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

BEFORE SHRI GEORGE GEORGE K, JUDICIAL MEMBER
and
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

IT(TP)A No.833/Bang/2013
(Assessment year: 2006-07)

M/s.Schneider Electric IT Business India
Pvt. Ltd.,
[Formerly known as American Power
Conversion (India) Pvt. Ltd.]
187/3 and 188/3, Jigani,
Bangalore-562106. … Appellant
PAN: AACCA 6398 Q

Vs.

Commissioner of Income-tax (LTU)
Bangalore. … Respondent

Appellant by : Shri K.R.Vasudevan, Advocate.
Respondent by : Mrs. Neera Malhotra, CIT(DR)

Date of hearing : 31/03/2016
Date of pronouncement : 11/05/2016

O R D E R

Per INTURI RAMA RAO, AM :

This is an appeal filed by the assessee-company directed against the order of the Commissioner of Income-tax (LTU) [CIT], Bangalore, dated 1/3/2015 passed u/s 263 of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short] for the assessment year 2006-07.

2. The assessee-company raised the following grounds of appeal:

1. **Initiating proceedings under section 263 of the Income-tax Act, 1961**

a) The learned Commissioner of Income-tax ('CIT') erred in holding that the assessment order under section 143(3) read with 144C of the Income-tax Act, 1961 ('the Act') is erroneous and prejudicial to the interest of revenue.

b) The learned CIT erred in invoking the provisions of section 263 of the Act to direct the Assessing Officer ('AO') to re-compute the deduction under section 10A of the Act.

c) The learned CIT erred in holding that the enhanced claim of section 10A on account of an adjustment of prior period expenses is erroneous and prejudicial to the interests of revenue.

d) The learned CIT ought to have observed that it is the duty of the Assessing Officer to compute the correct deduction under section 10A on the profits and gains of business of the 10A unit after having regard to the allowances and disallowances under the Act.

e) The learned CIT ought to have observed that section 263 can be resorted to only for setting right distortions and not for reviewing the order of the Income tax Officer.

f) The learned CIT has erred in applying Goetze (India) Limited vs. CIT [157 Taxmann 1 (SC) (2006)] to the present case stating that the assessee cannot amend a return to make a claim without revising the return of income. The learned CIT ought to have observed that deduction under section 10A of the Act claimed by the Appellant in the revised return is not a fresh claim and it is enhanced claim of deduction already claimed in the original return.

g) The learned CIT ought to have considered the fact that the amount of profit before tax has not undergone change and only the "profits and gains from business or profession" as computed under the provisions of the Act has increased due to treatment of the prior period expenses as not allowable expenditure by the Appellant.

h) The learned CIT ought to have observed that if the disallowance of prior period expenses was made by the learned AO/ CIT, the consequential deduction under section 10A of the Act should have been given to the Appellant by the learned AO/ CIT. In the present case, the disallowance is offered by the Appellant himself and has claimed the enhanced deduction under section 10A of the Act resulting from the change in profit and gains from business.

i) The learned CIT ought to have placed reliance on various judicial precedents held in favour of appellant in this regard.

2. **Re-computation of the deduction under section 10A of the Act**

   a) The learned CIT has erred in directing the AO not to adopt the enhanced claim of deduction under section 10A of the Act as per the revised return filed by the Appellant.

   b) The learned CIT ought to have appreciated the fact that when the enhanced taxable income and tax liability have been accepted, the revised 10A claim ought to have been accepted as well.

   a) The learned CIT ought to have observed that the deduction under section 10A has to be on allowed on the assessed income enhanced due to disallowances made during the course of assessments. The learned CIT ought to have placed reliance on the judicial precedents in this regard.

   b) ***Notwithstanding and without prejudice to the above,*** the assesse submits that the enhanced claim not made in the return of income can be made before the Appellate authorities.

   c) ***Notwithstanding and without prejudice to the above*** the learned CIT has erred in disallowing an amount of Rs.9,60,91,466 as excess claim of deduction under section 10A of the Act instead of Rs.9,20,58,963 (Rs.165,99,91,466 – Rs.156,79,32,503).

3. **Delay in filing revised return**

   a) The learned CIT erred in stating that the revised return filed by the appellant on 1 April 2008 is not valid.

   b) The learned CIT ought to have appreciated the fact that the Appellant could not file the revised return on 31 March 2008 due to certain technical system issues.

   c) The learned CIT ought to consider the fact that the Appellant has filed a letter before the learned AO informing about the technical error leading to the non-filing of the return on time.

4. **Calculation of Interest on resulting adjustment under section 234B of the Act**

   The learned CIT has erred in directing the AO to compute and levy interest under section 234B of the Act consequent to the above adjustments.

5. **Calculation of Interest on resulting adjustment under section 234D of the Act**

   The learned CIT has erred in directing the AO to compute and levy interest under section 234D of the Act consequent to the above adjustments.

6. The appellant craves leave to add, alter, or amend any of the above grounds at the time of hearing.

3. Briefly facts of the case are that the assessee is a company engaged in the business of design and manufacturing of UPS, Power Protection Devices and Software Development Services.

Return of income for the assessment year 2006-07 was filed on 30/11/2006 declaring income of Rs.22,98,86,248/-. Subsequently the return of income was revised at a total income of Rs.28,46,00,420/- but the return was uploaded only on 01/04/2008. It was stated that though the return was actually uploaded on 31/03/2008, due to technical reasons, it was shown as on 1/4/2008. The assessment was completed accepting the income declared in the revised return in which income from business was declared at Rs.193,72,76,043/- and deduction u/s 10A was enhanced to Rs.165,99,91,465/-. The Assessing Officer [AO] accepted the revised return as well as revised claim u/s 10A while passing the assessment order. However, he made adjustment under the provisions of sec.92A as directed by the Disputes Resolution Panel [DRP].

4. Aggrieved by the DRP's addition, assessee-company was in appeal before the CIT(A). While the matter stood there, the CIT (LTU), Bangalore, was of the view that the enhanced claim under the provisions of sec.10A was accepted though revised return was filed later and beyond the time prescribed under the statute. Therefore, he was of the view that the revised claim under the provisions of sec.10A was not supported by the revised return of income. Hence, enhanced claim was not admissible in view of the decision of the Hon'ble Supreme Court in the case of *Goetze (India) Ltd, vs. CIT* (157 Taxman 1)(SC) wherein it was held that new claim for deduction can be made only by filing revised return

of income. Therefore, the CIT issued show cause notice u/s 263. In response to show cause notice, it was stated that the law laid down by the Hon'ble Supreme Court in *Goetze (India) Ltd.* (supra) is applicable only to the power of the AO and not that of the appellate authorities. It was further submitted that though return of income was uploaded on 31/3/2008 within the due date, due to some technical problem, return of income has got uploaded after 12 AM and consequently the acknowledgment for e-filing was declared as on the next date. It was further submitted that no new claim was made under the provisions of sec.10A. It is only a revised computation of income. Hence, revised claim for deduction u/s 10A cannot be denied. The CIT, after considering the above submission, held that there was no communication from the concerned DIT(Systems) communicating any technical glitches while uploading return as on 31/3/2008. Under these circumstances, the CIT rejected the contention that the revised return of income was filed in time. Therefore, he was of the view that enhanced claim for deduction u/s 10A cannot be accepted following the law laid down by the Hon'ble Supreme Court in the case of *Goetze (India) Ltd.* (supra). Thus, he held that the assessment order passed by the AO is erroneous and prejudicial to the interests of revenue and exercising the power vested with him under the provisions of sec.263 of the Act, directed the AO to re-computed the tax liability without considering the enhanced claim of deduction u/s 10A of the Act.

5. Aggrieved by this order, the assessee-company is before us in the present appeal.

6. The learned counsel for the assessee-company argued that it is the duty of the AO to compute correct deduction under the provisions of sec.10A and it is only a matter of re-working of the deduction under the provisions of the Act. It does not amount to new claim which was not made in the original return of income. Even the revised return was not taken into consideration. It is obligatory on the part of the AO when he has adopted the revised total income to recomputed the deduction u/s 10A in view of the law laid down by the Hon'ble Bombay High Court in the case of *CIT vs. Gem Plus Jewellery India Ltd*. (94 Taxman 192). He also relied on the following decisions:

i. *Malbar Industries Co Ltd v. CIT* [20001 243 ITR 83 (SC);
ii. *CIT v. Max India Limited* [2007] 295 ITR 282 (SC);
iii. *CIT v Gokuldas Exports* [2012] 20 taxmann.com 491 (Kar.HC);
iv. *CIT v Vodafone Essar South Ltd* [IT Appeal No.119 of 2012] (Delhi HC);
v. CIT v Honda Siel Power Products Ltd. [2010] 333 ITR 547 (Delhi HC);
vi. *Infosys BPO Ltd v ACIT* [2012] 25 taxmann.com 571 (Bangalore ITAT);
vii. *Reliance Communication Limited v ACIT* [ITA No 2915/ Mum/ 2012] (Mumbai ITAT);
viii. *Broadcom India Research (P.) Ltd v DClT* [IT (TP)A No.1180/Bang/2011]; and
ix. *Sanghvi Jewellery Mfg. Co. (P.) Ltd v. ITO* [2012] 135 ITO 174 (Mumbai ITAT)
x. *Bartronics India Ltd. v. ACIT* [2012] 52 SOT 188 (Hyderabad ITAT)

xi. *S.B. Builders & Developers v. ITO* [2011] 45 SOT 335 (Mum. ITAT)

xii. *DCIT vs. Magarpatta Township Development & Construction Co* [2013] 141 ITD 682 (Pune ITAT)

xiii. *ITO v. M/s. Sahasra Electronics Private Limited* (ITA No. 1951/Del/2009) (Delhi ITAT)

On the other hand, learned CIT(DR) relied on the order of the CIT.

7. We heard the rival submissions and perused material on record. The only issue involved in this appeal is about legality of the proceedings initiated by the CIT exercising powers vested u/s 263 of the Act. In the order passed by the CIT us 263, the CIT directed the AO to disallow enhanced claim under the provisions of sec.10A on the ground that revised return of income was filed belatedly and beyond the period allowed by the statute. It is undisputed fact that the claim for deduction u/s 10A was made in the original return of income. The same was scrutinized by the AO and found that the assessee-company was entitled for deduction u/s 10A of the Act. Therefore, it is clear that no new claim was made in the revised return of income which is not accepted by the department. The AO, though had not taken cognizance of the revised return of income but adopted the total income as per revised return of income and also allowed the claim u/s 10A made in the revised return while completing the taxable income. It is not a condition *sine qua non* to allow the enhanced claim under the provisions of sec.10A that a revised return should

be filed. The only requirement of the Act is that original return should be filed within the due date specified under the provisions of sec.139(1) of the Act. Therefore, the reasoning adopted by the CIT while exercising the power of revision is not acceptable. However, we find that the AO had allowed revised claim u/s 10A without applying his mind as to whether other requirement of the provisions of sec.10A have been fulfilled or not in respect of enhanced claim u/s 10A. We are informed at the Bar that enhanced total income is on account of prior period income which is shown as prior period income in the financial statements. The AO has not applied his mind on this aspect. We restore this issue to the file of the AO to examine whether the additional income offered qualify for deduction under the provisions of sec.10A and if it is so found, to allow the same in accordance with law after affording due opportunity to the assessee-company. We are conscious of fact that direction is only on same subject matter of show cause notice issued u/s 263.

8. In the result, the appeal filed by the assessee-company is partly allowed for statistical purposes.

Order pronounced in the open court on this 11th May, 2016

sd/-	sd/-
(GEORGE GEORGE K)	**(INTURI RAMA RAO)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Place : Bangalore
D a t e d : 11/05/2016

srinivasulu,sps

Copy to :

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

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore