

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad

Before Shri Laliet Kumar, Judicial Member
And
Shri Manjunatha, G. Accountant Member

आ.अपी.सं / **ITA No.963/Hyd/2017**
(निर्धारण वर्ष / Assessment Year: 2010-11)

AET Laboratories (P) Ltd MEDAK PAN:AADCM6591L (Appellant)	Vs.	Dy. C. I. T. Circle 8(1) Hyderabad (Respondent)
निर्धारिती द्वारा / Assessee by: Shri A Srinivas, CA		
राजस्व द्वारा / Revenue by: Shri Srinath Sadanala, DR		
सुनवाई की तारीख / Date of hearing: 26/08/2024		
घोषणा की तारीख / Pronouncement: 26/08/2024		

आदेश/ORDER

Per Laliet Kumar, J.M

This appeal filed by the assessee is directed against the order dated 20/01/2017 of the learned CIT (A)-9, relating to A.Y.2010-11.

2. The assessee raised the following grounds:

"1. The Order of the Commissioner of Income Tax (Appeals)-9, Hyderabad dated 20-01-2017 is erroneous, contrary to law and facts of the case.

2. *The Commissioner of Income Tax (Appeals) erred in sustaining the Assessing Officer's view that other income of Rs.4,16,06,260/- credited in profit and loss account is not derived from business activity of the Appellant when in fact that the said income is derived from its industrial activity only as already explained before both the Assessing Officer and Commissioner of Income Tax (Appeals). Hence the Commissioner of Income Tax (Appeals) is not justified in upholding the action of the Assessing Officer in considering income of Rs.4,16,06,260/- as not derived from eligible unit.*

3. *The Commissioner of Income Tax (Appeals) erred in upholding the Assessing Officer's contention that the Appellant is not entitled for deduction u/s.10B since there is no positive income for the year after setting off brought forward loss and depreciation. The Commissioner of Income Tax (Appeals) ought to have seen that deduction u/s.10B has to be granted on income before setting off loss and depreciation. Hence the Appellant submits that deduction of Rs.1,77,08,937 claimed by the Appellant u/s.10B ought to have granted by Commissioner of income Tax (Appeals).*

4. *For all of the above and such other grounds as may be urged at the time of hearing it is most respectfully prayed that this Hon'ble Tribunal may be pleased to allow the appeal and suitable directions be given to the Assessing Officer to delete disallowances made in the Assessment Order in the interest of justice."*

3. The brief facts of the case are that the assessee company is engaged in the business of development of pharmaceutical dossiers and manufacturing of finished dossiers forms, filed its return of income for the A.Y 2010-11 on 28.09.2010 declaring Nil income after claiming deduction u/s 10B of the I.T. Act, 1961 for Rs.1,77,08,937/-. The case was selected for scrutiny and during the course of assesment proceedings, the Assessing Officer called upon the assessee to file necessary details to justify the exemption u/s 10B of the I.T. Act, 1961. The Assessing Officer, on the basis of information submitted by the

assessee noticed that the assessee has received an amount of Rs.4,16,06,260/- towards various income including stability storage charges, analysis charges, gain on foreign currency fluctuation, interest received, miscellaneous receipts etc. and reported under the head other income. The Assessing Officer further noticed that while computing exemption u/s 10B of the Act, the assessee has considered gross receipts from export of manufactured goods which includes other income. The Assessing Officer after considering relevant explanation furnished by the assessee observed that other income being analytical charges and stability storage charges, gain on foreign currency fluctuation, miscellaneous receipts etc., are not derived from the activities of export of goods or computer software and thus, not eligible for exemption u/s 10B of the I.T. Act, 1961. Therefore, re-computed the profits and gains of eligible undertaking u/s 10B of the Act at Rs (-)2,16,01,418/- and other income reported by the assessee has been assessed under the head "income from other sources".

4. The assessee carried the matter in appeal before the first appellate authority. Before the learned CIT (A), the assessee submitted that the Assessing Officer is erred in not considering other income for the purpose of computing exemption u/s 10B of the Act, without appreciating the fact that as per the amended provisions of sub-section (4) of section 10B, the profits and gains of an undertaking in proportionate to its business should be considered for the purpose of exemption and if we go by the

provision, any other income relatable to business of the undertaking including other income should be considered as derived from the activity of export of goods and thus, the reasons given by the Assessing Officer to disallow other income is incorrect. The learned CIT (A) after considering relevant submission of the assessee and also taken note of various facts observed that none of the income considered by the assessee under the head other income are eligible for claiming exemption u/s 10B of the Act, because the said other income is not derived from the activity of export of goods or in relation to any income received in pursuant to export of goods. Therefore, rejected the explanation furnished by the assessee and sustained the reasons given by the Assessing Officer to recompute eligible profit u/s 10B of the I.T. Act, 1961.

