

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

श्री एबी टी. वर्की, न्यायिक सदस्य एवं श्री जगदीश, लेखा सदस्य के समक्ष
BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI JAGADISH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1387/Chny/2024
निर्धारण वर्ष /Assessment Year: 2007-08

M/s. Stanadyne India Pvt. Ltd.,
(formerly Stanadyne
Amalgamations Pvt. Ltd.,)
No.96, Aranvoyal Village,
Poonamalle, Aranvoyal,
Tiruvallur – 602 025.
[PAN: AAFCS 7717L]

Vs. The Asst. Commissioner of
Income Tax,
Company Circle-IV(4),
Chennai.

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Appellant by

: Shri S.P. Chidambaram, Advocate

प्रत्यर्थी की ओर से /Respondent by

: Shri P. Krishna Kumar, JCIT

सुनवाई की तारीख/Date of Hearing

: 12.09.2024

घोषणा की तारीख /Date of Pronouncement

: 27.11.2024

आदेश / ORDER

PER JAGADISH, A.M :

Aforesaid appeal filed by the assessee for Assessment Year (AY) 2007-08 arises out of the order of Learned Commissioner of Income Tax (Appeals), Chennai-16 [hereinafter "CIT(A)"] dated 11.03.2024 in the matter of assessment framed by the Assessing

Officer [AO] u/s. 143(3) r.w.s 92CA(4) & 144C(3) of the Income-tax Act,1961 (hereinafter "the Act") on 28.01.2011.

2. The grounds of appeal raised by the assessee are as under:

1. *The order of the Commissioner of Income Tax (Appeals) ["CIT(A)"] is contrary to law, facts and circumstances of the case.*

2. *Set off of unabsorbed depreciation before allowing deduction under Section 10B of the Act.*

2.1 *The CIT(A) erred in setting off the unabsorbed depreciation and brought forward business loss of earlier years from profits of the undertaking before allowing deduction under Section 10B of the Act.*

2.2 *The CIT(A) erred in confirming the adjustment made by the Assessing Officer (AO) without adjudicating the case on merits.*

2.3 *The CIT(A) ought not to have passed the impugned order ex-parte without providing sufficient opportunity of being heard to the Appellant.*

2.4 *The CIT(A) ought to have appreciated that Section 10B of the Act provides for deduction of profits of the undertaking in its entirety and does not provide for any adjustment by way of set off of any brought forward losses.*

2.5 *The CIT(A) ought to have appreciated that the terms 'profit' and turnover" in sub-section (4) of Section 10B refers only to the current year's profits and turnover.*

2.6 *The CIT(A) failed to appreciate that profits of unit eligible for deduction under Section 10B of the Act is to be granted while computing the profits and gains of business or profession of the business itself and not from gross total income.*

2.7 *The CIT(A) failed to appreciate that the term 'total income' used in Section 10B of the Act refers only to the total income of the undertaking and not total income of the Assessee.*

2.8 *The CIT(A) ought to have followed the binding decision of the Hon'ble Supreme Court in the case of CIT vs Yokogawa India Limited wherein the same issue is settled in favour of the Appellant.*

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3. Reduction of refurbishment charges from export turnover while computing deduction u/s 10B

3.1 The CIT(A) erred in reducing the refurbishment charges amounting to Rs.1,15,53,800 from the export turnover while computing the deduction under Section 10B of the Act.

3.2 The CIT(A) erred in confirming the adjustment made by the AO without adjudicating the case on merits.

3.3 The CIT(A) ought not to have passed the impugned order ex-parte without providing sufficient opportunity of being heard to the Appellant.

3.4 The CIT(A) ought to have appreciated that the refurbishment charges is directly connected with the export activity and as such it cannot be excluded from export turnover.

4. The Appellant prays that directions be given to grant all such relief arising from the grounds of appeal mentioned supra as also all consequential relief thereto.

5.The Appellant craves leave to add, alter, amend, substitute, rescind, modify and/or withdraw in any manner whatsoever all or any of the foregoing grounds of appeal at or before the hearing of the appeal.”

3. Grounds No.1, 4 & 5 are general in nature, therefore no adjudication is required.

4. Ground No.2 is regarding set off of unabsorbed depreciation and brought forward business loss of earlier years from profits of the undertaking before allowing deduction u/s. 10B of the Act.

