आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद ।

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

(***Convened through Virtual Court***)

BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No. 1564/Ahd/2018

(**निर्धारण वर्ष /** Assessment Year : 2011-12)

Loxim Industries Ltd. 803, Shilp Building, C. G. Road, Ahmedabad 380006	**बनाम**/ Vs.	**DCIT(OSD)-1** Circle - 4, Navjeevan Building, Off Ashram Road, Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACL9043M		
(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

अपीलार्थी ओर से /**Appellant by :**	Shri S. N. Divatia, A.R.
प्रत्यर्थी की ओर से / **Respondent by :**	Shri S. S. Shukla, Sr.DR

सुनवाई की तारीख / **Date of Hearing**	09/02/2021
घोषणा की तारीख /**Date of Pronouncement**	16/02/2021

आदेश/O R D E R

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the assessee against the order of the Commissioner of Income Tax (Appeals)-6, Ahmedabad ('CIT(A)' in short), dated 26.04.2018 arising in the assessment order dated 27.03.2014 passed by the Assessing Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2011-12.

2. Grounds of appeal raised by assessee read hereunder:

> *"1.1 The order passed u/s.250 on 26.04.2018 for A.Y.2011-12 by CIT(A)-06, Abad upholding the deduction u/s. 10B at Rs.3,96,08,955/- after set off of income/loss from other units/heads of income instead of allowing the said deduction on standalone basis is wholly illegal, unlawful and against the principles of natural justice.*
>
> *1.2 The Ld. CIT(A) has grievously erred in law and or on facts in not considering fully and properly the submissions made and evidence produced by the appellant with regard to the impugned deduction.*
>
> *2.1 The Ld.CIT(A) has grievously erred in law and on facts in confirming the deduction u/s.10B as per CBDT circular dated 16.07.2013 instead of the amount worked on standalone basis and thereby allowing C/F of the balance Rs.75,41,412/-.* ***(correct figure claimed at the time of hearing Rs.79,24,927/-)***
>
> *2.2 That in the facts and circumstances of the case as well as in law, the Ld.CIT(A) ought not to have upheld the deduction u/s.10B at Rs.4,71,50,367/- instead of the amount on standalone basis without considering income/loss of different units/heads. The deficit of Rs.75,41,412/- ought to have been allowed to be C/F instead of setting off against other income.*

3. Briefly stated, the assessee is a closely held company and engaged in the business of manufacturers, formulators and processors of all types of chemicals, chemical compound, PVC, HDPE etc. It filed its return of income for A.Y.2011-12 on 29.09.2011 declaring loss of Rs.87,18,981/-. The return so filed was selected for scrutiny. During the course of assessment proceedings, the AO noticed that the assessee had claimed deduction u/s.l0B of Rs.4,77,14,761/- in respect of EOU unit at Padra, out of 4 units. The AO proposed to consolidate the profit/loss of all the units in order to arrive at the quantum of deduction u/s.l0B in the light of CBDT circular dated 16.07.2013. As a result, the said deduction was worked out to Rs.4,71,50,3677- as per page-5 of the order, but, it was limited to the gross total income of Rs.3,96,08,955/-.

4. Being aggrieved, the assessee preferred appeal to CIT(A). Two fold grievances were raised by the assessee before CIT(A), namely (i)

deduction of claim under s.10B of the Act was erroneously reduced to only rs.3,96,08,955/- as against the claim of the assessee of Rs.4,77,14,761/- (ii) loss of non-eligible units of Rs.79,24,927/- not allowed to be carried forward. It was contended that the computation of deduction in respect of EOU unit u/s. 10A/10B has to be made on standalone basis without set off of profit/loss of other units. It was submitted that assessee had relied upon various decisions including *Yokagava India Ltd.* However, the CIT(A) rejected this claim relying solely upon the aforesaid CBDT circular.

5. The relevant operative para of the order of the CIT(A) is reproduced hereunder:

> *"5.3 After considering findings of the AO and submissions of the appellant, this ground is adjudicated as under.*
>
> *It is seen that during the assessment proceedings the AO noted that the assessee was having an Export Oriented unit at Padra for which the appellant was eligible for deduction section 10B of the Act. The AO further noted that other three units of the appellant were not eligible for such deduction. The AO observed that the appellant had not aggregated the profit/loss of other units as well as the income /loss from other heads for claiming deduction u/s. 10B of the Act. The AO observed that this was not in accordance with CBDT Circular F.No. 279/M(sc./M-116/2012-ITJ dated 16.7.2013, on this issue where it was held that deduction u/s. 10B of the Act is to be allowed after consolidating the profit/loss of other units as well as the income/ loss from other heads. The AO asked the appellant to explain why the deduction u/s. 10B of the Act should not be worked out as per the above circular of CBDT. The appellant did not file any justification. Accordingly, the AO calculated the deduction u/s, 10B at Rs. 4,71,50,367/- as against Rs. 4,77,14,761/- as computed by the appellant. The AO restricted the deduction u/s. 10B of the Act to the income available of Rs. 3,96,08,955/-, The appellant is in appeal against this action of the AO.*
>
> *During the appeal proceeding the main contention of the appellant was that the provision contained in section 10A/10B of the Act is not an exemption but a deduction under Chapter III of the Act, unlike provision for deduction provided in Chapter VI-A. Therefore it could not be permissible lo apply contained in Chapter VIA of the Act but it will applied in the context of provisions contained in Chapter VI A of the Act. The appellant submitted that for the purpose of Section 10A/10B of the Act, the losses suffered in the non eligible units need not be set: off against the profit/income of the eligible unit for computing the deduction u/s 10A/10B of the Act, The appellant further submitted that deduction u/s. 10A/10B of the Act is to be allowed from the total income of the undertaking and not from total income of the*

assessee, The appellant in support of its contention relied on the judgment of hon'ble Gujarat High Court in CIT, Rajkot vs Ace Software Ltd vide order dated 1.03.2013 in Tax Appeal No. 831 of 2012, The appellant also relied on the following judgments:-

- *CIT vs Black & Veatch Consulting Pvt. Ltd,(2012) 348 ITR 0072(Bombay).*
- *CIT vs. Tei Technologies Pvt. Ltd. (2014) 361 ITR 036 (Delhi).*
- *Scientific Atlanta Vs ACIT 129 TTJ 273 (Bombay ITAT Special Branch)*
- *ACIT vs Yokagava India Ltd (2007) 111 TTJ 548*

After considering all facts and circumstances of the case, I am not inclined to agree with the contention of the appellant. It is seen that the as mentioned above also the AO allowed deduction u/s. 10B of the Act based on CBDT Circular F.No. 279/Misc./M-116/2012-ITJ dated 16.7.2013 where it has been clearly held that deduction u/s. 10B of the Act is to be allowed after consolidating profit/loss of other units as well as income/loss from other heads. The main contention of the appellant is based on judgment of hon'ble Gujarat High Court in CIT, Rajkot vs Ace Software Export Ltd(supra) which is dated 1.3.2013 while the Circular relied on by the AO is dated 16.7.2013. Thus it is clear that the judgment relied on by the appellant is dated before the date of the Circular on which the AO has relied, Thus the Circular would be applicable to the facts of the present case, Other decisions relied on by the appellant: also pre date the Circular dated 16.7.2013 relied on by the AO and hence are not applicable. In view of this, there is no substance in the contention of the appellant.

In view of discussion above, it is held that the AO is justified in restricting deduction under section 10B of the Act to Rs.3,96,08,955/-. Accordingly, this ground of appeal is rejected."

6. Aggrieved by the denial of relief by the CIT(A), the assessee preferred appeal before the Tribunal.

7. The learned counsel Mr. S. N. Divatia appearing for the assessee submitted at the outset that controversy herein is squarely covered by the decision of Hon'ble Supreme Court in the case of *CIT vs. Yokogawa India Ltd. 391 ITR 274 (SC).* Learned counsel further supported his case by the judgment rendered by the Hon'ble Gujarat High Court in *CIT vs. Ace Software Exports Ltd. Tax Appeal No. 831 of 2012* judgment dated *01.03.2013* and *Pr.CIT vs. Infosys BPO Ltd. [2021] 123 taxmann.com 216 (Karnataka).*

8. The learned DR for the Revenue, on the other hand, relied upon the orders passed by the AO and CIT(A). The learned DR further submitted that the issue is squarely governed by the CBDT Circular No. 7/DV/2013 [FILE NO.279/MIS./M-116/2012-ITJ], DATED 16-7-2013.

9. The circular relied upon by the learned DR for the Revenue is reproduced hereunder:

"SECTION 10A, READ WITH SECTIONS 10AA & 10B OF THE INCOME-TAX ACT, 1961 - FREE TRADE ZONE - CLARIFICATION ON ISSUES RELATING TO APPLICABILITY OF CHAPTER IV OF THE ACT AND SET OFF AND CARRY FORWARD OF BUSINESS LOSSES

CIRCULAR NO. 7/DV/2013 [FILE NO.279/MISC./M-116/2012-ITJ], DATED 16-7-2013

It has been brought to the notice of the Board that the provisions of 10A/10AA/10B/10BA of the Income-tax Act, with regard to applicability of Chapter IV of the Act and set off and carry forward of losses, are being interpreted differently by the Officers of the Department as well as by different High Courts.

2. The two sections 10A and 10B of the Act were initially placed on statute in 1981 and 1988 respectively, and continued with some modifications and amendments till 31.03.2001. Section 10A as inserted by Finance Act, 1981 read as under:

> *"10A. Special provision in respect of newly established industrial undertakings in the free trade zones.—(1) Subject to the provisions of this section, any profits and gains derived by an assessee from an industrial undertaking to which this section applies shall not be included in the total income of the assessee."*

2.1 Similarly section 10B as inserted by Finance Act, 1988 read as under:

> *"10B. Special provision in respect of newly established hundred per cent export oriented undertakings.—Subject to the provisions of this section, any profits and gains derived by an assessee from a hundred per cent export oriented undertaking (hereafter in this section referred to as the undertaking) to which this section applies shall not be included in the total income of the assessee."*

3. Vide Finance Act, 2000 sections 10A and 10B of the Act were substituted. Section 10A as substituted by Finance Act, 2000 reads as under:

> *"10A. (1) Subject to the provisions of this section, a deduction of such profits and gains as are derived by an undertaking from the export of articles or things or computer software for a period of ten consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce such articles or things or computer software, as the case may be, shall be allowed form the total income of the assessee...."*

3.1 Similarly, section 10B as substituted by Finance Act, 2000 reads as under:

> *"10B. (1) Subject to the provisions of this section, a deduction of such profits and gains as are derived by a hundred per cent export-oriented undertaking from the export of articles or things or computer software for a period often consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce articles or things or computer software, as the case may be, shall be allowed from the total income of the assessee..."*

3.2 The effect of the substitution of sections 10A and 10B of the Act has been elaborated in Circular No. 794 dated 9.8.2000 which clearly provides that the new provisions provide for deduction in respect of profits and gains derived by an undertaking from export of articles or things or computer software.

4. Sub-section (6) of sections 10A and 10B were amended by Finance Act 2003 with retrospective effect from 1-4-2001. Circular No. 7/2003, dated 5-9-2003 explains the amendments brought by Finance Act, 2003. The relevant paragraph is reproduced below:

> *"20. Providing for carry forward of business losses and unabsorbed depreciation to units in Special Economic Zones and 100% Export Oriented Units.*
>
> *20.1 Under the existing provisions of sections 10A and 10B, the undertakings operating in a Special Economic Zone (under section 10A) and 100% Export Oriented Units (EOU's) (under section 10B) are not permitted to carry forward their business losses and unabsorbed depreciation.*
>
> *20.2 With a view to rationalize the existing tax incentives in respect of such units, sub-section (6) in sections 10A and 10B has been amended to do away with the restrictions on the carry forward of business losses and unabsorbed depreciation.*
>
> *20.3 The amendments have been brought into effect retrospectively from 1-4-2001 and have been made applicable to business losses or unabsorbed depreciation arising in the assessment year 2001-02 and subsequent years."*

5. From the above it is evident that irrespective of their continued placement in Chapter III, sections 10A and 10B as substituted by Finance Act, 2000 provide for deduction of the profits and gains derived from the export of articles or things or computer software for a period of 10 consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce such article or thing or computer software. The deduction is to be allowed from the total income of the assessee. The term 'total income' has been defined in section 2 (45) of the IT Act and it means the total amount of income referred to in section 5, computed in the manner laid down in the Income-tax Act.

5.1 All income for the purposes of computation of total income is to be classified under the following heads of income and computed in accordance with the provisions of Chapter IV of the Act-

- *Salaries*
- *Income from house property*
- *Profits and gains of business and profession*
- *Capital gains*
- *Income from other sources*

"5.2 The income computed under various heads of income in accordance with the provisions of Chapter IV of the IT Act shall be aggregated in accordance with the provisions of Chapter VI of the IT Act, 1961. This means that first the income/loss from various sources i.e. eligible and ineligible units, under the same head are aggregated in accordance with toe provisions of section 70 of the Act. Thereafter, the income from one ahead is aggregated with the income or loss of the other head in accordance with the provisions of section 71 of the Act. If after giving effect to the provisions of sections 70 and 71 of the Act there is any income (where there is no brought forward loss to be set off in accordance with the provisions of section 72 of the Act) and the same is eligible for deduction in accordance with the provisions of Chapter VI-A or sections 10A, 10B etc. of the Act, the same shall be allowed in computing the total income of the assessee.

5.3 If after aggregation of income in accordance with the provisions of sections 70 and 71 of the Act, the resultant amount is a loss (pertaining to assessment year 2001-02 and any subsequent year) from eligible unit it shall be eligible for carry forward and set off in accordance with the provisions of section 72 of the Act. Similarly, if there is a loss from an ineligible unit, it shall be carried forward and may be set off against the profits of eligible unit or ineligible unit as the case may be, in accordance with the provisions of section 72 of the Act.

6. The provisions of Chapter IV and Chapter VI shall also apply in computing the income for the purpose of deduction under sections 10AA and 10BA of the Act subject to the conditions specified in the said sections."

10. We have carefully considered the rival submissions. The pivotal question in controversy is whether the Revenue is right in law in

holding that assessee is not entitled to the benefit of deduction given by the Act under s.10A/10B as amended with retrospective effect by the Finance Act, 2003 with effect from 01.04.2001 *qua* individual eligible undertaking.

11. It is the case of the Revenue that in the light of circular dated 16.07.2013 expounding the law, the assessee is not entitled to deduction of profits and gains of the business of eligible undertaking independently without taking into account and without giving effect to the provisions of set off and carry forward contained in Sections 70, 72 and 74 of the Act. We however disagree with the proposition canvassed on behalf of Revenue. We find that identical issue arose before Hon'ble Supreme Court in the case of *Yokogawa India Ltd. (supra).* Hon'ble Supreme Court ordains that though s. 10A/ 10B were amended by FA 2000 w.e.f. 01.04.2001 to change their tenor from "exemption" to "deduction", the "deduction" contemplated is s.10A/s.10B *qua* the eligible undertaking of an assessee standing on its own and without reference to the other eligible or non-eligible units or undertakings of the assessee. The benefit of deduction is given by the Act to the individual undertaking. The deduction of the profits and gains of the business of an eligible undertaking has to be made independently and before giving effect to the provisions for set off and carry forward contained in s. 70, 72 and 74. It was further held by the Hon'ble Supreme Court that the deductions u/s 10A/10B are prior to the commencement of the exercise to be undertaken under Chapter VI of the Act for arriving at the total income of the assessee from the gross total income.

12. While examining the issue, the Hon'ble Supreme Court has also considered the provisions of Section 10A of the Act (*pari materia* with s.10B of the Act) as it stood prior to the amendment made by Finance Act, 2000 with effect from 01.04.2001 as well as the amended Section 10A thereafter and also the amendment made by Finance Act, 2003

with retrospective effect from 01.04.2001. Hence, the CBDT Circular being in conflict with the judgment of Hon'ble Supreme Court cannot be taken in reckoning. Governed by the judicial fiat, the stage of deduction would be while computing the gross total income of the eligible undertaking under Chapter IV of the Act and not at the stage of computation of total income under Chapter VI. All consequences under sections 70, 72 and 74 of the act would consequently flow unit wise. In view of the resounding conclusion drawn in favour of the assessee on the aforesaid legal position, the grounds raised by the assessee are answered in affirmative.

13. In the result, the captioned appeal of assessee is allowed.

This Order pronounced on 16/02/2021

Sd/-	Sd/-
(RAJPAL YADAV)	(PRADIP KUMAR KEDIA)
VICE PRESIDENT	ACCOUNTANT MEMBER

Ahmedabad: Dated 16/02/2021

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।