5. Aggrieved by the order of the learned CIT (A), the assessee is in appeal before the Tribunal.

6. The learned Counsel for the assessee submitted that the learned CIT (A) is erred in upholding re-computation of exemption u/s 10B of the Act by not considering other income of Rs.4,16,06,260/- even though said income forms part of business of the assessee. The learned Counsel for the assessee further referring to the provisions of section 10B(4) of the Act submitted that as per amended provisions, for the purpose of sub-section (1) profits derived from export of article or thing or computer software

shall be the amount which bears to the profits of the business of the undertaking, the same proportion as the export turnover in respect of such article or thing or computer software bears to the total turnover of the business carried out by the undertaking. Therefore, any other income relates to the business activity of the assessee should be considered for the purpose of exemption u/s 10B of the I.T. Act, 1961. In this regard, he relied upon certain judicial precedents including the decision of the Hon'ble Karnataka High Court in the case of CIT vs. Motorola Electronics India (P) Ltd on 17/07/2018, CIT vs. CIT Vs. Hindustan Gum & Chemicals Ltd. 241 Taxman 401 and the decision of ITAT Ahmedabad Benches in the case of M/s Karp Mfg. Co vs Addl CIT in ITA Nos: 374 & 766/Ahd/2011.

7. The learned Counsel for the assessee submitted that in so far as 2nd ground of the appellant which relates to the set off of brought forward losses, submitted, that this issue is covered by the decision of the ITAT Chennai Benches in the case of M/s. International Agricultural Processing vs. CIT vide order dated 25.05.2022 where the Tribunal by following the decision of the Hon'ble Supreme Court in the case of CIT vs. Yokogawa India Ltd reported in (2017) 391 ITR 274 held that while computing profit and gains of an entity, the stage at which the computation of income is under Chapter VI of the Act and thus, before allowing set off of forward business loss or unabsorbed depreciation, exemption should be allowed.

8. The learned DR, on the other hand, supporting the orders of the learned CIT (A) submitted that the profits and gains of 100% export oriented undertaking from export of article or thing is only eligible for exemption, but not other income like interest received, gain on foreign fluctuation and miscellaneous income etc. The learned CIT (A) after considering the relevant facts has rightly upheld the additions made by the Assessing Officer and their order should be upheld. In so far as set off of brought forward unabsorbed depreciation, although the issue is covered by the decision of the Hon'ble Supreme Court in the case of CIT vs. Yokogawa India Ltd (Supra), but fact remains that profit from eligible undertaking is negative and thus question of set off of brought forward business loss does not arise. The learned CIT (A) after considering the relevant facts has rightly rejected the argument of the assessee and their order should be upheld.

9. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that the appellant has reported income from sale of dossiers/formulation separately and income from other activities like analysis charges, stability storage charges, interest income, gain on foreign currency fluctuation, miscellaneous receipts etc. under other income. However, while computing exemption u/s 10B of the I.T. Act, 1961, the appellant has considered total income of Rs.9,16,55,290/- which include other income. The Assessing

Officer re-computed the profits of the eligible undertaking for the purpose of section 10B at Rs(-)2,16,01,418/- by excluding other income. It is the argument of the learned Counsel for the assessee that in light of amendment to provision 10B(4) of the I.T. Act, 1961, for the purpose of sub-section (1), the profits derived from export of article or thing shall be the amount which bears to the profits of the undertaking, the same proportion as export turnover in respect of such article or thing bears the total turnover of the business carried on by the undertaking. To support his argument, he relied upon certain judicial precedents including the decision of the Hon'ble Karnataka High Court in the case of CIT vs. Motorola India Electronics (P) Ltd.

10. We have given our thoughtful consideration to the reasons given by the learned Assessing Officer to recompute the eligible profit for the purpose of section 10B of the I.T. Act, 1961 by excluding other income in light of sub-section (4) and also the decisions relied upon by the learned Counsel for the assessee. We find, sub-section (4) deals with manner in which the eligible profit of an undertaking should be computed. In other words, it explains the method of computing the profits derived from export of article or thing or computer software of a business of an assessee in case the assessee is having 100% EOU unit and non export unit. In case, the assessee is deriving profit and gains of business or profession from both the units, then computation of eligible profits derived from export of article or thing should be computed

