आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENTAND
SHRI MANJUNATHA. G, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.160/Chny/2022**
निर्धारण वर्ष /**Assessment Year: 2015-16**

Cognizant Technology Solutions India Pvt. Ltd., 5/535, Okkiam Thoraipakkam, Old Mahabalipuram Road, Chennai – 600 096. **[PAN: AAACD-3312-M]**	**Vs.**	**The Dy. Commissioner of Income Tax**, Large Taxpayer Unit-1, Chennai.
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent**

आयकर अपील सं./**ITA No.233/Chny/2022**
निर्धारण वर्ष /**Assessment Year: 2015-16**

The Dy. Commissioner of Income Tax, Central Circle-1(1), Chennai.	**Vs.**	**Cognizant Technology Solutions India Pvt. Ltd.,** 5/535, Okkiam Thoraipakkam, Old Mahabalipuram Road, Thoraipakkam, Chennai – 600 097. **[PAN: AAACD-3312-M]**
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**

अपीलार्थी की ओर से/ Assessee by	:	Shri N.V. Balaji, Advocate
प्रत्यर्थी की ओर से /Revenue by	:	Shri V. Nandakumar, CIT

सुनवाई की तारीख/Date of Hearing	:	18.12.2023
घोषणा की तारीख /Date of Pronouncement	:	29.12.2023

आदेश / O R D E R

Per Mahavir Singh, Vice President :

These cross appeals, by the assessee and the Revenue, are arising out of the orders of Commissioner of Income Tax (Appeals)-18, Chennai [hereinafter "CIT(A)"] dated 11.01.2022. The Assessments were framed by Dy. Commissioner of Income Tax, Large Taxpayer Unit-1, Chennai for the relevant A.Y. 2015-16 vide order dated 28.12.2017 u/s. 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

Assessee's appeal in ITA No.160/Chny/2022 :

2. The first issue in this appeal of assessee is as regards to the order of CIT(A) in confirming the action of the A.O in making disallowance of expenses relatable to exempt income by invoking the provisions of Section 14A of the Act r/w Rule 8D of the Income Tax Rules, 1962 (hereinafter "the Rules").

3. The CIT(A) noted that the assessee has claimed exempt income being dividend income of Rs. 4,56,83,550/- u/s. 10(38) of the Act. The CIT(A) noted that the assessee-company has made substantial investments in subsidiary and other companies and the total

investment stood at Rs. 386,52,26,050/- as on 31.03.2015. The CIT(A) confirmed the action of the A.O, but directed, on alternative ground raised by the assessee, that the disallowance made u/s. 14A of the Act results enhancement of business income and same shall be eligible for deduction u/s. 10AA of the Act. The CIT(A) directed the A.O vide para 7.3.5 as under:

> *"7.3.5 The other alternative ground raised by the assessee was that disallowance u/s.14A results in enhancement of business income and the same shall be eligible for deduction u/s 10AA of the Act. On this issue, there is a decision of the ITAT in the assessee's own case for the AY 2007-08 in ITA No.2100/Mds/2011 dated 23.01.2013. The disallowance u/s 14A would increase the business income of the assessee which comprises of taxable income and exempt income u/s 10AA. Hence the entire dividend income cannot be completely attributed to the income derived from eligible units u/s. 10AA alone. Hence, the dividend income may be reasonably apportioned between taxable and non-taxable income and accordingly A.O may allow exemption on the disallowance made u/s 14A to the income attributable to exempt income. This ground of appeal is partly allowed."*

Aggrieved, now the assessee is in appeal before the Tribunal.

4. We have heard the rival contentions, and gone through the facts and circumstances of the case. The only plea now before us raised by the assessee is that the disallowance u/s. 14A of the Act should be restricted only on the investments which give rise to exempt income i.e., dividend income. To this preposition, the Ld. CIT-DR opposed but could not make any argument or controvert factually or legally. We find that this issue is now squarely covered by almost by all Hon'ble

High Courts in unanimity and the Tribunal is consistently taking view that disallowance in relation to expenditure incurred on exempt income should be restricted only on the investments, which give rise to exempt income. The A.O will see each portfolio and will examine whether it gives exempt income or not and that investment only will be considered for the purpose of making disallowance under Rule 8D(2)(iii) of the Rules. Accordingly, we direct the A.O and hence, this issue of assessee's appeal is allowed for statistical purposes.

5. The next issue in this appeal of assessee is as regards to the order of CIT(A) in allowing depreciation of computer software at 20% holding that they are intangible assets. The assessee claimed depreciation at 60%.

6. We have heard the rival contentions, and gone through the facts and circumstances of the case. We noted that the A.O on perusal of depreciation schedule noted that the assessee-company claimed depreciation at 60% on computers and software purchases made claiming the same as akin to software licenses. The A.O disallowed the depreciation claimed by the assessee at 60% and restricted the same at 25% by treating the same as depreciation on software and

thereby, disallowed the excess claim of depreciation. Aggrieved, the assessee preferred an appeal before CIT(A).

7. The CIT(A) also confirmed the action of the A.O. Now, the assessee is in appeal before the Tribunal.

8. Before us, the Ld. counsel for the assessee submitted that admitted position is that these software applications and licenses are in the category of intangible assets, but these are held to be computer as held by Hon'ble Madras High Court in the case of *CIT vs. Computer Age Management Services [2019] 109 taxmann.com 134 (Mad.).* We noted that this issue is squarely covered by decision of Hon'ble Madras High Court in the case of *CIT vs. Computer Age Management Services, supra,* and the assessee even now on computer software licenses is eligible for claim of depreciation at 60%. The Hon'ble Madras High Court held as under:

> *"7. As noticed above, the assessee is in the business of registrar and transfer agent as licensed by the SEBI handling large volume of market sensitive data and information, which is available only through general customized application software. The assessee acquired software licenses capitalized during the relevant years in the books of accounts and claimed depreciation at 60%. In paragraph 20 of the order passed by the Tribunal, the nature of items, on which, the assessee claimed depreciation at 60%, has been listed out and they are 17 in number, from which, we find that substantial amount of server licences, which have been obtained by the assessee are customized and some of which are single user licenses.*

> ***8.*** *The question would be as to whether the software application, which was acquired by the assessee would fall under Entry 5 of Part A of New Appendix I, which states that computers including computer software are entitled to depreciation at 60%. Note 7 of the Appendix defines the expression 'computer software' to mean any programs recorded on CD or disc, tape, perforated media or other information storage devices.*
>
> *9. The case of the Revenue is that software are licences and that they are intangible assets and would fall under Part B of New Appendix I, which deals with knowhow, patents, copyrights, trademarks, licenses, francises or any other business or commercial rights of similar nature.*
>
> ***10.*** *We find that Part B of New Appendix I is a general entry whereas Entry 5 of Part A of New Appendix I is a specific entry read with Note 7. In the instant case, the Tribunal, in our considered view, rightly held that the assessee is eligible to claim depreciation at 60%."*

Hence, we allow this issue of assessee's appeal.

9. The next two common issues raised by the assessee in regard to fresh claim of deduction on long term capital loss inadvertently not claimed in the return of income and also claim of deduction on account of compounding fee paid to Reserve Bank of India (RBI).

10. The Ld. counsel for the assessee, first of all, took us through assessee's paper book, wherein the claim made by the assessee before the A.O vide letter dated 12.12.2017 (which is enclosed in the assessee's paper book at Pages 169-175), wherein it is claimed that the long term loss to be claimed inadvertently must be claimed in the return of income and the relevant para 8.1 is recorded as under:

"8.1 Long-term capital loss inadvertently missed from being claimed in the return of income

- *During the subject AY, preference shares held by the assessee in its subsidiary, Ygyan Consulting Private Limited were redeemed at par (ie at face value)*
- *In this regard, we wish to draw your attention to the Cash Flow Statement and Note No. 11 to the Financial Statements for the FY 2014-15, wherein, the redemption of preference shares and the receipt of proceeds therefrom are disclosed.*
- *The redemption of the said preference shares has resulted in a long term capital loss in the hands of the Assessee, the details of which are as follows:*

Particulars	***Amount (INR)***
Amount received on redemption (Refer to Cash flow statement)	*1,30,70,000*
Less: Indexed cost of acquisition (Refer to Note No.11 to the Financial statements) *[1,30,70,000 x 1024 + 463]*	*(2,89,06,436)*
Long term capital gain/(loss)	***(1,58,36,436)***

- *The Assessee submits that the aforesaid long term capital loss was inadvertently not claimed in the return of income filed by the Assessee on 30 November 2015 for the subject AY. Accordingly, we request you to take the above on record and permit carry-forward of the above mentioned loss."*

11. Further the assessee vide the same letter has also made claim of deduction towards compounding fee paid to the RBI and the relevant claim reads as under:

" 8.2 Deduction towards compounding fee paid to the Reserve bank of India

- *During the subject AY the Company had paid an amount of INR 1,14,81,500 as compounding fee under the provisions of the Foreign Exchange Management Act, 1999. A copy of the order*

*of the Reserve Bank of India directing payment of the Compounding fee is enclosed as **Annexure** 5.*

- *The said amount was not claimed by the Company as a deduction under the head 'profits and gains from business or profession' in the return of income filed by it under section 139(1) of the Act. In this regard, we wish to draw your attention to the computation of total income filed **by** the Company.*
- *Placing reliance on judicial precedents on this subject, the Assesee now wishes to make a **claim** that the compounding fee is not a payment made in the nature of a penalty or fine for violation of law and it would only partake the character of a payment that is compensatory in nature."*

12. The A.O has not adjudicated both the claims and the assessee has raised the same before CIT(A) and the CIT(A) by passing reference rejected the claim on merits, but mainly that the same claim was not made in the return of income and hence, not eligible. The CIT(A) on both the counts dismissed the claim as not maintainable. Aggrieved, now the assessee is in appeal before the Tribunal.

