

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCH 'B', BANGALORE**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER  
AND  
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

**ITA No.1167(B)/2015  
(Assessment year : 2007-08)**

The Deputy Commissioner of Income-tax,  
Circle-2(1) (2), 4<sup>th</sup> Floor, RP Bhanavan,  
Bangalore

Appellant

**Vs**

M/s Delixus Software India Pvt.Ltd.,  
HMS Campus, National Highway-4,  
Kesarmandu PO, Kyathsandra,  
Tumkur-572 104

**PAN No.AABCD7604D**

Respondent

**Revenue by : Shri B. Saravanan, Addl.CIT  
Assessee by : Shri A.C.Raju, CA**

**Date of hearing : 25-02-2016**

**Date of pronouncement : 29-02-2016**

**ORDER**

**PER SHRI VIJAY PAL RAO, JM:**

This appeal of the revenue is directed against the order dated 26-05-2015 of the CIT(A)-2, Bangalore for Assessment year: 2007-08. The revenue has raised the following grounds;

*"1. The order of the CIT(A) is contrary to the facts and circumstances of the case and hence not sustainable.*

*2. Whether the CIT(A) was right in allowing the deduction u/s 10B from prior to setting off of brought forward losses.*

*3. For these and other grounds that may be urged at the time of hearing, it is prayed that the order of the CIT(A) insofar as it relates to the above grounds may be reversed and that of the AO may be restored.*

*4. The assessee craves leave to add, alter, amend and/or delete the grounds mentioned above.*

2. The only issue arises in this revenue's appeal is regarding allowing deduction u/s 10B of the IT Act, 1961 prior to setting off of brought forward losses.

3. We have heard learned DR as well as the learned AR and considered the relevant material on record. At the outset, we note that the learned CIT(A) had decided the issue by following the judgment of the Hon'ble jurisdictional High Court in the case of CIT Vs M/s Yokogawa India Ltd (341 ITR 385) at para 3.3 to 3.4 of his order as under;

*“3.3. I have carefully considered the assessee's submissions and perused the assessment order. I find merit in the assessee's submissions since its case is covered in its favour by the decision of the Hon'ble High Court of Karnataka in the case of CIT Vs Yokogawa India Ltd. The gist of the said decision is reproduced below;*

*“ The assessee company claimed exemption of Rs.3,95,99,100/- u/s10A for its STP unit. The exemption had been claimed before set off of brought forward losses and depreciation. According to the assessing authority the deduction under section 10A has to be allowed from the total income of the assessee. The total income of the assessee was arrived at as per section 80B(5). Therefore, the exemption under section 10A had to be given after setting off of all brought forward losses within the context of sec.32(1) r.w.s.72(2). Accordingly, sec.10A benefit was re-computed. After such re-computation the assessee was held to be not entitled for exemption u/s10A and hence a sum of Rs.36,575/- was treated as income from the sources. **Held.** As the income of 10A unit has to be excluded at source itself before arriving at the gross total income the loss of non-10A unit cannot be set off against the income of 10A unit under section 72. The loss incurred by the assessee under the head profits and gains of business or profession has to be set off against the profits and gains if any of any business or profession carried on by such assessee. Therefore, as the profits and gains under section 10A is not be included in the income of the assessee at all, the question of setting off of the loss of the assessee in respect of any business against profits and gains of the undertaking would not arise. Similarly, as per section 72(2); unabsorbed business loss is t be first set off and thereafter unabsorbed depreciation treated as current year depreciation u/s 32(2) is to be set off. As deduction under section 10A ha to be excluded from the total income of the assessee, the question of unabsorbed business loss being set off against such profit and gains of the undertaking would not arise”.*

*3.4 Respectfully following the decision of the jurisdictional High Court referred to above, I hereby direct the AO to allow the assessee’s claim for deduction u/s 10B from the total income first and then determine the total income or loss to be carried forward, as the case may be.*

4. The learned AR of the assessee has pointed out that the identical issue was considered and decided by this Tribunal in case of ITO Vs M/s Clear Water Technology Services Pvt.Ltd (36 ITR(Trib.)0528 wherein the Tribunal has decided this issue after considering the judgment of the Hon'ble jurisdictional High Court in the case of CIT Vs M/s Himatsingike Seide Ltd. 286 ITR 255(Kar.) as well as the latest judgment of the jurisdictional High Court in the case of CIT Vs M/s Yokogawa India Ltd (Supra) we find that subsequent judgment of the Hon'ble jurisdictional High Court in the case of M/s Yokogawa India Ltd (Supra) has been decided by the Hon'ble jurisdictional High Court after considering the amended provisions of Sec.10A/10B of the IT Act, 1961, whereas the judgment in case of CIT Vs M/s Himatsingike Seide Ltd. (Supra) was prior to the amendment in the provisions of Sec.10A/10B of the IT Act, 1961. Therefore, in view of the latest judgment of the jurisdictional High Court, we do not find any error or illegality in the order of the learned CIT(A).

5. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open Court on the 29<sup>th</sup> February, 2016. \

**Sd/-**  
**(INTURI RAMA RAO)**  
**ACCOUNTANT MEMBER**  
D a t e d : 29-02-2016  
Place: Bangalore  
**am\***

**Sd/-**  
**(VIJAY PAL RAO)**  
**JUDICIAL MEMBER**

**Copy to :**

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- 5 DR, ITAT, Bangalore.
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By order

AR, ITAT, Bangalore