

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF JANUARY 2021

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE NATARAJ RANGASWAMY

I.T.A. NO.416 OF 2014

BETWEEN:

BIOCON LIMITED
20TH KM, HOSUR ROAD
ELECTRONICS CITY P.O.
BANGALORE-560100
REP. HEREIN BY ITS
DEPUTY GENERAL MANAGER
TAX & COMPLIANCE
MR. B. SHIVADUTT.

.... APPELLANT

(BY MR. SURYANARAYANA T, ADVOCATE)

AND:

1. THE DEPUTY COMMISSIONER OF INCOME TAX
CIRCLE-11(2), C.R. BUILDING
QUEENS ROAD, BANGALORE-560001.
2. THE COMMISSIONER OF INCOME-TAX
LTU, JSS TOWERS, 100 FEET RING ROAD
BANASHANKARI 3RD STAGE
BANGALORE-560085.

... RESPONDENTS

(BY MR. K.V. ARAVIND, ADVOCATE)

THIS I.T.A. IS FILED UNDER SEC. 260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 30.04.2014 PASSED IN ITA NO.369/BANG/2010 FOR THE ASSESSMENT YEAR 2004-05, PRAYING TO:

(i) FORMULATE THE SUBSTANTIAL QUESTION OF LAW STATED ABOVE.

(ii) ALLOW THE APPEAL AND SET ASIDE THE ORDER OF THE ITAT DATED 30.04.2014 IN ITA NO.369/BANG/2010 (ANNEXURE-'C') TO THE EXTENT QUESTIONED HEREIN.

THIS I.T.A. COMING ON FOR HEARING, THIS DAY, **ALOK ARADHE J.**, DELIVERED THE FOLLOWING:

JUDGMENT

This appeal under Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act', for short) has been filed by the assessee. The subject matter of the appeal pertains to the Assessment Year 2004-05. The appeal was admitted by a Bench of this Court vide order dated 01.12.2014 on the following substantial questions of law:

"1. The Tribunal was right in holding that the appellant was not entitled to deduction under Section 35(2AB) of the Act to the extent the expenses eligible for deduction under the said provisions pertained to unit entitled for deduction under Section 10B of the Act?"

2. The Tribunal was right in holding that Section 14A of the Act was applicable to the appellant although it had no exempt income?"

2. Facts leading to filing of this appeal briefly stated are that the assessee is a company engaged in the manufacture and sale of biotechnological products in Pharmaceutical and enzyme sectors through fermentation based technology. The assessee filed its return of income for the Assessment Year 2004-05 declaring a total income of Rs.50,65,18,080/- after claiming various deductions which included deduction under Section 10B as well as under Section 35(2AB) of the Act. The Assessing Officer, by an order dated 29.12.2006, *inter alia* held that since the assessee has claimed deduction under Section 10B of the Act, therefore, it is not entitled to claim deduction under Section 35(2AB) of the Act. The aforesaid order was affirmed by the Commissioner of Income Tax (Appeals)

by an order dated 13.11.2009. Thereupon, the assessee filed an appeal before the Tribunal. The Tribunal, by an order dated 30.04.2014, affirmed the order passed by the Commissioner of Income Tax (Appeals) as well as the Assessing Officer. In the aforesaid factual background, the assessee has approached this Court.

3. Learned counsel for the assessee submitted that Section 10A as well as Section 10B of the Act are not exemption provisions but are deduction provisions and the deduction have to be given effect to at the stage of computation of profits and gains of business or profession under Chapter IV-D of the Act. It is further submitted that the Tribunal has relied on the decision of this Court in '**CIT Vs. YOKOGAWA INDIA LIMITED**' (2012) 21 TAXMANN.COM 154 (KAR). However, the aforesaid decision was reversed on the issue of the nature of provision namely Section 10A and Section 10B of the Act, by the Supreme Court in '**CIT Vs.**