13. We have heard the rival contentions, and gone through the facts and circumstances of the case. We noted that the assessee has tried to give basic facts in relation to the claim of long term capital loss on reduction of mutual funds and claimed deduction of compounding fee paid to RBI under Forum Exchange Management Act, which needs to be verified in detail and to be examined. Hence, these two issues are remitted back to the file of A.O for adjudication at his level. Needless to

say that the A.O will provide opportunity of being heard to the assessee to file evidences in relation to these claims and then decide the issue in accordance with law. Hence, these two issues of assessee's appeal are remitted back to the A.O for re-adjudication.

Revenue's appeal in ITA No.233/Chny/2022:

14. The first issue in this appeal of Revenue is as regards to the order of CIT(A) in allowing the set-off of losses incurred by the units claimed deduction u/s. 10AA of the Act against the taxable income of other units. We noted that this issue is squarely covered by the decision of Hon'ble Madras High Court in assessee's own case and it has been noted by CIT(A) in para 7.2 and allowed set-off of losses against the profits of eligible units for claiming deduction u/s. 10AA of the Act. The relevant finding of CIT(A) in para 7.2 reads as under:

> *"7.2.1 The AO found that the assessee had set off the losses of Rs.116,65,15,210/- incurred in eligible units for deduction u/s 10AA against the profits of non-tax holiday units (profits derived from units other than units covered u/s 10AA). The AO further found that the set off done by the assessee is not correct in the light of the findings arrived at in the assessee's own case in the earlier years. When the assessee was called upon to show cause as to why the set off of loss claimed should not be disallowed, the assessee submitted detailed explanation which is extracted in the assessment order itself. The AO did not accept the submission of the assessee. The AO relying on the decision of the Karnataka High Court in the case of Himatasingike Seide Ltd (286 ITR 285) held that the deduction u/s 10A should be allowed only after set off of brought forward losses. Reliance was also placed on the*

decision of the IT AT Chennai Bench in the case of M/s Sword Global India P Ltd (formerly known as M/s Global Software India P Ltd) (306 ITR AT-286), wherein it was held that all brought forward losses are required to be set off against business profits of current year before computing deduction u/s 10B of the Act. The AO further observed that the decision of the ITAT in the assessee's own case cannot be followed as appeal against the said decision is pending before the Hon 'ble High Court of Madras. He therefore did not allow the loss claimed to the extent of Rs.116,65,15,210/-.

7.2.2 On the contrary, the AR submitted that the issue is covered in favour of the assessee by the decision of the jurisdictional Madras High Court in TCA No.86 of 2017 dated 20.11.2020 and TCA No.1235 of 2015 dated 20.10.2021. It is further submitted that the TCA No.1235 of 2015 was filed by the Department against the decision of the ITAT in [TA No.751/Mds/2010 dated 09.06.2014 for the AY 2006-07. The AR further submitted that the Madras High Court while rendering its decision in TCA No.86 of 2017 dated 20.11.2020 has relied on the decision of the Supreme Court in the case of Yokogawa India Ltd(2016 TaxCorp (DT) 67973), wherein it was held that the deductions u/s 10A 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.

7.2.3 I find that the issue is fully covered by the decisions of the jurisdictional Madras High Court in the assessee's own case which are more binding. I therefore hold that the AO was not justified in adjusting the losses of eligible units u/s 10AA against the profits eligible for deduction u/s 10AA, and the set off of losses of eligible units u/s 10AA against the other taxable profits of the business made by the assessee is in order. I therefore direct the AO not to set off of the losses of Rs. 116,65,15,210/- against the profits eligible for deduction u/s 10AA. The grounds raised on this issue is therefore allowed."

15. Since, this issue is squarely covered by the decision of Hon'ble Madras High Court, supra, in assessee's own case in allowing losses incurred by the units u/s. 10AA of the Act, the profits and set-off of

losses against other taxable profits of the business made by the assessee, we respectfully following the decision of Hon'ble Madras High Court and the decision of Hon'ble Supreme Court in the case of *CIT vs. Yokogawa India Ltd. 391 ITR 274 (SC).* The Hon'ble Supreme Court Court held as under:

> ***"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 understand 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 80IIBC 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 IOA(l); IOA (IA) 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 **1** 0A 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 1 0A has already been dealt with earlier and in the overall scenario unfolded by the provisions of Section **1** 0A 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 **1**0A, 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."*

Accordingly, this issue of Revenue's appeal is dismissed.

