

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C' NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No. 1372/Del/2016
Assessment Year: 2010-11**

M/s. TCS e-Serve International Ltd., vs. ACIT, Circle 1(1),
9th Floor, Nirmal Building, Nariman Gurgaon.
Point, Mumbai.

PAN : AADCC1577A
(Appellant)

(Respondent)

Appellant by : Sh. S.P. Singh, CA &
Sh. Sharad Goel, CA

Respondent by: Ms. Anima, Sr. DR

Date of hearing: 20/07/2021

Date of order : 06/08/2021

ORDER

PER K. NARASIMHA CHARY, J.M.

Aggrieved by the order dated 26/11/2015 passed by the Commissioner of Income Tax (Appeals)-2, Gurgaon ("Ld. CIT(A)") for the assessment year 2010-11, M/s. TCS e-Serve International Ltd., ("the assessee") preferred this appeal.

2. Brief facts of the case, relevant for the disposal of this appeal, are that the assessee filed their return of income for the assessment year 2010-11 on 20.04.2010 claiming a loss of Rs.67,39,731/- by showing a sum of Rs.43,50,946/- as other income on account of unclaimed

balances written back and treating the same as exempt u/s. 10AA of the Income-tax Act, 1961 ("the Act"). According to the assessee, this amount was claimed as expenses in the preceding year for the purpose of calculation of deduction u/s. 10AA of the Act, namely, the quantum of deduction u/s. 10AA was reduced to the extent of expenditure to the tune of Rs. 43,50,946/- in the year when such expenses were debited in the profit and loss account. Learned Assessing Officer observed that the assessee did not have profits to claim the deduction u/s. 10AA of the Act in the year when subject expenses were reduced from the profit to calculate the quantum and the write back of expenses does not fall under the definition of export turnover given in Explanation to section 10AA of the Act. On this premise, learned Assessing Officer reduced the exemption u/s. 10AA by this amount of Rs.43,50,946/-.

3. When the assessee preferred appeal, learned CIT(A) observed that these amounts do not in any way represent the business income of the assessee; that they are on account of non-availability of persons to whom salary income/other expenses were payable resulting in resultant benefits to the assessee; and that such benefits do not arise out of any business operation. Learned CIT(A) declined to accept the contention of the assessee that profits derived from export of articles is based on the profits of the undertaking and observed that as per provisions of section 10AA of the Act, the formula for determining the profits derived from export of articles comprises profits of business of the undertaking and not the profits of the undertaking. Learned CIT(A), therefore, declined to grant any relief to the assessee on this score and confirmed the action of the Assessing Officer.

4. Apart from this, learned CIT(A) observed that the learned Assessing Officer committed three mistakes in computation of total income, namely, (i) learned Assessing Officer wrongly took the returned loss at Rs.67,39,731/-; (ii) the computation of deduction claimed by assessee u/s. 10AA was not correct, inasmuch as the brought forward loss of eligible business for preceding years was required to be reduced from the profits of business from current year before allowing deduction u/d. 10AA which was not done by Id. Assessing Officer; and (iii) the claim of assessee for set off of unabsorbed depreciation against other income of Rs.35,25,367/- was not in accordance with the law. He, therefore, by adding the addition of Rs.43,50,946/-, made by the Id. Assessing Officer to the total income of the assessee, computed the same at Rs.80,57,251/-.

5. Learned CIT(A) further held that the assessee's claim for grant of credit of tax deducted at source to the tune of Rs.8957/- did not arise from the order under appeal.

6. Challenging this action of the Id. CIT(A), the assessee filed this appeal stating that the expenses written back to the profit and loss account should have been treated as income eligible for deduction u/s. 10AA of the Act despite the fact that the said expenses have not been reduced from the income eligible for deduction u/s. 10AA in earlier years; that the brought forward business losses and unabsorbed depreciation of the eligible unit should not have been set off against the profits of the business of eligible unit before allowing deduction u/s. 10AA of the Act and in all fairness, learned CIT(A) should have allowed the carry forward of brought forward business losses and unabsorbed

depreciation of the eligible unit for set off in subsequent years. Assessee also prayed to allow the claim for grant of credit of tax deducted at source of Rs.8957/-.

7. In respect of ground No. 1, 2 & 3, Id. AR submitted that the amount of Rs.43,50,946/- shown as other income on account of unclaimed balances written back, was treated to be a part of export turnover for the purpose of calculation of deduction u/s. 10AA of the Act since these were claimed as expenses in the preceding year for the purpose of calculation of deduction u/s. 10AA of the Act. Learned AR submitted that the quantum of deduction u/s. 10AA was reduced to the extent of expenditure to the tune of Rs. 43,50,946/- in the year when such expenses were debited in the profit and loss account. He, therefore, submits that while giving the same treatment, the write back of such expenses should be treated as income eligible for deduction u/s. 10AA of the Act. He also submitted that the assessee has brought forward business losses and unabsorbed depreciation amounting to Rs.11,73,61,104/- and Rs.5,90,17,382/- respectively pertaining to F.Y. 2008-09 and during the F.Y. 2009-10, the assessee did not set off the aforesaid brought forward business losses and unabsorbed depreciation from the total income of assessee for the purpose of computing deduction u/s. 10AA of the Act. He further submitted that the deduction provided in Chapter VIA is given at the stage of computing the total income once gross total income is arrived at, whereas under Chapter-III, the income of a unit has to be excluded before arriving or computing the gross total income of the assessee. In support of this proposition, he places reliance on the decision of Hon'ble Supreme Court in CIT vs.

Yokogawa India Ltd. (2017) 391 ITR 274(SC) and proceeded to submit that deduction u/s. 10AA of the Act should be treated as exempt and cannot be brought to form part of the tax computation and consequently, brought forward losses and unabsorbed depreciation cannot be set off against the income which cannot form part of total income.

8. In respect of assessee's claim for grant of credit of the tax deducted at source, he prayed that the Assessing Officer may be directed to verify and allow the same.

9. Learned DR places reliance on the orders of the authorities below and submitted that inasmuch as Id. CIT(A) relied upon the decision of the Co-ordinate Bench of this Tribunal in the case of Technovate eSolution P. Ltd. vs. ITO (2015) 59 taxmann.com 77 and the decision of Hon'ble Supreme Court in Himatsinghka Seide Ltd. vs. CIT (2014) 48 taxmann.com 357, the findings recorded by learned CIT(A) may not be faulted with. She prayed to dismiss the appeal.

10. We have gone through the records in the light of submissions made on either side. The assessee claimed certain expenses in the year relevant to assessment year 2009-10 for the purpose of calculation of deduction u/s. 10AA of the Act and the quantum of deduction u/s. 10AA was reduced to the extent of expenditure to the tune of Rs. 43,50,946/- in the year when such expenses were debited in the profit and loss account. Learned Assessing Officer reduced the deduction u/s. 10AA of the Act by such amount of Rs.43,50,946/- on the ground that the assessee had not claimed any deduction u/s. 10AA of the Act in the immediately preceding year and the write back of such expenses does

not fall under the definition of export turnover given in Explanation to section 10AA of the Act. It remains an admitted fact that in the immediately preceding year, the assessee suffered losses and there is no reason not to believe the explanation on behalf of the assessee that due to such losses, the assessee did not claim any deduction u/s. 10AA of the Act in the immediately preceding year, i.e., F.Y. 2008-09. It is, therefore, clear that in computing the deduction u/s. 10AA for the current year, the write back of the expenses have to be considered as a part of income, inasmuch as, the income on account of write back of unclaimed expenses is accrued to the assessee only due to the export business and there is direct nexus of export business of assessee and the accrual of income, in respect of which, the expenses were shown in the preceding year and such unclaimed expenses were written back for this year. It is not the case of the Revenue that the expenses of Rs.43,50,946/- had no relation to export business of the assessee in the earlier year. We, therefore, conclude that the authorities below are not correct in reducing the deduction u/s. 10AA of the Act by such an amount which was written back by the assessee on account of unclaimed balances written back.

11. So far as the set off of the brought forward business losses and unabsorbed depreciation of the eligible unit against profit of the business of eligible unit before allowing deduction u/s. 10AA of the Act as was done by Id. CIT(A), is concerned, the law is settled and it is no longer *res integra*. In *Yokogawa India Ltd. (supra)*, Hon'ble Supreme Court observed that –

“17. If the specific provisions of the Act provide [first proviso to Sections 10A(1); 10A (1A) and 10A (4)] that the unit that is contemplated for grant of benefit of deduction is the eligible undertaking and that is also how the contemporaneous Circular of the department (No.794 dated 09.08.2000) understood the situation, it is only logical and natural that the stage of deduction of the profits and gains of the business of an eligible undertaking has to be made independently and, therefore, immediately after the stage of determination of its profits and gains. At that stage the aggregate of the incomes under other heads and the provisions for set off and carry forward contained in Sections 70, 72 and 74 of the Act would be premature for application. The deductions under Section 10A therefore would be 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. The somewhat discordant use of the expression “total income of the assessee” in Section 10A has already been dealt with earlier and in the overall scenario unfolded by the provisions of Section 10A the aforesaid discord can be reconciled by understanding the expression “total income of the assessee” in Section 10A as ‘total income of the undertaking’.

12. The provisions of section 10A are *pari materia* with the provisions of section 10AA and therefore, the claim of the assessee for not reducing the brought forward losses from the profit of business of current year before allowing deduction u/s. 10AA is proper and has to be considered in favour of the assessee. For these reasons, we allow ground No. 1 to 3 of appeal.

13. Now coming to ground No. 4 in respect of claim for grant of credit of tax deducted at source to the tune of Rs.8,957/-, whether or not it arises from the assessment order, when once the assessee raised the issue, it cannot be brushed under the carpet. Ld. DR fairly conceded the request of the assessee to allow the Assessing Officer to verify this

fact pleaded by the assessee and, if it is true, to allow the claim of assessee. We, therefore, direct the Assessing Officer to verify the tax credit and allow the same to the assessee.

14. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on this the 6th day of August, 2021.

Sd/-

(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Dated: 06/08/2021

'aks'

Sd/-

(K. NARSIMHA CHARY)
JUDICIAL MEMBER