

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री डि.एस. सुन्दर सिंह, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.3311, 3312, 3313, 3314 & 3315/Mds/2016

निर्धारण वर्ष / Assessment Years : 2005-06 to 2008-09 & 2010-11

The Deputy Commissioner of
Income Tax,
Corporate Circle – 4(1),
Chennai - 600 034.

v. M/s Lister Technologies Pvt. Ltd.,
No.232, V.M. Street, Mylapore,
Chennai - 600 004.

(अपीलार्थी/Appellant)

PAN : AAACL 6079 R

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri Supriyo Pal, JCIT

प्रत्यर्थी की ओर से/Respondent by : Shri S. Sendamarai Kannan, Advocate

सुनवाई की तारीख/Date of Hearing : 22.02.2017

घोषणा की तारीख/Date of Pronouncement : 23.03.2017

आदेश /ORDER

PER N.R.S. GANESAN, JUDICIAL MEMBER:

All the appeals of the Revenue are directed against the common order passed by the Commissioner of Income Tax (Appeals) – 8, Chennai dated 26.09.2016, for the assessment years 2005-06 to 2008-09 and 2010-11. Since common issues arise for consideration in all these appeals, we heard these appeals together and disposing of the same by this common order.

2. There was a delay of 3 days in filing each of these appeals by the Revenue. The Revenue has filed petitions for condonation of delay. We have heard the Ld. Departmental Representative and the Ld.counsel for the assessee. We find that there was sufficient cause for not filing the appeals before the stipulated time. Therefore, we condone the delay and admit the appeals.

3. The first issue arises for consideration is deduction claimed by the assessee under Section 10A of the Income-tax Act, 1961 (in short 'the Act').

4. Shri Supriyo Pal, the Ld. Departmental Representative, submitted that the CBDT in its circular dated 16.07.2013 instructed its officers to allow deduction under Section 10A of the Act only after setting off losses as per provisions of Section 70 and 71 of the Act. After setting off losses under Section 70 and 71 of the Act, if the resultant figure is loss from the eligible unit, it shall be eligible to carry forward and set off in accordance with the provisions of Section 72 of the Act. In the case before us, according to the Ld. D.R., the A.O. found that the brought forward losses are more than profits of eligible business, therefore, the assessee is not eligible for

deduction under Section 10A of the Act. The Ld. D.R. very fairly submitted that the Apex Court recently in CIT & Another v. M/s Yokogawa India Ltd. in Civil Appeal No.8498 of 2013 dated 16th December, 2016, examined an identical issue and found that the deduction under Section 10A of the Act would be prior to the commencement of exercise to be undertaken under Chapter-VI of the Act for arriving at total income of the assessee from gross total income. In view of this judgment of Apex Court, the Ld. D.R. very fairly submitted that the issue raised by the Revenue is covered in favour of assessee.

5. Shri Supriyo Pal, the Ld. Departmental Representative further submitted that for the assessment year 2007-08, the assessee has also raised one more issue with regard to eligibility of the assessee for deduction under Section 10A of the Act in respect of foreign exchange gain.

6. We have heard Shri S. Sendamarai Kannan, the Ld.counsel for the assessee also. As rightly submitted by the Ld. Departmental Representative, the Apex Court has held that the deduction under Section 10A of the Act would be prior to the commencement of exercise to be undertaken under Chapter – VI of the Act, therefore,

the loss brought forward from the earlier year cannot be set off. In view of this judgment of Apex Court in Yokogawa India Ltd. (supra), this Tribunal is of the considered opinion that the CIT(Appeals) has rightly found that the loss suffered by the assessee cannot be set off before allowing deduction under Section 10A of the Act.

7. For the assessment year 2007-08, the assessee claimed deduction under Section 10A of the Act in respect of foreign exchange gain to the extent of ₹4,28,767/-. Foreign exchange gain admittedly related to the export business of the assessee and its sale consideration was realized by virtue of export made by the assessee. Therefore, this Tribunal is of the considered opinion that the CIT(Appeals) has rightly found that the assessee is eligible for benefit under Section 10A of the Act in respect of such foreign exchange gain due to fluctuation.

8. In view of the above discussion, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

9. In the result, all the appeals filed by the Revenue are dismissed.

Order pronounced on 23rd March, 2017 at Chennai.

sd/-

(डि.एस. सुन्दर सिंह)

(D.S. Sunder Singh)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 23rd March, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-8, Chennai
4. Principal CIT, Chennai-4, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.