16. The next issue in this appeal of Revenue is as regards to the order of CIT(A) in deleting the disallowance made by A.O on account of expenses relatable to exempt income by invoking the provisions of

Section 14A of the Act r/w Rule 8D(2) of the Rules under the provisions of Section 115JB of the Act while computing the book profit. We noted that this issue is also squarely covered by the Special Bench of this Tribunal in the case of *ACIT vs. Vireet Investments (P.) Ltd. [2017] 82 taxmann.com 415 (Delhi-Trib.)(SB)*, wherein it is held that disallowance u/s. 14A of the Act r/w Rule 8D of the Rules cannot be added back while computing the book profit u/s. 115JB of the Act. This issue is also covered by the following decisions:

I. *Pr. CITvs. Bhushan Steel Ltd. in ITA NO.593 & 595 of 2015 (Delhi HC);*
II. *PCCIT vs. Jj Glastronics P. Ltd. 139 taxmann.com 375 (Karnataka HC);*
III. *Jayant Packaging (P.) Ltd. vs DCIT 189 ITD 321 (ITAT-Chennai).*

No contrary decision is brought to our notice by the Revenue and hence, this issue of Revenue's appeal is dismissed.

17. The next issue in this appeal of Revenue is as regards to allowability of lease equalization charges under the provisions of Section 115JB of the Act. We noted that the A.O while computing book profit has added back of the lease equalization charges to the book profit treating the same as an ascertained liability of the current year/notional provision created for future lease rental liabilities. According to A.O, the assessee's claim that it is an ascertained liability

of the present year is incorrect. But, actually it is an ascertained and contingent liability of future year subject to continuation of lease agreement by both the parties and hence, for the current year this obligation arises from past event. Hence, the A.O held the same as unascertained liability, but according to CIT(A), the provision of lease equalization charges is ascertained liability and covered by the decisions of Hon'ble Madras High Court and Hon'ble Supreme Court in the case of *CIT vs. Yokogawa India Ltd. [2017] 77 taxmann.com 41 (SC)*. Once, the Hon'ble Supreme Court in the case of *CIT vs. Virtual Soft Systems Ltd. [2018] 92 taxmann.com 370 (SC)* held as under:

> **"*13.*** *The method of accounting followed, as derived from the ICAI's Guidance Note, is a valid method of capturing real income based on the substance of finance lease transaction. The rule of substance over form is a fundamental principle of accounting, and is in fact, incorporated in the ICAI's Accounting Standards on Disclosure of Accounting Policies being accounting standards which is a kind of guidelines for accounting periods starting from 01.04.1991. It is a cardinal principle of law that the difference between capital recovery and interest or finance income is essential for accounting for such a transaction with reference to its substance. If the same was not carried out, the Respondent would be assessed for income tax not merely on revenue receipts but also on non-revenue items which is completely contrary to the principles of the IT Act and to its Scheme and spirit.*
>
> ***14.*** *The bifurcation of the lease rental is, by no stretch of imagination, an artificial calculation and, therefore, lease equalization is an essential step in the accounting process to ensure that real income from the transaction in the form of revenue receipts only is captured for the purposes of income tax. Moreover, we do not find any express bar in the IT Act which bars the bifurcation of the lease rental. This bifurcation is analogous to the manner in which a bank would treat an EMI payment made by the debtor on a loan advanced by the bank. The repayment of principal would be a balance sheet item and not a revenue item. Only the interest earned would be a revenue receipt*

chargeable to income tax. Hence, we do not find any force in the contentions of the Revenue that whole revenue from lease shall be subjected to tax under the IT Act."

18. Hence, the CIT(A) has rightly deleted the addition and held that it is ascertained liability and cannot be added back in book profit u/s. 115JB of the Act. We uphold the order of the CIT(A) and this issue of Revenue's appeal is dismissed. Consequently, the appeal of the Revenue is dismissed.

19. In the result, the appeal filed by the assessee in ITA No.160/Chny/2022 is partly allowed for statistical purposes and the appeal filed by the Revenue in ITA No.233/Chny/2022 is dismissed.

Order pronounced on 29th December, 2023.

Sd/-	Sd/-
(मंजुनाथ. जी)	**(महावीर सिंह)**
(Manjunatha. G)	**(Mahavir Singh)**
लेखा सदस्य /Accountant Member	**उपाध्यक्ष / Vice President**

चेन्नई/Chennai, दिनांक/Dated: 29th December, 2023.
EDN/-

आदेश की प्रतिलिपि अग्रेषित**/Copy to:**

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR 5. गार्ड फाईल/GF