

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH : By Virtual Hearing**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND
SHRI SOUNDARARAJAN K, JUDICIAL MEMBER**

ITA No. 640 & 641/Coch/2023
Assessment Years : 2003-04 & 2005-06

Aptiv Connection Systems India Pvt. Ltd., 7/60-A & 60-B, Arakkunnam Pulikkamali Road, Arakkunnam PO, Kochi – 682 313. PAN – AAACF 5044 Q	Vs.	The Asst. Commissioner of Income-tax, Circle – 1(1), Kochi – 682 018. .
APPELLANT		RESPONDENT

Assessee by	:	Shri Salil Kapoor, Advocate
Revenue by	:	Smt. Girly Albert, Sr. DR

Date of hearing	:	12.09.2024
Date of Pronouncement	:	11.11.2024

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

These appeals filed by the assessee are against the order passed by the NFAC, Delhi dated 14/07/2023 in ITBA/NFAC/S/250/2023-24/1054379384(1) for the assessment year 2003-04 and 2005-06.

2. The only issue raised by the assessee is that the Id. CIT(A) erred in confirming the order of the AO by denying the set off of the income from the eligible unit against the loss of the non-eligible unit.

2.1 It is the 2nd round of appeal before us. The necessary facts are that the assessee in the present case is a private limited company and engaged in the business of computer aided design and engineering services. The assessee has 3 units based in different geographical locations i.e. Chennai, Cochin and Bengaluru. The units based in Chennai and Bengaluru are eligible for exemption u/s 10A of the Act. The assessee has declared profit with respect to Bengaluru unit amounting to Rs. 66,10,020/- whereas the loss was declared with respect to Chennai and Cochin unit at Rs. 2,34,126/- and Rs. 91,94,342/- respectively.

3. The assessee with respect to Bengaluru unit claimed exemption of Rs. 58,67,861/- being 90% of the profit of Rs. 66,10,020/- under the provisions of sec. 10A of the Act. As such, the assessee has shown taxable profit of Rs. 7,42,159/- in its Bengaluru unit, which was set off against the losses incurred at Chennai and Cochin Units. The assessee computed the loss for its business for Rs. 83,04,385/- (loss of Rs. 2,34,126/- + 91,94,342/- minus profit Rs. 7,42,151/-).

4. However, the AO was of the view that the assessee before claiming the exempt income u/s 10A of the Act has to set off of the profit of the eligible unit against the other units being Chennai and Cochin and if some positive income remains, which alone can be claimed as exempt u/s 10A of the Act. According to the AO, once the income of the assessee is set off against the losses, there remains no positive income and, therefore, there is no possibility of claiming any exemption u/s 10A of the Act. On appeal by the assessee, the Id. CIT(A) confirmed the order of the AO.

5. Against the finding of the Id. CIT(A), the assessee has preferred an appeal to the ITAT in ITA No. 616/Cochin/2008, which was decided vide order dated 4-06-2010 by observing that the income of an undertaking eligible for exemption u/s 10AA of the Act has to be determined on standalone basis, therefore, the loss of non-eligible unit cannot be set off against profit of unit eligible for exemption u/s 10AA of the Act.

6. Likewise, the ITAT also observed that the claimed u/s 10A of the Act of an eligible unit shall not be allowed to be carried forward like the loss or depreciation computed under normal provisions of the Act. As such, the income of the eligible unit has to be taxed independently without merging with the non-eligible unit u/s 10A of the Act. The ITAT while holding so has made reference to the judgment of special bench in the case of Scientific Atlanta India Technology Private Ltd., reported in 38 SOT 252.

7. However, the AO in his order giving effect dated 22/07/2010 has allowed the set off profit of the eligible unit against the loss of other units, which was against the direction of the ITAT.

8. The AO further upon realizing the mistake rectified its OGE dated 22/07/2010 suo moto under the provisions of sec. 154 of the Act vide order dated 11/06/2011, wherein the AO has computed the tax liability of its Bengaluru unit independently by taking sum of Rs. 7,42,159/- as taxable income of the assessee. On appeal, the Id. CIT(A) also confirmed the same.

