, thereafter deduction u/s. 10A of the Act is to be allowed. In support of her submissions, she placed reliance on the decision in the case of CIT vs. Himatasingike Seide Ltd., 156 Taxman 151 (Kar)

and the decision of Co-ordinate Bench in the case of G. Jewelcraft Ltd. vs. ITO, 56 taxmann.com 192 (Mum-Trib).

4. We have heard the submissions made by rival sides and have examined orders of authorities below. A perusal of show cause notice u/s. 263 of the Act dated 13/06/2011 and the impugned order shows that the solitary reason for invoking revisional provisions by the CIT is that the assessee while claiming deduction u/s. 10A of the Act has not computed the deduction before adjustment of brought forward depreciation and the Assessing Officer has accepted the same. According to CIT, deduction u/s. 10A of the Act has to be granted after reducing brought forward depreciation.

It is pertinent to mention here that the provisions of section 10A of the Act were amended by the Finance Act, 2000 w.e.f. 01/04/2001. Prior to the amendment, benefit under section 10A of the Act was in the nature of exemption. Post amendment, provisions of section 10A had become deduction provisions. The said deduction would be allowed to the assessee while computing gross total income of eligible undertaking under Chapter-IV of the Act. The decision in the case of CIT vs. Himatasingike Seide Ltd. (supra) pertains to the assessment year 1994-95, thus, provisions of section 10A of the Act prior to amendment vide Finance Act 2000 were applicable in the said assessment year. Hence, the provisions of section 10A/10B of the Act as explained in CIT vs. Himatasingike Seide Ltd. (supra) has lost its relevance in view of the amendment to section 10A by the Finance Act, 2000 w.e.f. 01/04/2001. The Co-ordinate Bench in the case of G.Jewelcraft Ltd. (supra) decided the issue following the decision in the case of CIT vs. Himatasingike Seide Ltd. (supra). Thus, the aforesaid decisions do not support the cause of Revenue.

5. The Hon'ble Apex Court in the case of CIT vs. Yokogawa India Ltd (supra) has explained the provisions of section 10A of the Act after the amendment. For the sake of completeness, the provisions of Section 10 of the Act as expounded by Hon'ble Apex Court are reproduced herein below:

*“ 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."*

Thus, the Hon'ble Court in an unambiguous manner has held that the deduction u/s. 10A of the Act has to be allowed at the stage of determination of profits and gains of business of an eligible undertaking.

6. The Hon'ble Jurisdictional High Court in CIT vs. Black & Veatch Consulting (P.) Ltd. 20 taxmann.com 727(Bom.) has held that deduction u/s. 10A of the Act in respect of eligible unit has to be allowed prior to setting off of brought forward depreciation & losses. This position was again reiterated in CIT vs. Ganesh Polychem Ltd. 35 taxmann.com 446 (Bom.)

7. In the light of the facts of the case and the provisions of section 10A of the Act explained by the Hon'ble Apex Court, we are of the considered view that the reasons for invoking revisional powers under section 263 of the Act by the CIT are bereft of merit. We find no error in the assessment order dated 16/12/2009, hence, the impugned order is quashed and the appeal of assessee is allowed.

8. In the result, appeal of assessee is allowed.

Order pronounced in the open court on Tuesday the 31<sup>st</sup> day of October, 2023.

Sd/-

(GAGAN GOYAL)

लेखाकार सदस्य / ACCOUNTANT MEMBER

मुंबई / Mumbai, दिनांक / Dated 31/10/2023

Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य / JUDICIAL MEMBER

**प्रतिलिपि अग्रेषितCopy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
- 4.. विभागीय प्रतिनिधि, आय.अपी.अधि ., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

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BY ORDER,

(Dy./Asstt.Registrar),ITAT, Mumbai