

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S. S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.728/PUN/2022
निर्धारण वर्ष / Assessment Year : 2015-16

DCIT, Satara Circle, Satara	Vs.	Datwyler Pharma Packaging I.P. Ltd., Plot No.3, 4, 5, Khandala Sez (Phase 1), MIDC, Kesurdi, Satara- 412801. PAN : AADCN1330Q
Appellant		Respondent

Revenue by : Shri Keyur Patel
Assessee by : Shri Jitendra Jain &
Shri Aaditya Dastane

Date of hearing : 02.02.2023
Date of pronouncement : 10.02.2023

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the Revenue directed against the order of the National Faceless Appeal Centre, Delhi ['NFAC'] dated 04.08.2022 for the assessment year 2015-16.

2. The Revenue raised the following grounds of appeal :-

"1. On the facts and in the circumstance of the case and in law, the Ld CIT(A) erred in directing the AO to recompute the deduction u/s.10AA before setting off the brought forward losses and brought forward unabsorbed depreciation.

2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in relying upon the Hon'ble Apex Court's judgment in the case of CIT vs. Yokogawa India Ltd., whereas the decision was given in respect of 10A deductions wherein the deductions claimed in the present case are u/s.10AA which is completely independent section under the Income Tax Act, 1961.*

3. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact that the intention of the legislature with regard to the deductions available u/s.10AA has always been that "the amount of deduction referred to in the said section shall be allowed from the total income of the assessee, computed in accordance with the provisions of the Income-tax Act before giving effect to the provisions of the said section and the deduction under the said section" as clarified through amendments introduced by the Finance Act, 2017.*

4. *For this and such other reasons as may be urged at the time of hearing, the order of the CIT(A) may be vacated and that of the Assessing Officer be restored.*

5. *The appellant craves leave to add, amend, alter or delete any of the above grounds of appeal during the course of appellate proceedings before the Hon'ble Tribunal."*

3. Briefly, the facts of the case are as under :-

The respondent-assessee is a company incorporated under the provisions of the Companies Act, 1956. It is engaged in the business of manufacturing and supplying of rubber, plastic and aluminium closures for injectable drugs. The manufacturing unit is located in a Special Economic Zone ('SEZ') at Khandala MIDC, Satara. The Return of Income for the assessment year 2015-16 was filed on 29.11.2015 disclosing Rs.Nil income, after claiming of exemption of profits earned from the SEZ operations u/s 10AA of the Income Tax Act, 1961 ('the Act'). The same was revised on

30.11.2015 at a total income of Rs.Nil. The case was selected for scrutiny assessment under limited scrutiny purpose. The reasons given for selection of scrutiny are stated below :-

- “(i) High ratio of refund to TDS,*
- (ii) Substantial Increase in share capital in a year,*
- (iii) Large share premium received during the year (verify applicability of Sec 56(2)(viib)),*
- (iv) Large other expenses claimed in the Profit & Loss a/c,*
- (v) Exemption claimed under sections 10A / 10AA,*
- (vi) Large out ward remittances to a non-resident not being a company, or to a foreign company (Form 15CA),*
- (vii) Depreciation claimed at higher rates/ Higher additional depreciation claimed,*
- (viii) Receipt of large value foreign remittance (Form 15CA),*
- (ix) Mismatch in sales turnover reported in Audit Report and ITR, and*
- (x) Mismatch in amount paid to related persons u/s 40A(2)(b) reported in Audit Report and ITR.”*

4. The respondent-assessee was also registered under the provisions of section 10AA of the Act. Therefore, the assessment was completed by the Asstt. Commissioner of Income Tax, Satara Circle, Satara (‘the Assessing Officer’) vide order dated 12.12.2017 passed u/s 143(3) of the Act after setting off of brought forward losses for the assessment year 2013-14 against the assessed business income of Rs.29,72,10,402/-.

5. Being aggrieved by the above assessment order, an appeal was filed before the NFAC contending that the Assessing Officer had

erred in computing the business profits after setting off of brought forward business losses and brought forward unabsorbed depreciation losses of Rs.29,72,10,402/-. It is further contended that the amended provisions of section 10AA were applicable from the assessment year 2018-19. Thus, it was contended that the ratio of the decision of the Hon'ble Supreme Court in the case of CIT vs. Yokogawa India Limited [Civil Appeal No.8498 of 2013 dated 16.12.2016] still holds the field. The NFAC considering the submission of the appellant and the Explanatory Notes to provisions of the Finance Act, 2017 dated 15.02.2018 held that the amendment is w.e.f. 01.04.2018 accordingly, applicable for the assessment year 2018-19 placing reliance on the decision of the Hon'ble Delhi High Court in the case of Cosmo Films Ltd. vs. CBDT, 108 taxmann.com 49 (Delhi) and directed the Assessing Officer to compute the deduction u/s 10AA before setting off of brought forward losses and brought forward unabsorbed depreciation.

6. Being aggrieved, the Revenue is in appeal before us in the present appeal.

7. It is submitted that the ratio of the decision of the Hon'ble Supreme Court in the case of Yokogawa India Limited (supra) has no application to the facts of the present case, inasmuch as, the said

decision was rendered in the context of provisions of section 10A of the Act. It is further submitted that in view of the clarification brought into the provisions of section 10AA by the Finance Act, 2017, the decision of the NFAC is patently wrong.

8. On the other hand, ld. DR submits that the issue in the present appeal is covered by the decision of the Hon'ble Delhi High Court in the case of Cosmo Films Ltd. (supra) and CBDT Circular No.2/2018 dated 15.02.2018. The ld. AR also relied on the decision of the Hon'ble Bombay High Court in the case of CIT vs. Techno Tarp and Polymers Pvt. Ltd. in Income Tax Appeal No.2134 of 2013 dated 05.12.2015.

9. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to the computation of profits and gains of eligible unit u/s 10AA, whether the exemption of profits and gains of such unit should be allowed before setting off of brought forward losses or not. The Hon'ble Supreme Court in the case of Yokogawa India Limited (supra) held that the exemption of profits and gains of eligible unit u/s 10A should be allowed like the eligible undertaking of the assessee standing alone and without reference to the other eligible or non-eligible undertaking of the assessee and the benefit of deduction is to be given to the

undertaking before setting off of brought forward losses or current losses. It is undisputed fact that the provisions of section 10AA are *pari materia* with the provisions of section 10A of the Act. In order to overcome of the decision of the Hon'ble Supreme Court in the case of Yokogawa India Limited (supra), the provisions of section 10AA has been amended to clarify that the amount of deduction u/s 10A shall be allowed to total income of the assessee, computed in accordance with provisions of Income Tax Act before giving effect to the provisions of section 10AA of the Act. The CBDT vide Circular No.2/2018 dated 15.02.2018 published the explanatory notes of the Finance Act, 2017 to reflect the legislative intent. Thus, it is clarified that the amended provisions of section 10AA comes w.e.f. 01.04.2018 and applied only for the assessment year 2018-19 not prior to the assessment year 2018-19. The Hon'ble Delhi High Court in the case of Cosmo Films Ltd. (supra) after referring to the decision of the Hon'ble Supreme Court in the case of Yokogawa India Limited (supra) and the amended provisions of the CBDT Circular No.2/2018 dated 15.02.2018 held as follows :-

“10. In the present case, since it is not in dispute that prior to AY 2018-2019 the computation of the Profits and Gains of the eligible unit by giving the deduction under Section 10AA would have to be independent of the computation of Profit and Gains of the ineligible unit, it is obvious that in the present case which concerns Assessment

Year (AY) 2017-2018, the Petitioner should be permitted to carry forward the losses of its ineligible unit.”

10. Thus, considering the settled position of law as discussed above, the decision of the NFAC is only in consonance with the law laid down by the Hon’ble Delhi High Court in the case of Cosmo Films Ltd. (supra). Therefore, we do not find any reason to interfere with the order of the NFAC. Accordingly, the grounds of appeal filed by the Revenue stand dismissed.

11. In the result, the appeal filed by the Revenue stands dismissed.

Order pronounced on this 10th day of February, 2023.

Sd/-
(S. S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 10th February, 2023.

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “A” बेंच, पुणे / DR, ITAT, “A” Bench, Pune.
4. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.