5. The assessee-company is engaged in manufacture of fuel injection system consisting of pumps, injectors, hydraulic, valve lifters etc. The assessee-company has shown business income of Rs.1,41,22,834/- and has claimed deduction u/s. 10B of the Act at Rs.1,38,38,944/-. The assessee has set off of carry forward depreciation loss of earlier years to the extent of Rs.2,83,890/-. The A.O has recomputed the income by first setting off of the unabsorbed depreciation of Rs.2,87,48,637 from total income determined at Rs.2,87,448,637/- and since after setting off of unabsorbed depreciation there is no income left, assessee has not allowed any deduction u/s. 10B of the Act. The A.O has held that deduction u/s. 10B of the Act is to be granted after setting off of unabsorbed depreciation and brought forward losses prior to computation of deduction u/s. 10B of the Act.

6. The Ld. Authorized Representative (A.R) of the assessee has argued that the issue whether the brought forward losses has to be set off first before allowing exemption under chapter-III has been settled by the Hon'ble Supreme Court in the case of CIT v. Yokogawa India Ltd. [2017] 77 taxmann.com 41 (SC), therefore the issue is settled in favour of the assessee.

7. The Ld. Departmental Representative (DR), on the other hand, has relied on the orders of lower authorities.

8. We have heard the rival submissions, and perused the materials available on record. The issue whether set off of unabsorbed depreciation and business losses are to be allowed before allowing deduction/exemption u/s. 10B of the Act has been settled by Hon'ble Supreme Court in the case of CIT v. Yokogawa India Ltd., supra, by holding that though section 10A of the Act 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 not at the stage of computation of total income under Chapter-VI. In view of the above, the A.O is directed to allow the claim of deduction u/s. 10B of the Act before allowing unabsorbed depreciation as held by Hon'ble Supreme Court.

9. Ground No.3 is against confirming the reduction of refurbishment charges from export turnover while computing deduction u/s. 10B of the Act.

10. The assessee in the computation of eligible profit u/s. 10B of the Act has computed the deduction u/s. 10B of the Act at Rs. 1,38,38,944/- by taking profit for net income at Rs. 1,41,22,834/-, export turnover at Rs.24,58,25,868/- and total turnover at Rs.25,08,68,702/- as per Section 10B(4) of the Act. However, the A.O while making computation as per 10B(4) has excluded the refurbishment charges on export sales of Rs. 1,15,53,800/- from export turnover while computing ratio of export turnover by total turnover on the profit for undertaking to determine the eligible profit u/s. 10B of the Act. The A.O has not considered refurbishment charges on export as part of export turnover as the assessee has classified the said income separately from the export sale in the profit and loss account and further, the refurbishment charges are transaction over and above the export sale. The A.O has computed deduction u/s. 10B of the Act at Rs. 1,31,88,514/- against the claim of Rs. 1,38,38,944/-.

11. The Ld. AR has submitted that refurbishment charges are incidental to the export activity are part of the export turnover and therefore, has been correctly included in the export turnover. The Ld.

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AR has relied on the decision of Hon'ble Karnataka High Court in the case of CIT v. Hewlett Packard Global Soft Ltd. [2017] 87 taxmann.com 182 (Karnataka), and the decision of Hon'ble Madras High Court in the case of Camiceria Apparels India (P.) Ltd. v. ACIT [2019] 103 taxmann.com 234 (Mad.) in support of its contention.

12. The Ld. Departmental Representative (DR), on the other hand, has relied on the orders of lower authorities.

13. We have heard the rival submissions, and perused the materials available on record. The A.O while computing the eligible profit u/s. 10B of the Act as per section 10B(4) has not considered refurbishment charges on export sales of Rs.1,15,53,800/- as the assessee in the profit and loss account has classified separately. The Ld. AR has submitted that refurbishment charges are incidental to and integral to export and therefore cannot be excluded from the export turnover .We are in agreement with the submission of Ld AR that refurbishment export sale is integral and incidental to the export business and therefore to be considered part of export turnover for the purpose of computation u/s 10B(4). The Hon'ble Madras High Court in the case of *CIT vs. M/s. Oliver Valves India Pvt. Ltd., in Tax case Appeal*

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No.278 & 279 of 2018 vide order dated 23.07.2020. on similar facts has held the fee received as a part of export turnover. We, therefore allow the assessee's ground of appeal.

14. In the result, the appeal filed by the assessee is allowed.

Order pronounced on 27th November, 2024.

Sd/-
(एबी टी. वर्की)
(ABY. T. Varkey)

न्यायिक सदस्य / Judicial Member

Sd/-
(जगदीश)
(Jagadish)

लेखा सदस्य / Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 27th November, 2024.

EDN/-

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

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