

IN THE INCOME TAX APPELLATE TRIBUNAL“E” BENCH, MUMBAI

BEFORE SHRI RAJENDRA, AM AND SHRI AMARJIT SINGH, JM

आयकरअपीलसं/I.T.A. No.5374/Mum/2013
(निर्धारणवर्ष / Assessment Year: 2004-05)

ITO 8(3)(2) 201, Aayakar Bhavan, M.K. Road. Mumbai Pin:400020	बनाम/ Vs.	Technivision Ventures Ltd.(Formerly M.S. Solix Technologies Ltd) 1486, C-12- 136,522 Lane No.13 Street No.14 Tarnaka, Secunderabad Pin: 500017
स्थायीलेखासं. / जीआइआरसं. / PAN/GIR No. : AACCA5943R		
(अपीलार्थी/ Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Vishwas Mundhe,(DR)
Department by:	K. Gopal

सुनवाईकीतारीख / Date of Hearing: 23.03.2017
घोषणाकीतारीख /Date of Pronouncement: 31.05.2017
आदेश / ORDER

PER AMARJIT SINGH, JM:

The Revenue has filed the present appeal against the order dated 30.05.2013 passed by the Commissioner of Income Tax (Appeals)-18, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the assessment year 2004-05.

2. The Revenue has raised the following grounds:-

“On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred has erred in holding that the

brought forward unabsorbed depreciation and business losses of the assessee's 10A unit were not liable for set-off against the current year's profit of the same 10A unit by relying on the decision of the Hon'ble Bombay High Court in the case of CIT 10 vs. Black & Veatch Consulting Pvt. Ltd. ITA No. 1237 of 2011, without appreciation the difference that in the latter case the issue was set-off of brought forward unabsorbed depreciation and losses of non-eligible 10A unit against the current profits of an eligible 10A unit whereas in the present case the unabsorbed brought forward depreciation and business losses of earlier years, set-off against the current profits of the 10A unit, pertained to the said eligible 10A unit itself and therefore, the facts of the present case are distinguishable from those of the case cited supra"

"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in holding that the brought forward unabsorbed depreciation and business losses of the assessee's 10A unit were not liable for set-off against the current year's profit of the same 10A unit, by relying on the decision of the Hon'ble Bombay High Court in the case of Black & Veatch Consulting Pvt. Ltd., ITAL No.1237 of 2011 in which reference has been made to the decision of the Hon'ble Bombay High Court in the case of Hindustan Unilever Ltd., [325 IT 102 at para 24(2010)], without appreciation that in case of Hindustan Unilever Ltd., the issue was adjustment of losses of an eligible IOB unit against other income, without setting off the said loss against the profits of other eligible EOUs, whereas in the present case, the unabsorbed depreciation and business losses brought forward from earlier years pertained to the eligible 10A unit itself and therefore, the facts of the present case are distinguishable from the case of Hindustan Unilever Ltd."

"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in holding that the brought forward unabsorbed depreciation and business losses of the assessee's 10A unit were not liable for set-off against the current year's profit of the same 10A unit, without

appreciating that in the case of CIT -10, Mumbai vs. Galaxy Surfactants Ltd.-A.Y.2005-06 in ITXA 3465 of 2010, the Hon'ble Bombay High Court has held that there is no bar in Section 10B which prohibits the operation of Sections 70,71, 72 etc., unlike Section 801A (5) or Section 801 (6) and therefore, by this ratio, the brought forward unabsorbed depreciation and business losses of the 10A unit have been rightly set off by the AO prior to computing deduction u/s.10A of the Act."

"On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in holding that the brought forward unabsorbed depreciation and business losses of the assessee's 10A unit were not liable for set off against the current year's profit of the same as 10A unit without appreciating that deduction u/s 10A is liable to be allowed from the total income of the assessee and in doing so, the profits and gains of business or profession are liable to be taxed under Section 32(2), which provides that brought forward unabsorbed depreciation would be deemed to be part of the depreciation of the current year and hence allowable accordingly. The Appellant prays that the order of the CIT(A) on the above ground be set aside and that of the ITO/ACIT/DCIT be restored.

The Appellant craves leave to amend or alter any grounds or add a new ground which may be necessary."

