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Deduction under section 10B is to be allowed before set-off of brought forward loss and unabsorbed depreciation

In brief

Recently, in the case of Charon Tec Pvt. Ltd¹ (the assessee), the Chennai Income-tax Appellate Tribunal (the Tribunal) held that deduction under section 10B of the Income-tax Act, 1961 (the Act) is to be allowed before the set-off of brought-forward loss and unabsorbed depreciation.

Facts of the case

- The assessee, a company incorporated in India, is engaged in the business of electronic printing and data processing.

- With respect to assessment year 2005-06, the assessing officer (AO), among others, made additions to the income of the assessee by way of adjustment of brought-forward loss before granting deduction under section 10B of the Act.
- The Commissioner of Income-tax (Appeals) (CIT(A)) held that deduction under section 10B of the Act is to be granted before the set-off of brought-forward loss.

¹ ACIT v. Charon Tec P. Ltd [TS-841-ITAT-2012(CHNY)]

Issue before the Tribunal

Whether deduction under section 10B of the Act is to be granted before the set-off of brought-forward loss and unabsorbed depreciation.

Revenue's contentions

- Even though section 10B falls under chapter III and not chapter VI-A, section 10B allows deduction as opposed to exemption. As such, the profits and gains of the business of the eligible unit have to be computed first (which will call for the set-off of brought-forward business loss and unabsorbed depreciation). Thereafter, deduction under section 10B of the Act is to be granted. The judgement of the Special Bench of the Tribunal in the case of Scientific Atlanta India Pvt Ltd², and the Kerala High Court in the case of Patspin India Ltd³ was relied on.

Assessee's contentions

- The legislature had consciously placed section 10B in chapter III of the Act which deals with incomes which do not form part of the total income. Therefore, the intention of the legislature was not to treat deduction available under section 10B of the Act at par with deduction available under chapter VI-A.
- Deduction under section 10B of the Act is to be computed as per the formula given in section 10B(4) of the Act. Thus, the profits of the eligible undertaking were to be deducted from the total income of the eligible undertaking. Thereafter, profits if any, will be available for set-off of losses.
- To support these contentions, the assessee relied on the judgements of the Karnataka High Court in the case of Yokogawa India Ltd and others⁴, the

judgement of the Bombay High Court in the case of Hindustan Unilever Ltd⁵ and the order of the Tribunal in the case of Intimate Fashions India Pvt Ltd.⁶

Tribunal ruling

- The Karnataka High Court in the case of Yokogawa India Ltd had held that relief under section 10A although termed as deduction was in the nature of exemption. This relief was with respect to commercial profits, neither subject to the charge of income tax nor includible in the total income. Therefore, the deduction shall be given before the computation of profits and gains of business or profession.
- A similar view has been taken by the Bombay High Court in the case of Black & Veatch Consulting (P) Ltd.⁷
- Since the provisions of section 10A were similar to the provisions of section 10B of the Act, the same ratio could be applied in the cases covered by section 10B of the Act.
- However, the Kerala High Court in the case of Patspin India Ltd had taken a contrary view and held that deduction under section 10B of the Act was to be granted after the set-off of brought-forward loss and unabsorbed depreciation.
- When views of different jurisdictional high courts are available, the decision favourable to the assessee is to be followed. The decision of the Supreme Court in the case of Vegetable Products Ltd⁸ was relied upon.
- In view of the above, the exemption under section 10B of the Act was to be allowed before setting off of brought-forward loss and unabsorbed depreciation.

² Scientific Atlanta India Pvt Ltd v. ACIT [2010]129 TTJ 273 (Chennai)

³ CIT v. Patspin India Ltd [2011] 245 CTR 97 (Ker)

⁴ CIT v. Yokogawa India Ltd and others [2011]341 ITR 385 (Kar)

⁵ Hindustan Unilever Ltd v. DCIT [2010]237 CTR 287(Bom)

⁶ ITA No.2097/Mds/2006

⁷ CIT v. Black & Veatch Consulting (P) Ltd [2012] 251 CTR 265(Bom)

⁸ CIT v. Vegetable Products Ltd [1973] 88 ITR 192 (SC)

Conclusion

This decision adds to the list of the cases which have taken a view that deduction under section 10A/10B of the Act should be computed before the set-off of brought-forward loss and unabsorbed depreciation.

Our Offices

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Ahmedabad President Plaza, 1st Floor Plot No 36 Opp Muktidham Derasar Thaltej Cross Road, SG Highway Ahmedabad, Gujarat 380054 Phone +91-79 3091 7000	Bangalore 6th Floor, Millenia Tower 'D' 1 & 2, Murphy Road, Ulsoor, Bangalore 560 008 Phone +91-80 4079 7000	Bhubaneswar IDCOL House, Sardar Patel Bhawan Block III, Ground Floor, Unit 2 Bhubaneswar 751009 Phone +91-674 253 2279 / 2296	Chennai 8th Floor, Prestige Palladium Bayan 129-140 Greams Road, Chennai 600 006 Phone +91-44 4228 5000	Hyderabad #8-2-293/82/A/113A Road no. 36, Jubilee Hills, Hyderabad 500 034, Andhra Pradesh Phone +91-40 6624 6600
Kolkata 56 & 57, Block DN. Ground Floor, A- Wing Sector - V, Salt Lake. Kolkata - 700 091, West Bengal, India Telephone: +91-33 2357 9101 / 4400 1111 Fax: (91) 033 2357 2754	Mumbai PwC House, Plot No. 18A, Guru Nanak Road - (Station Road), Bandra (West), Mumbai - 400 050 Phone +91-22 6689 1000	Gurgaon Building No. 10, Tower - C 17th & 18th Floor, DLF Cyber City, Gurgaon Haryana -122002 Phone : +91-124 330 6000	Pune GF-02, Tower C, Panchshil Tech Park, Don Bosco School Road, Yerwada, Pune - 411 006 Phone +91-20 4100 4444	For more information contact us at, pwctrs.knowledgemanagement@in.pwc.com

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