Supreme Court holds section 10A/ 10B to be a deduction provision

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In brief

In a recent decision[1], the Supreme Court (SC) ruled that section 10A of the Income-tax Act, 1961 (the Act), as amended by the Finance Act, 2000, is a provision for deduction, and 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 the total income under Chapter VI.

In detail

Facts

The following facts were considered based on the High Court's (HC) decision of the lead case[2]:

- The taxpayer had claimed exemption under section 10A before adjusting the brought forward losses and depreciation of its non-10A units.
- The tax officer recomputed the exemption under section 10A after adjusting the brought forward losses of non-10A units.
- The Commissioner of Income-tax (Appeals) [CIT(A)] set aside said the assessment order and granted relief to the taxpayer on the premise that the income under section 10A had to be excluded at source itself, and not after computing the gross total income.
- Both, the Income-tax Appellate Tribunal and the HC, dismissed the appeal by Revenue authorities and upheld the CIT(A)'s order. Accordingly, the Revenue authorities preferred an appeal before the SC.

Issues before the Supreme Court

i Is section 10A of the Act beyond the purview of the computation mechanism of total income as defined under the Act? Consequently, is the income of a section 10A unit required to be excluded before arriving at the taxpayer's gross total income?

ii Is the phrase "total income" in section 10A of the Act akin and in *pari materia* with the said expression as appearing in section 2(45) of the Act?

iii Even after the amendment made with effect from 01 April, 2001, does section 10A of the Act continue to remain an exemption section and not a deduction section?

iv Can losses of other 10A units or non-10A units be set off against profits of 10A units before deductions under section 10A are effected?

v Can brought forward business losses and unabsorbed depreciation of 10A units or non-10A units be set off against profits of the taxpayer's other 10A units?

Taxpayer's contentions

- Though there were certain provisions under section 10A that suggested that it was a deduction provision, such as section 10A(6), section 10A was really an exemption provision.
- The total income referred to in section 10A referred to the total income of the undertaking, and not total

[1] Consisting of batch of appeals lead by Civil appeal no. 8498 of 2013
[2] [2012] 341 ITR 385

income as defined under section 2(45) of the Act.

- Alternatively, even if section 10A was considered to be a deduction provision, the stage of such deduction would be immediately after the computation of profits and gains of business, but before aggregation of incomes with other loss-making eligible units or non-eligible units of the taxpayer.

Revenue's contention

- The language of section 10A suggested that the section was a deduction provision, and accordingly, chapter notes or marginal notes (referring to it as an exemption provision) should not be used to interpret section 10A as an exemption provision merely because it was contained in Chapter III of the Act. Reliance was also placed on the SC's decision in Tata Power Co. Limited *v.* Reliance Energy Limited[3].
- Further, deduction under section 10A had to be made and allowed at the stage of computing gross total income under Chapter VI of the Act, irrespective of any specific provision to this effect under Chapter VI of the Act.

Supreme Court's ruling

The deductions under section 10A would be while computing the gross total income of the eligible undertaking under Chapter IV of the Act, and not at the stage of computing the total income under Chapter VI, on the following premises:

- Based on the cardinal principles of interpretation of taxing statutes laid down by J. Rowlatt in Cape Brandy Syndicate *v.* Inland Revenue Commissioner,[4] it was well established that in a taxing act, one had to look merely at what was said clearly.
- The introduction of the word, 'deduction' in section 10A by the amendment through the Finance Act, 2000, in the absence of any contrary material, must be considered as enunciation of the legislative decision to alter its nature from one providing for exemption to one providing for deduction.
- Further, the deduction contemplated in section 10A was *qua* the eligible undertaking of a taxpayer standing on its own, without regard to other eligible or non-eligible units or undertakings of the taxpayer.

  Reference was made to the Circular dated 09 August, 2000 (explaining the rationale for amendment in section 10A), wherein the said principle was reflected.
- The deduction of the profits and gains of the business of an eligible undertaking must be made independently and, therefore, immediately after the stage of determination of its profits and gains.
- The term, 'total income of the taxpayer' in section 10A must be understood as 'total income of the undertaking.'

The takeaways

This is a welcome judgment as it puts to rest the controversy as to whether section 10A/10B is a deduction provision or an exemption provision. Further, the taxpayer, depending on the specific facts, may rely on the principles laid down by the SC and claim set off of losses of 10A/10B unit against other business income or income from other sources, as the case may be.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor.

[3] Civil Appeal no. 3510-3511 of 2008

[4] [1921] 1 KB 64

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