3. The brief facts of the case, are that the Assessee filed its return of income on 01.11.2004 declaring the total loss to the tune of Rs.3,06,255/- for the AY.2004-05. The return was filed along with audited copies of Profit and Loss Account, Balance-Sheet and Tax Audit Report u/s 44AB and u/s 10A. The return was processed u/s 143(1) of the I.T. Act, 1961 on 12.02.2005. Thereafter the case was selected for scrutiny and notice u/s.143(2), dated 27.10.2005 was issued and served upon the Assessee on 27.10.2005. Subsequently,

notices u/s 143(2) & 142(1) along with a detailed questionnaire dated 28.07.2006 were issued and served upon the Assessee. The Assessee company is engaged in the Computer Software Development and the related consultancy. During the year, the Assessee has claimed deduction u/s 10A of the I.T. Act to the tune of Rs.2,12,23,977/-. This deduction was claimed for the business carried out by the Assessee at 12-13. 522, Nagarjun Nagar, Tanaka, Secunderabad, and the total income of the said unit was declared to the tune of Rs.2,29,02,892/-. The Assessee claimed the deduction 10A of the Act which was not allowed on the facts that the Assessee transferred the old machinery from sister concern i.e M/s. Solix Enterprise Solution Ltd. and thereby violated the conditions as laid down u/s 10A(2)(iii) of the I.T. Act. The claim of the Assessee was also declined for the AY. 2002-03 because at that time there was no infrastructure facilities. Since, the claim of the Assessee u/s 10A was declined therefore, the AO completed the assessment by Assessing the income to the tune of Rs.2,09,44,030/-. Feeling aggrieved, Assessee filed the appeal before the CIT(A) and the CIT(A) allowed the claim of the Assessee. Therefore, an application u/s 154 for giving the facts of the order of the CIT(A) dated 07.07.2011 was filed. At the time of giving effect of the said order, the depreciation was allowed before allowing the claim u/s 10A. Feeling aggrieved the Revenue has filed the present appeal before us.

4. Ld. representative of the Revenue has argued that brought forward unabsorbed depreciation and business losses of the Assessee was not liable to be set-off earlier to the set off claim of the assessee's unit u/s.10A of the Act in view of the decision of the Bombay High Court in the case of **CIT-10 Vs. Black & Veatch Consulting Pvt. Ltd. ITA No. 1237 of 2011**. It is also argued that in the earlier year the unit was not eligible u/s.10A of the Act, therefore, the finding of the CIT(A) is wrong against the law and facts and is liable to be set aside. On the other hand, the Ld. representative of the Assessee has relied upon the order passed by the CIT(A) in question and also argued that the case of the assessee is fully covered by the case of **CIT-10 Vs. Black Veatch Consulting Pvt. Ltd. ITA No. 1237/Mum/2011 and Commissioner of Income Tax Vs. Yokojawa India Ltd. 77 taxman.com 41 (SC)** therefore, the finding of the CIT(A) is quite correct and is in accordance with law. We have heard the argument advanced by the Ld. representative of the parties and perused the record. Initially the Assessing Officer disallowed the deduction u/s 10A of the Act by virtue of order dated 21.12.2006. Therefore, the Assessee filed an appeal against the said order before the CIT(A) and the CIT(A) in view of the order dated 07.07.2011 held that the using the old machines nowhere disentitled the assessee to raise the claim u/s 10A of the Act and it is also held that the claim of the assessee is entitled to be set off u/s.10A of the Act earlier to the claim of brought forward unabsorbed depreciation and business loss.

Undoubtedly, in view of the order dated 07.07.2011 the claim of the Assessee for deduction u/s 10A was accepted. Thereafter, an application for giving effect to the order was filed in which brought forward unabsorbed depreciation and business loss was allowed subsequently to set off the claim of deduction u/s. 10A of the Act. Before going further it is necessary to advert the finding of the CIT(A) in this regard:-

“I have considered the submissions of the appellant order of the AO and facts of the case carefully, it is noticed that the AO rejected the claim of the appellant for adjustment of absorbed depreciation and losses to be adjusted before allowing the deduction u/s 10A.