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TAXMANN.COM 41 (SC) and it was held that Section 10A and Section 10B of the Act are the provisions with regard to deduction. In this connection, our attention was invited to paragraph 18 of the judgment. It is also submitted that deduction under Section 10B of the Act is qua the undertaking and is given in respect of the profits of business of the undertaking whereas deduction under Section 35(2AB) of the Act is given effect to a later stage while computing the total income of the assessee at the entity level. Therefore, the deductions granted under Section 10B as well as Section 35(2AB) of the Act are independent and the deduction under Section 35(2AB) of the Act is an expenditure based deduction whereas deduction under Section 10B of the Act is an income based deduction and are independent provisions.

4. Our attention has also been invited to sub-Section (6) of Section 10B as amended by Finance Act,

2003 with effect from 01.04.2001 which provides that after 01.04.2001, the units are entitled to deduction under Section 10B of the Act are to be treated on par with other units and will also be entitled to deductions available under the Act under Sections 32, 35, etc. It is also urged that prior to amendment of sub-Section (6) of Section 10B by the Finance Act, 2003, the intention was to curtail the other tax concessions under the Act to the eligible units which is evident from the Circular No.794 dated 09.08.2000. It is also submitted that in order to eliminate the restrictions contained in sub-Section (6) of Section 10B, the aforesaid provision was amended by Finance Act, 2003, by which, phrase "ending before the 1st day of April, 2001" was inserted which means that after 01.04.2001, the restrictions on other tax concessions or deductions are not been in existence. In this connection, our attention has been drawn to the Circular No.7 of 2003 dated 05.09.2003. It is also contended that Section 10B of the Act is a code in

itself and deduction under the said provision will have to be computed in accordance with the formula prescribed in sub-Section (4) on commercial profits and therefore, reducing profits on a notional basis, attributing some profits to the expenses eligible for weighted reduction under Section 35(2AB), amounts to tinkering with the formula. It is also urged that the Tribunal grossly erred in relying on Section 14A of the Act to uphold the disallowance. It is further submitted that Section 14A applies only to exempt incomes and since Section 10B of the Act is not an exemption provision as has been held by the Supreme Court in ***CIT Vs. YOKOGAWA LIMITED, supra***, the aforesaid provision does not apply to the fact situation of the case. In support of aforesaid submission, reliance has been placed on the decisions in ***'KARLE INTERNATIONAL PRIVATE LTD. Vs. ACIT' dated 07.09.2020 in ITA No.377/2012, 'VIJAY INDUSTRIES Vs. CIT' (2019) 103 TAXMANN.COM 454, 'REDINGTON (INDIA) LTD. Vs. ACIT' [(2017)***

77 TAXMANN.COM 257 (MAD)], 'CHEMINVEST LTD. Vs. CIT' [(2015) 61 TAXMANN.COM 118 (DEL)] AND 'PCIT Vs. GVK PROJECT AND TECHNICAL SERVICES LTD.' (2019) 106 TAXMANN.COM 181 (SC).

5. On the other hand, learned counsel for the revenue submitted that the assessee is not entitled to deduction of expenditure both under Sections 37 and 35(2AB) specifically in view of Section 35(2) of the Act. It is also submitted that it is never the intention of the legislature nor there is any provision in the Act which confers the benefit of double deduction to the extent of 250%. It is also submitted that restriction imposed under Section 35(2) of the Act equally applies to the expenditure for computing deduction under Section 10B of the Act and the Supreme Court in paragraph 11 of the decision in **CIT Vs. YOKOGAWA**, *supra*, has held that deduction under Section 35 is deemed to have been claimed which includes deduction under Section 35(2AB)

of the Act. It is also submitted that deduction under Section 10B is arrived at after allowing the deduction and undertaking is eligible for deduction under Section 35(2AB) and the same is being claimed and therefore, once again assessee is not entitled to claim deduction for 100% expenditure and all deductions are deemed to have been claimed in view of Section 10A(6) of the Act. It is also urged that profits of a unit have to be computed on stand alone basis without reference to other eligible or non-eligible units or undertaking of the assessee. In this connection, our attention has been invited to paragraph 16 of the decision of the Supreme Court in **YOKOGAWA INDIA LTD.**, *supra*.

6. We have considered the submissions made on both sides and have perused the record. Before proceeding further, it is apposite to take note of the relevant extract of Section 10B and Section 35(2AB) of the Act, which reads as under:

"10B. Special provisions in respect of newly established hundred per cent export-oriented undertakings

(1) Subject to the provisions of this section, a deduction of such profits and gains as are derived by a hundred per cent export-oriented undertaking from the export of articles or things or computer software for a period of ten consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce articles or things or computer software, as the case may be, shall be allowed from the total income of the assessee.

35(2AB)(1) Where a company engaged in the business of bio-technology or in any business of manufacture or production of any article or thing, not being an article or thing specified in the list of the Eleventh Schedule incurs any expenditure on scientific research (not being expenditure in the nature of cost of any land or building) on in-house research and development facility as

approved by the prescribed authority, then, there shall be allowed a deduction of a sum equal to one and one-half times of the expenditure so incurred.

(2) No deduction shall be allowed in respect of the expenditure mentioned in clause (1) under any other provision of this Act

7. A Division Bench of this Court in ***CIT Vs. YOKOGAWA LTD.***, *supra* held that Section 10B of the Act is in the nature of an exemption provision. It is pertinent to mention here that the Tribunal by placing reliance on decision of this Court in ***YOKOGAWA INDIA LTD.***, *supra*, held that Section 10B of the Act is in the nature of the exemption provision and therefore, the Assessing Officer was right in reducing the profits of the units eligible for deduction under Section 10B to the extent of additional 50% deduction available under Section 35(2AB) of the Act. However, it is pertinent to mention here that subsequently the decision of this

Court in **YOKOGAWA INDIA LTD.**, *supra* insofar as it pertains to nature of provision of Section 10B of the Act is concerned, was reversed by the Supreme Court in **CIT VS. YOKOGAWA**, *supra* and it was held that Section 10B of the Act is in the nature of deduction provision. It is also pertinent to mention here that Section 10B is a provision which deals with deduction of income whereas Section 35(2AB) deals with deduction on expenditure.

8. It is also relevant here to mention that the restriction contained in sub-Section (6) of Section 10B of the Act operate only upto 1st day of April 2001. Therefore, the restrictions contained in sub-Section (6) of Section 10B of the Act have no application to the obtaining factual matrix of the case as the Assessment Year is subsequent to 1st April 2001. It is also noteworthy that the bar contained in Section 35(2AB)(2) does not apply to the fact situation of the case as the same provides that no deduction shall be allowed in respect of expenditure mentioned in clause(1) under any

provisions of the Act. As stated supra, the deduction under Section 10B of the Act is on the income and not on the expenditure. The Supreme Court in '**CIT VS. WALFORT SHARE AND STOCK BROKERS (P). LTD**', **(2010) 326 ITR 1** has held that mandate of Section 14A is clear and the same is aimed to curb the practice to claim deduction of expenses incurred in relation to exempt income against taxable income and at the same time, avail of the tax incentive by way of exemption of exempt income without making apportionment of expenses incurred in relation to exempt income. In the instant case, no exempt income has accrued to the assessee, therefore, the provisions of Section 14A of the Act are not attracted.

In view of preceding analysis, the substantial question of law framed in this appeal are answered in favour of the assessee and against the revenue. In the result, the impugned order dated 30.04.2014 passed by the tribunal insofar as it pertains to the finding that the

assessee is not entitled to claim deduction under Section 35(2AB) of the Act to the extent expenses eligible for deduction under the said provision in relation to units entitled to deduction under Section 10B of the Act is hereby quashed. In the result, the appeal is disposed of.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

RV/SS