

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

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

**ITA No.803(BNG)/2015
(Assessment year : 2011-12)**

The Income-tax Officer,
Ward-1,
Bangalore

Appellant

Vs

Ms Kewal Engineering Pvt.Ltd.
No.21, Kumbalgod Ind. Area,
Phase-I,
Bangalore

Respondent

**Revenue by : Shri Naresh Saka, Addl.CIT
Assessee by : Shri Sandeep, CA**

**Date of hearing : 30-11-2015
Date of pronouncement : 11-12-2015**

O R D E R

PER SHRI INTURI RAMA RAO, AM :

This appeal filed by the revenue is directed against the order of the Commissioner of Income-tax (Appeals)-4, Bangalore dated 10-03-2015 for the assessment year : 2011-12.

2. The revenue raised the following grounds in its appeal;

“1. The order of the Ld.CIT is opposed to the law and facts of the case.

2. On the facts and circumstances of the case, ld.CIT(A) has erred in directing to follow the ratio laid down by the Hon'ble HC in the case of CIT Vs Tata Elxsi Ltd.

while computing the deduction u/s 10A when the department has filed a SLP before the Hon'ble SC on this issue which is pending adjudication.

3. The ld.CIT(A) has erred in directing the AO to follow the ratio laid down by the Hon'ble HC in the case of CIT Vs Yokogawa India Ltd. with regard to the set off of the carry forward losses against the gross total income before computing the deduction u/s 10A of the Act, when the department's SLP before the Hon'ble SC in this issue is pending adjudication.

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

5. The assessee craves leave to add, alter, amend and/or delete any of the grounds that may be urged.

3. Brief facts of the case are that the respondent assessee-company is engaged in the business of export of tools, dyes and machine components. The return of income for the assessment year 2011-12 was filed on 28-09-2011 declaring NIL income after setting off of the brought forward loss of Rs.23,41,760/-. Against the said return of income the assessment was completed by the AO vide order dated 28-03-2014 passed

u/s 143(3) of the IT Act, 1961 at a total income of Rs.1,54,019/- while doing so learned AO allowed the benefit of deduction under the provisions of sec.10B on income after setting off of the brought forward business loss of assessment year 2010-11 of Rs.23,05,688/- and reduced the freight charges from the export turnover.

4. Being aggrieved by this assessment order an appeal was filed before the CIT(A). The learned CIT(A) following the decision of the Hon'ble High Court of Karnataka in the case of CIT Vs Himatsinghe Seide Ltd. held that while computing the deduction u/s 10B of the IT Act, the brought forward loss should not be set off and also held that following the decision of the Hon'ble Karnataka High Court in the case of CIT Vs Tata Elxsi Ltd. 349 ITR 98, that the freight charges should be reduced from the export turnover as well as total turnover while computing the deduction u/s 10B of the IT Act, 1961.

5. Being aggrieved by the order of the learned CIT(A) the revenue is in appeal before us.

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6. We have heard the rival submissions and perused the material on record. The issue in this appeal has been decided by the learned CIT(A) following the decision of the jurisdictional High Court. Hence, we do not find any reason to interfere with the order passed by the learned CIT(A), and we uphold the order of the Id.CIT(A) and dismiss the appeal filed by the revenue.

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

Order pronounced in the open Court on the 11th December, 2015.

Sd/-
(VIJAYPAL RAO)
JUDICIAL MEMBER
Place: Bangalore
D a t e d : 11-12-2015

Sd/-
(INTURI RAMARAO)
ACCOUNTANT MEMBER

am*

Copy to :

- 1 Appellant
- 2 Respondent
- 3 CIT(A)-II Bangalore
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

By order, AR,ITAT, Bangalore