On the other hand, the AR has submitted that the case of the appellant is squarely covered by the decision of Hon'ble Bombay High Court in the case of CIT Vs. Black & Veatch Consulting Pvt. Ltd. 248 ITR 72. It was further argued that as per decision of Hon'ble Punjab & Haryana high Court in the case of CIT Vs. Ramlal Babulal 148 CTR 643 and the decision of Allahabad High Court in the case of Omega Sports & Radio Works 134 ITR 28, it was held that when the decision of jurisdictional high court is available, it is binding on the lower authorities to make rectification as per the decision of the court.

From the perusal of the submissions and facts of the case, it is undisputed that the facts of the present case are squarely covered by the decision of Hon'ble Bombay High Court in the case of CIT Vs. Black & Veatch Consulting Pvt. Ltd. (supra). Secondly, the other argument of the appellant is also clear that the decision

of jurisdictional high court on a debatable issued is binding on the lower authorities and rectification is valid. The gist of the decision of Hon'ble court in the case of CIT Vs. Ramlal Babulal (supra) and in the case of Omega Sports & Radio Works (supra) is reproduced as under:

CIT Vs. Ramlal Babulal

It is true that the Bombay High Court and the Gujarat High Court t taken a view contrary to the one taken by the Punjab &Haryana 1 Court, but in the presence of a definite opinion of this Court, the s shall prevail and is binding on the functionaries working within territorial jurisdiction of this Court. The authorities by reference to opinion of another High Courts cannot say that the point is debate and thus is not a mistake apparent on the face of the record. The view of this Court as already noticed by the Tribunal was definite and the question of a doubt being there did not arise if the assessment order had been passed in the first instance. The assessing authority could not have taken a view contrary to the one taken in the case of Gheru Lal Bal Chand, by reference to the decisions of the other High Courts. In view of the fact that the opinion rendered by this Court in binding on the functionaries working within the territorial jurisdiction of this Court, and once that is so, the order passed by the assessing authority by ignoring the opinion of this Court is a mistake apparent on the face of the record and thus the /TO was right in issuing a notice and passing an order of rectification. The Tribunal was not right in coming to the conclusion that the mistake in this case was not apparent on the face of the record in view of the conflicting view of the other High

Courts.CIT vs. Vardhman Spinning (1:97) 139 CTR (P&H) 322: (1997) 226 ITR 296 (P&H) followed.

Omega Sports & Radio Works

If there is a decision on a particular point of the High Court it is binding on the IT authorities in that state and merely because there is some judicial divergence of opinion on that point between some other High Courts it cannot be said that there is scope for debate so that s. 154 cannot be attracted.- CIT Vs. Ramji Bhai Hirjibhai & Sons 1977 CTR (Guj) 27: (1977) 110 ITR 411 (Guj): TC53\$.406#1 and CIT Vs. Mohan Lal Kansal. (1978) 114 ITR 583 (P&H: TC 54R.666 followed; CIT Vs. Vindishwari Trading Corpn. 1978 CTR (All) 110 : (1978 113 ITR 791 (All): TC 54R.639#1 and T.S. Balram, ITO: Vs. Volkart Bros. (1971) 82 ITR 50 (Supreme Court): TC53R.165 distinguished.”

5. On appraisal of the above said finding we are of the view that the facts and circumstances of the present case is quite similar to the facts of the case relied by the Assessee cited as **CIT-10 Vs. Black and Veatch Consulting Pvt. Ltd. ITA No. 1237/Mum/2011**. The case of the Assessee is fully covered by the said decision. The Hon’ble Supreme Court has also justified the said proposition in view of the decision of the case titled as **Commissioner of Income Tax Vs. Yokojawa India Ltd. 77 taxman.com 41 (SC)**. No distinguishable facts has been placed on record. Before us there is no reason to deviate the finding of the CIT(A). In view of the said circumstances,

we are of the view that CIT(A) has passed the order in question judiciously and correctly which is not required to be interfere with at this appellate stage.

6. In the result, appeal filed by the Revenue is hereby ordered to be dismissed.

Order pronounced in the open court on 31stMay 2017

Sd/-

Sd/-

(RAJENDRA)

(AMARJIT SINGH)

लेखासदस्य / ACCOUNTANT MEMBER

न्यायिकसदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांकDated : 31 .05.2017

V.P. Singh

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त (अपील) / The CIT(A)-
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापितप्रति //True Copy//

उप/सहायकपंजीकार

(Dy./Asstt.Registrar)

आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai