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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL LODGING NO.1237 OF 2011

The Commissioner of Income Tax-10 ...Appellant

Versus

Black & Veatch Consulting Pvt.Ltd. ...Respondents

Mr.Ravindra V. Lokhande for appellant.

Mr.Percy J. Pardiwala, Sr. Advocate with Mr.Jas Sanghavi i/b. PDS Legal for respondents.

CORAM: DR.D.Y. CHANDRACHUD &
R.D.DHANUKA, JJ.

April 9, 2012.

ORAL JUDGMENT (PER DR.D.Y.CHANDRACHUD,J.)

1. This appeal by the Revenue under Section 260A of the Income Tax Act, 1961 arises from a decision of the Income Tax Appellate Tribunal dated 20 April 2011. The Assessment Year to which the appeal relates is AY 2006-07. The following question of law has been raised by the Revenue:

> "(A) Whether on the facts and circumstances of the case and law, the ITAT was correct in holding that the brought forward unabsorbed depreciation and losses of the unit the Income which is not eligible for deduction under Section 10A of the Act cannot be set off against the current profit of the eligible unit for computing the deduction under Section 10A of the IT Act."

2. The Assessing Officer, during the course of the order of assessment under Section 143(3) observed as follows:

> "Under the scheme of the Act, the profits of the unit eligible for deduction under Section 10A of the Act, would form part of the income computed under the head `Profits and gains of business and profession'. However, in order the same does not suffer tax, deduction will have to be made in respect thereof while computing the income under the head `Profits and gains of business and profession'. In other words, the deduction in respect of the profits eligible under Section 10A of the Act is required to be made at the stage of computing the income under the head `Profits and gains of business or profession'."

Nonetheless, while computing the total income of the assessee the Assessing Officer took the net profit as per the profit and loss account and after, inter alia, making certain disallowances and allowances, arrived at

the total business income at Rs.86.07 lakhs. A set off was effected of the brought forward business loss of AY 2003-04 and AY 2004-05 upon which the Assessing Officer came to the conclusion that there was nil income which would qualify for deduction under Section 10A. The CIT (A) held that the Assessing Officer was justified in adjusting the brought forward losses of earlier years before arriving at the gross total income, for allowing a deduction under Section 10B. In appeal, the Tribunal has relied upon a decision of its Special Bench in the case of Scientific **Atlanta Vs. ACIT**[1] in which it has been emphasised that the provision contained in Section 10A is not an exemption but a deduction under Chapter III. Following that decision, the Tribunal held that the deduction under Section 10A in respect of the allowable unit under Section 10A has to be allowed before setting off brought forwarded losses of a non 10A unit.

3. Section 10A is a provision which is in the nature of a deduction and not an exemption. This was emphasised in a judgment of a Division Bench of this Court while construing the provisions of Section 10B in **Hindustan Unilever Ltd Vs. Deputy Commissioner of Income Tax**[2]. The submission of the Revenue placed its reliance on the literal reading of Section 10A under which 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 is to be allowed from the total income of the assessee. The deduction under

1. 129 TTJ 273

2. (2010) 325 ITR 102 at para 24

Section 10A, in our view, has to be given effect to at the stage of computing the profits and gains of business. This is anterior to the application of the provisions of Section 72 which deals with the carry forward and set off of business losses. A distinction has been made by the Legislature while incorporating the provisions of Chapter VI-A. Section 80A(1) stipulates that in computing the total income of an assessee, there shall be allowed from his gross total income, in accordance with and subject to the provisions of the Chapter, the deductions specified in Sections 80C to 80U. Section 80B(5) defines for the purposes of Chapter VI-A "gross total income" to mean the total income computed in accordance with the provisions of the Act, **before making any deduction under the Chapter**. What the Revenue in essence seeks to attain is to telescope the provisions of Chapter VI-A in the context of the deduction which is allowable under Section 10A, which would not be permissible unless a specific statutory provision to that effect were to be made. In the absence thereof, such an approach cannot be accepted. In the circumstances, the decision of the Tribunal would have to be affirmed since it is plain and evident that the deduction under Section 10A has to be given at the stage when the profits and gains of business are computed in the first instance. So construed, the appeal by the Revenue would not give rise to any substantial question of law and shall accordingly stand dismissed. There shall be no order as to costs.

(DR.D.Y. CHANDRACHUD,J.)

(R.D.DHANUKA, J.)