in proportion to export turnover in respect of such article or thing and total turnover of the business carried on by the undertaking. Therefore, the argument of the learned Counsel for the assessee in terms of sub-section(4) of section 10B that other income reported by the assessee is also eligible for exemption u/s 10B of the Act is devoid of merit. In our considered view, to be eligible for exemption u/s 10B of the Act first of all, the profit should be derived from export of an article or thing or computer software or any other income related to export activities of the assessee. In the present case, the assessee is derived various income including stability storage charges, analysis charges, gain on foreign currency fluctuation, interest received and miscellaneous receipts etc. to the tune of Rs.4,16,06,260/- and failed to demonstrate with evidence that the said receipts are directly linked or connected to export of goods or thing or computer software. Therefore, we are of the considered view that the assessee is not eligible for exemption u/s 10B of the I.T. Act, 1961 in respect of other income. In so far as the case law relied upon by the assessee including the decision of the Hon'ble Karnataka High Court in the case of CIT vs. Motorola India Electronics (P) Ltd (Supra), the above case laws are not applicable to the facts of the present case and thus not considered.

11. At this stage, it is relevant to consider the order of the Coordinate Bench of the ITAT Hyderabad Benches in the case of HSBC Electronic Data Processing India Pvt. Ltd vs. Addl. CIT in

ITA No.1613/Hyd/2017 dated 5.8.2024. The Coordinate Bench of the ITAT has considered an identical issue of deduction u/s 10B of the Act in respect of gain on foreign exchange fluctuation and after considering the relevant facts has held as under:

“10.4 We have heard the rival contentions and gone through the record in the light of submissions made by the either side. As per section 10A of the Act, the deduction under this section is available only if the profit is derived from the activity of export. Section 10A is intended to promote export activities by providing tax exemption on profits derived from exports and therefore to qualify for exemption u/s 10A, the receipt/gains must be directly attributable to the exports. However, the profit or gains earned by the assessee from hedging with forward contracts/ marked to market gains cannot be considered as profit derived from the activity of export, as it has no direct nexus with the export activity. As no such direct nexus have been proved by the assessee, in our consider view the profit and the gains earned by the assessee from hedging with forward contracts/ marked to market gains is not eligible for deduction under section 10A of the Act. Therefore, we dismiss this ground of the assessee.”

12. In view of the matter and by following the decision of the Coordinate Bench of ITAT Hyderabad in the case of HSBC Electronic Data Processing India (P) ltd vs, Addl. CIT (Supra), we are of the considered view that the assessee is not entitled for exemption u/s 10B of the Act in respect of other income. The learned CIT (A) after considering the relevant facts has rightly sustained the eligible profit computed by the Assessing Officer u/s 10B of the Act. Thus, we are inclined to uphold the finding of the learned CIT (A) and dismiss the ground raised by the assessee.

13. In so far as Ground No.3 of assessee's appeal with regard to set off of brought forward business loss and unabsorbed depreciation, we find that the issue is covered in favour of the assessee by the decision of the Hon'ble Supreme Court in the case of CIT vs. Yokogawa India (P) Ltd (Supra) where the method of computation of eligible profit for the purpose of 10A and 10B has been explained and held that at stage at which such profits should be computed is under Chapter VI and before allowing brought forward business loss or unabsorbed depreciation. Therefore, there is no dispute on the legal position laid down by the Hon'ble Supreme Court, But, fact remains that in the present case, the question of set off of brought forward business and unabsorbed depreciation against profits of the eligible business for the purpose of section 10B does not arise, because after exclusion of other income, the profits for the purpose of section 10B computed by the Assessing Officer is negative. Therefore, the argument taken by the assessee in light of the decision of the Hon'ble Supreme Court is only academic and does not have any bearing on the computation of profits eligible for business u/s 10B of the Act. However, in so far as set off of brought forward business loss or unabsorbed depreciation against other income computed by the Assessing Officer separately, in our considered view, by considering the nature of business loss and nature of brought forward loss and unabsorbed depreciation, whether it can be set off against other income is to be examined by the Assessing Officer. In any way, unabsorbed depreciation can be set off

against any income including other income. Therefore, we are of the considered view that this issue needs to be set aside to the file of the Assessing Officer for the purpose of verification of facts. Thus, we set aside the issue of brought forward business loss or unabsorbed depreciation to the file of the Assessing Officer and direct the Assessing Officer to verify the claim of the assessee and decide the issue in accordance with law.

14. In the result, appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the Open Court on 26th August, 2024.

Sd/-

Sd/-

(MANJUNATHA, G) ACCOUNTANT MEMBER	(LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 26th August, 2024

Vinodan/sps

Copy to:

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1	AET Laboratories (P) Ltd, Survey No.42, Gaddapotharamn, Kazipally Industrial Area, MEDAK 5-2319
2	Dy.CIT Circle 8(1) Hyderabad
3	Pr. CIT – 2, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order