IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'A ', NEW DELHI)

BEFORE SHRI N. K. SAINI, ACCOUNTANT MEMBER
AND SHRI KULDIP SINGH, JUDICIAL MEMBER
I.T.A. No. 1403/Del/2010
Assessment year : 2006-07

M/s. A. T. Kearney India Pvt. Ltd., 14th Floor, Tower D, Global Business Park, Gurgaon - 122002 **GIR / PAN:AADCA1436G**	Vs.	ITO, Ward 1(1), New Delhi
(Appellant)		(Respondent)

Appellant by : Shri Satyam Sethi, Adv.
Respondent by : Shri K K Jaiswal, DR

Date of hearing : 30.09.2015
Date of pronouncement : 16.10.2015

ORDER

PER KULDIP SINGH, JM:

The appellant M/s. A. T. Kearney India Pvt. Ltd., by filing the present appeal u/s 250 of the I. T. Act, 1961 (for short 'the Act') sought to set aside the impugned order dated 04.01.2010 passed by Ld. CIT(A) IV, New Delhi for the Assessment Year 2006-07 on the grounds inter alia that:

> *"1.1 That on the facts and circumstances of the case and in law, the learned Commissioner or Income Tax (Appeals) ('CIT-A') has erred in upholding the order of the order of the Income Tax Officer, Ward (I), New Delhi ('the assessing officer"), wherein the assessing officer held that deduction under section l0A of the Income-tax Act, 1961 ('Act') in respect or profits derived by the eligible undertaking would*

be computed after set-off of brought forward unabsorbed depreciation of Rs 36,70,496 from prior years.

1.2 That on the facts and circumstances of the case and in law, the learned CIT-A has erred in denying the set-off of brought forward unabsorbed depreciation of Rs 36,70,496/- against interest income of Rs 7,91,145/- on the inter corporate deposits earned by the Appellant during the subject year.

2. That on the facts and circumstances of the case and in law, the learned CIT-A has erred in upholding the order of the assessing officer, wherein the assessing officer has held that the interest of Rs.2,45,479/- earned by the Appellant on Fixed deposits with banks constitutes "income from other sources" and hence chargeable to income-tax under section 56(I) of the Act. Consequently, the learned CIT(A) has also erred in upholding the order of the assessing officer in not allowing deduction under section l0A of the Act on above interest on fixed deposits.

3. That on the facts and in law the learned assessing officer has erred on facts and in law in levying interest under section 234B of the Act amounting to Rs. 1,15,146/-."

2. Briefly stated, the facts of this case are that during the processing of income tax return filed by the assessee for the Assessment Year 2006-07, the same was subjected to scrutiny u/s 143(1) of the Act. Pursuant to the notices issued to the assessee, Shri Puneet Gupta, CA/AR of the assessee attended the proceedings, filed details and documents from time to time and the case was also discussed with him. The assessee company is into the business of I. T. enabled services who has declared its income at Rs.3,56,74,005/-.

4. Appendix III to Form 3CD transpires that assessee has unabsorbed depreciation of Rs.36,70,496/- available for carry forward. As per Section 32(2), the assessee was to carry forward this unabsorbed depreciation and

added it to the current year depreciation for the correct computation of its income from business and profession, so the income from the business of the assessee is computed at Rs.3,17,58,030/- (this includes the amount of interest income earned from bank deposits) and the exemption u/s 10A of the Acts is available to the assessee at this amount. Since no unabsorbed depreciation is available to the assessee at income of Rs.7,91,145/- from interest income is not allowable for set off from the business loss carried forward as per the provision of Section 72(1)(i) of the Act which shows that the concealment of income on the part of the assessee to avoid tax. The amount of Rs.7,91,145/- was taxed at income from other sources.

5. A perusal of Schedule VIII of the P & L account shows the interest on deposits with the bank of Rs.2,45,479/-. The assessee has stated that the interest income arises from surplus funds deposited with the bank would constitute business income, but since the assessee is deriving income from business of I. T. Enabled services and has earned interest income from bank from routine deposits and as per Section 56(1), the bank interest is held as income from other sources, no unabsorbed depreciation remained to be carried forward, so this is reduced from the total taxable income and added to the income from other sources and as such, the total income from other sources is determined at Rs.10,36,624/-.

5.1 The assessee challenged the assessment order and his appeal has been dismissed by Ld. CIT(A) vide impugned order. Feeling aggrieved, the assessee has come up before the Tribunal by filing the present appeal.

6. Ld. A.R. by challenging the impugned order contended inter alia that the Ld. CIT(A) has erred in upholding the order of A.O. that deduction u/s 10A of the Act in respect of profits derived by the eligible undertaking

would be computed after set off of brought forward unabsorbed depreciation of Rs.36,70,496/- from prior service; that Ld. CIT(A) has erred in denying the set off of brought forward of unabsorbed depreciation of Rs.36,70,496/- against interest income of Rs.7,91,145/- on the inter corporate deposits earned by the appellant and relied upon the judgement cited as **CIT Vs Yokogawa India Ltd. 341 ITR 385 (Kar.) and CIT Vs TEI Technologies Pvt. Ltd. 361 ITR 36 (Del.)**; that the surplus funds generated from business operation were kept as short term deposits on which interest of Rs.2,45,479/- was earned which the appellant has treated as business income, however, the same was assessed as income from other sources and relied upon the judgements cited as **Deepak Pandurang Gadre vs DCIT in I.T.A. No. 225/PN/07 dt. 31.01.2011 and ITO Vs M/s. Greytrix (India) Pvt. Ltd. I.T.A. No. 5787/Mum/2009 dated 07.10.2011**.

7. On the other hand, Ld. D.R. reiterated the arguments addressed before Ld. CIT(A), relied upon the impugned order and contended that since interest income has not been derived from export activities, the same is not liable to be deducted u/s 10A of the Act and relied upon the judgements cited in **262 ITR 278 Pandian Chemicals Ltd. Vs CIT (S.C.) and 259 ITR 403 CIT Vs Menon Impex Pvt. Ltd. (Mad.)** and prayed for dismissal of the appeal.

8. We have heard Ld. authorized representatives of both the parties and gone through the documents relied upon in the light of the facts and circumstances of the case.

8.1 **Grounds No.1.1 and 1.2 read as under**:

> *"1.1 That on the facts and circumstances of the case and in law, the learned Commissioner or Income Tax (Appeals) ('CIT-A') has erred*

in upholding the order of the order of the Income Tax Officer, Ward (I), New Delhi ('the assessing officer"), wherein the assessing officer held that deduction under section l0A of the Income-tax Act, 1961 ('Act') in respect or profits derived by the eligible undertaking would be computed after set-off of brought forward unabsorbed depreciation of Rs 3,670,496 from prior years.

1.2 on the facts and circumstances of the case and in law, the learned CIT-A has erred in denying the set-off of brought forward unabsorbed depreciation of Rs 3.670.496 against interest income of Rs 791.145 on the inter corporate deposits earned by the Appellant during the subject year."

8.2 Undisputedly, this is settled principle of law that even after amendment to Section 10A by the Finance Act 2000 w.e.f. 01.04.2001, Section 10A continues to be an exemption provision, though it is termed as provision providing deduction. Hon'ble Jurisdictional High Court in the judgement cited as **2012, 210 Taxman 237 (Del.) CIT Vs TEI Technologies (P) Ltd.** held that Section 10A as it stands though decided as deduction provision is essential and in substances exemption provision.

8.3 In order to decide the moot point that **'as to whether the deduction u/s 10A of the Act with respect to it derived by the eligible undertaking would be computed after set off of brought forward unabsorbed depreciation of Rs.36,70,496/- from the prior year.'** Hon'ble Karnataka High Court in the judgement cited as **CIT Vs Yokogawa India Ltd. 341 ITR 385 (Kar.)** thrashed the issue in controversy at hand, operative part of which is reproduced as under for ready reference:

"The expression "deduction of such profits and gains as derived by an undertaking shall be allowed from the total income of the assessee", has to be understood in the context with which the said provision is inserted in Chapter –III of the Act. Sub-section (4) of section 10A

clarifies this position. It provides that the profits derived from export of articles or things from computer software shall be the amount which bears to the profits of the business of the undertaking, the same proportion as the export turnover in respect of such articles or things or computer software bears to the total turnover of the business carried on by the undertaking. Therefore, it is clear that though the assessee may be having more than one undertaking for the purpose of section 10A it is the profit derived from export of articles or things or computer software from the business of the undertaking alone that has to be taken into consideration and such profit is not to be included in the total income of the assessee. The provisions of this sub-section will apply even in the case where an assessee has opted out of section 10A by exercising his option under sub-section (8). It is permissible for an assessee to opt in and opt out of section 10A. In the year when the assessee has opted out, the normal provisions of the Act would apply. The profits derived by him from the undertaking would suffer tax in the normal course subject to various provisions of the Act including those of Chapter VI-A. If in such a year, the assessee has suffered losses, such losses would be subject to inter source and inter head set off. The balance if any thereafter can be carried forward for being set off against profits of the subsequent assessment years in the normal course. Unabsorbed depreciation also merits a similar treatment.

Held that as the profits and gains under section 10A is not be included in the income of the assessee at all, the question of setting off the loss of the assessee of any profits and gains of business against such profits and gains of the undertaking would not arise. Similarly, as per section 72(2), unabsorbed business loss is to be first set off and thereafter unabsorbed depreciation treated as current years depreciation under section 32(2) is to be set off. As deduction under section 10A has to be excluded from the total income of the assessee, the question of unabsorbed business loss being set off against such profit and gains of the undertaking would not arise."

8.4 The ratio of the judgement in the case cited as **Yokogawa India Ltd. (supra)** is inter alia that the profits and gains u/s 10A were not to be

included in the income of the assessee at all and as such the question of setting off of loss of assessee of any profits & gains of business against such profits and gains of undertaking does not arise; that under Section 72(2) of the Act, unabsorbed business loss is to be first set off and thereafter unabsorbed depreciation treated as current year depreciation u/s 32(2) is to be first set off; that since deduction u/s 10A has to be excluded from the total income of the assessee, the question of unabsorbed business loss being set off against such profits & gains of the undertaking does not arise. The case at hand is squarely covered by the judgement (supra) and as such, the A.O. and Ld. CIT(A) have erred in holding that the deduction u/s 10A of the Act in respect of the profits by the eligible undertaking would be computed after set off of brought forward unabsorbed depreciation of Rs.36,70,496/- from prior year.

9. Ground No.1.2 as to denying the set off of brought forward unabsorbed depreciation of Rs.36,70,496/- against the interest income of Rs.7,91,145/- on the inter corporate deposit earned by the appellant during the subject year is consequential. Resultantly, grounds No.1.1 and 1.2 are determined in favour of the assessee. Ld. D.R. has fairly conceded the principles laid down in the judgements cited above.

10. Regarding ground No.2, Ld. A.R. contended that the interest of Rs.2,45,479/- earned by the assessee from the surplus funds generated from business operation kept as short term deposits are not chargeable to the income tax u/s 56(1) of the Act rather the same are allowed to be deducted u/s 10A of the Act and relied upon the judgements cited as **Deepak Pandurang Gadre Vs DCIT I.T.A.No. 225/Mum/2007 and ITO Vs M/s. Greytrix (India) Pvt. Ltd. I.T.A.No. 5787/Mum/2009**. However, the

judgements (supra), relied upon by the Ld. A.R. are inapplicable to the facts and circumstances of the case being on distinguishable facts and in the face of law laid down by Hon'ble Apex Court in the judgements cited as **Pandian Chemicals Ltd. Vs CIT (supra) and CIT Vs Menon Impex Pvt. Ltd. (supra)**.

10.1 The **Hon'ble Apex Court in Pandian Chemicals Ltd. (supra)** also held that in the case of industrial undertaking "*the interest derived by the industrial undertaking of the assessee on deposits made with the Electricity Board for the supply of electricity for running the industrial undertaking could not be said to flow directly from the industrial undertaking itself and was not profits or gains derived by the undertaking for the purpose of the special deduction under section 80HH.*"

10.2 Similarly, Hon'ble Madras High Court in the case cited as **Menon Impex Pvt. Ltd. (supra)** in identical issue, held as under:

> *"The assessee had set up a new industrial undertaking in the Kandla Free Trade Zone for the manufacture of light engineering goods. In the course of the business of the undertaking, the assessee was required to open letters of credit with banks which had, as a condition for issuing such letters of credit, required the assessee to make deposits. On these deposits, the assessee earned interest and the question was whether the assessee was entitled to the benefit of section 10A of the I. T. Act, 1961, in relation to the interest:*
> ***Held,** that the interest received by the assessee was on deposits made by it in the banks. It was the deposit which was the source of the interest income. The mere fact that the deposit was made for the purpose of obtaining letters of credit which were in turn used for the purpose of the business of the industrial undertaking did not establish a direct nexus between the interest and the industrial undertaking and, therefore, the assessee was not entitled to get the benefit of Section 10A in relation to the interest."*

10.3 The ratio laid down in the judgements cited as **Menon Impex Pvt. Ltd. and Pandian Chemicals Ltd. (supra)** relied upon by Ld. D.R. are applicable to the facts and circumstances of the present case and as such, the assessee is not entitled for deduction on account of interest derived from deposits made in the bank, which cannot be held as business income by any stretch of imagination.

11. Factually, the funds parked by the assessee in the bank by way of fixed deposits have not been generated from the business activities. For claiming the benefit of deduction available u/s 10A of the Act, there must be direct nexus between deposits and business activities. In the judgements supra relied upon by Ld. A.R., the funds deposited by way of fixed deposits in the bank were either the margin money which was compulsorily to be deposited to carry out the business activities or were having direct nexus to run the business. Since, this is a benefit given to the industrial activities only, interest earned from mere parking the funds in the fixed deposits is not eligible for exemption u/s 10A of the Act. So, the judgements relied upon by the Ld. A.R., are inapplicable to the facts and circumstances of the case. Even the Ld. A.R. has failed to point out as to how the surplus money deposited with the bank amounts to activities in the course of business and the interest accrued thereon is to be treated as income from business activities. So, the interest income of Rs.2,45,479/- has been rightly declared as income from other sources by the A.O. and affirmed by Ld. CIT(A). Resultantly, ground No.2 is decided against the appellant/assessee.

12. Ground No.3 is, as to *whether on the facts and in law the learned assessing officer has erred on facts and in law in levying interest under section 234B of the Act amounting to Rs. 1,15,146."* Since the levy of

interest under Income tax Act, 1961 is consequential the ground No.3 is determined accordingly.

13. In view of what has been discussed above, appeal filed by the assessee is partly allowed and the findings of Ld. CIT(A) qua grounds No.1.1, 1.2 and 3 are hereby set aside. However, findings of Ld. CIT(A) on the ground No.2 are hereby affirmed.

14. Order pronounced in the open court on 16th Oct., 2015

Sd./-	Sd./-
(N. K. SAINI)	(KULDIP SINGH)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Date: 16th Oct., 2015
Sp
Copy forwarded to:-

1. The appellant
2. The respondent
3. The CIT
4. The CIT (A)-, New Delhi.
5. The DR, ITAT, Loknayak Bhawan, Khan Market, New Delhi.

True copy.

By Order
(ITAT, New Delhi).

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	1/10		Sr. PS/PS
2	Draft placed before author	1,5,7,14,15		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS	16/10/15		Sr. PS/PS
6	Kept for pronouncement	16/10		Sr. PS/PS
7	File sent to Bench Clerk	16/10		Sr. PS/PS
8	Date on which the file goes to Head Clerk			
9	Date on which file goes to A.R.			
10	Date of Dispatch of order			