9. Being aggrieved by the order of the Id. CIT(A), the assessee is in appeal before us.

10. The Id. AR before us contended that there was no direction in the order of the ITAT for not allowing the set off of the income of eligible unit against the losses of other eligible unit. Thus, in the absence of such direction, the AO has exceeded his jurisdiction by rectifying the OGE dated 22/07/2010.

11. On the other hand, the Id. DR submitted that the ITAT in its order dated 04/06/2010 has clearly directed the AO not to allow the set off of the loss of the eligible unit against the non-eligible/eligible unit, which the AO has not done so in the OGE and, therefore, the same was rectified u/s 154 of the Act. The Id. DR before us vehemently supported the orders of the authorities below.

12. We have heard the rival contentions of both the parties and perused the materials available on record. At this juncture, we are inclined to refer the direction given by the ITAT in the own case of the assessee reported in 43 SOT 460 in the first round of litigation which is reproduced as under:

4. 4 *In view of the foregoing, we may sum up our findings, as under :*

- (a) *the deduction under section 10A in respect of the ISR Centre, Bangalore, is to be computed only qua its profits, i. e. , without any adjustment or set off of any loss from any other source, either eligible or non-eligible (under section 10A) . The allocation of preliminary expenses under section 35D for the purpose could either on some reasonable basis, as turnover, or better still, set off against the specific income(s) of the Unit(s) in relation to the setting up or expansion of which the same stood incurred in the first place.*
- (b) *The income that obtains after the deduction under section 10A, or the 'unabsorbed claim under section 10A' as the Tribunal describes it in the case of Scientific Atlanta India Technology (P.) Ltd. (supra) , would stand to be taxed as such, i. e. , shall not be set off against any other loss or be carried forward.*

12.1 On perusal of the above direction, there remains no ambiguity that the ITAT has clearly directed the AO to allow the set off of the income of the eligible unit against the losses of other units. Admittedly, such direction of the ITAT was not adhered by the AO in the OGE and, therefore, we are of the view that there was a mistake apparent from the record in the OGE of the AO. Thus, we hold that there was apparent mistake, which has been rectified by the AO under the provisions of sec. 154 of the Act. Accordingly, we decline to interfere in the finding of the authorities below and uphold the same. Hence, the ground of appeal of the assessee is hereby dismissed.

13. In the result, the appeal of the assessee is hereby dismissed.

Coming to ITA No. 641/Coch/2023 for the assessment year 2005-06

14. The facts of the case on hand are identical to the facts of the case discussed above except two issues detailed in the subsequent paragraph, therefore, respectfully following the same, the ground of appeal of the assessee is hereby dismissed.

15. At the outset, the learned counsel for the assessee before us submitted that he has been instructed by the assessee not to press the issue raised in ground No. 7 in the memo of appeal. Accordingly, we dismiss the same as not pressed.

16. The last substantive ground of appeal of the assessee is that the assessee has filed the revised return of income which has not been considered by the AO during the assessment proceedings. As such, the AO has framed the assessment order on original return of income. On

appeal, the Ld. CIT-A also dismissed the ground of appeal of the assessee by holding that the assessee has not filed any evidence of having filed revised return of income.

16.1 However, at the time of hearing before us, the Id. AR requested to restore the issue to the file of the AO to consider the revised return of income and undertakes the accountability of making the necessary compliance. On the other hand, the Id. DR did not raise any objection if the issue is set aside to the file of the AO for fresh adjudication as per the provisions of law.

16.2 Considering the rival submissions of the assessee, in the interest of justice and fair play, we set aside the issue to the file of the AO for fresh adjudication as per the provisions of law and in the light of the above stated discussion. Hence the ground of appeal of the assessee is by allowed for statistical purposes.

17. In the result, the appeal of the assessee is hereby partly allowed for statistical purposes.

18. In the combined result, the appeal of the assessee bearing ITA No. 640/coch/2023 is hereby dismissed whereas ITA No. 641/coch/2023 is hereby partly allowed for statistical purposes.

Order pronounced in court on 11th day of November 2024

Sd/-

Sd/-

(SOUNDARARAJAN K)

Judicial Member

Bangalore

Dated, 11th November, 2024

(WASEEM AHMED)

Accountant Member

/ vms /

Copy to :

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore