IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "B", HYDERABAD

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA No. 2227/Hyd/2017
Assessment Year: 2009-10

Cognizant Technology Solutions India Pvt. Ltd., (erstwhile Excellence Data Research Pvt. Ltd.), Chennai	vs.	Asst. Commissioner of Income-tax, Circle – 17(1), Hyderabad.
PAN – AABCE 4933C		
(Appellant)		(Respondent)

Assessee by : Shri Ravi Bharadwaj
Revenue by : Shri Nilanjan Dey

Date of hearing : 05/11/2018
Date of pronouncement : 06/12/2018

O R D E R

PER S. RIFAUR RAHMAN, A.M.:

This appeal filed by the assessee is directed against the order of CIT(A) – 5, Hyderabad dated 30/10/2017 for AY 2009-10.

2. Briefly the facts of the case are, the assessee, a private ltd company engaged in the business of developing, testing, integration and deployment of digital video delivery across multiple platforms including cable, IP and mobile technologies, filed its return of income on 29th September, 2009 declaring a total income of Rs. 4,68,35,769/- under the provisions of section 115JB of the Income-tax Act, 1961 (in short 'the Act') and a total income of Rs. 14,19,335/- under the normal provisions of the Act. It had claimed deduction u/s 10A of the Act amounting to Rs. 6,95,70,554/- in the return of income.

2.1 The return was processed u/s 143(1) of the Act and subsequently, the same was taken for scrutiny assessment u/s 143(3)

of the Act and thereafter a daft order was passed by the AO on 18/03/2013 as a transfer pricing adjustment was proposed in the assessment.

2.2 When the assessee filed its objections before the DRP, the DRP upheld the action of AO/TPO vide its order dated 27th November, 2013 passed u/s 144(5) of the Act. Subsequently, the AO passed a final assessment order u/s 143(3) rws 144(5) of the Act on 20/12/2013 wherein an adjustment of the brought forward business loss was made prior to allowing deduction u/s 10A of the Act.

2.3 Aggrieved by the said order, the assessee preferred an appeal before the ITAT and the ITAT vide its order dated 31/07/2014 in ITA No. 159/Hyd/2014 remanded the issue on set-off of brought forward losses to the AO to verify the issue by providing an opportunity of being heard to the assessee and pass an order accordingly.

2.4 Consequently, the AO vide his order dated 29/09/14 passed u/s 143(3) rws 254, adjusted the brought forward losses before allowing deduction u/s 10A of the act.

3. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A), who upheld the order of AO.

4. Aggrieved by the order of CIT(A), the assessee is in appeal before us raising the following grounds of appeal:

> *"The grounds of appeal listed below are without prejudice to each other.*
>
> *1. The order of the learned Commissioner of Income-tax (Appeals) ['CIT(A) is erroneous, bad in law, prejudicial to the Appellant and contrary to the facts and circumstances of the case.*

Claim of deduction under section 10A of the Act before adjusting the brought forward business losses against the current year's income

2. The learned CIT(A) has erred in not adjudicating the ground of the Appellant that the Assistant Commissioner of Income-tax ('learned AO') has failed to provide an opportunity of being heard on the issue of set-off of losses, as per the directions of this Hon'ble Tribunal in ITA No. 159/Hyd/2014 dated 31 July 2014 before passing an Order giving effect to the directions of this Tribunal.

3. The learned CIT(A) has erred in fact and law by holding that the brought-forward business losses of the unit eligible for deduction under section 10A of the Act ought to be set-off prior to the grant of deduction under section 10A of the Act.

4. The learned CIT(A) has erred in not applying the principle laid down by the Hon'ble Supreme Court in the case of CIT vs M/s Yokogawa India Ltd (391 ITR 274) in relation to the stage at which the deduction under section 10A shall be allowed.

5. The learned CIT(A) has erred in law and facts in stating that the principle laid down in the case of CIT vs Mis Yokogawa India Ltd (391 ITR 274) is not relevant to the present set of facts of the Appellant."

5. Before us, the ld. AR submitted that the AO was wrongly set off of the brought forward losses prior to grant of deduction u/s 10A of the Act. For this proposition, he relied on the decision of Hon'ble Supreme Court in the case of CIT Vs. Yokogawa India Ltd. [2017] 77 Taxmann.com 41 (SC).

6. The ld. DR, on the other hand, relied on the orders of revenue authorities.

7. Considered the rival submissions and perused the material on record. We noticed that AO has allowed the deduction u/s 10A after setting off of the brought forward losses by treating the deduction u/s 10A as deduction u/s Chapter – VIA. Whereas the deduction as per amended Act of Finance Act, 2000 find place in Chapter – III. The question of allowing deduction of section 10A in Chapter III or

Chapter VIA was adjudicated by Hon'ble Supreme Court in the case of CIT Vs. Yokogawa India Ltd. (supra). The relevant ratio is as under:

> *"17. If the specific provisions of the Act provide [first proviso to Sections 10A(l); 10A (1A) and 10A(4) that the unit that is contemplated for grant of benefit of deduction is the eligible undertaking and that is .c: 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 E 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 E 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 E 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'.*
>
> *18. For the aforesaid reasons we answer the appeals and the questions arising therein, as formulated at the outset of this order, by holding that though Section 10A, as amended, is a provision for deduction, the stage of deduction would be while computing the gross total income of the eligible undertaking under C Chapter IV of the Act and not at the stage of computation of the total income under Chapter VI. All the appeals shall stand disposed of accordingly."*

Respectfully following the above decision, which is directly on the subject, we direct the AO to allow the deduction u/s 10A before setting off of the brought forward losses. Accordingly, grounds raised by the assessee on this issue are allowed.

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

Pronounced in the open Court on 6th December, 2018.

Sd/-	**Sd/-**
(P. MADHAVI DEVI)	**(S. RIFAUR RAHMAN)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Hyderabad, Dated: 6th December, 2018

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4) Pr. CIT - 5, Hyd.
5) The Departmental Representative, I.T.A.T., Hyderabad.
6) Guard File