

Brought forward losses are to be reduced from profits of current year before allowing sec. 10A deduction

Summary – The Delhi ITAT in a recent case of Tecnovate eSolution (P.) Ltd., (the Assessee) held that Brought forward loss of eligible business for preceding year should be reduced from profits of business for current year before allowing deduction under section 10A

Facts

- The assessee-company was an undertaking for manufacturing and exporting articles like computer softwares etc. The assessee claimed deduction under section 10A at the rate of 90 per cent of the profits of business.
- The Assessing Officer observed that while computing the profits of the business, the assessee did not reduce the amount of brought forward business loss which ought to have been reduced.
- The Commissioner (Appeals) upheld the assessment order.
- On appeal:

Held

- It is relevant to mention that the assessee is having only eligible unit and there is no income from any non-eligible unit either in this year or in the earlier year. The assessee candidly admitted that the brought forward loss arose out of the eligible business in the immediately preceding assessment year. The short controversy is as to whether brought forward loss of the eligible business for the preceding year should be reduced from the profits of the business for the current year before allowing deduction under section 10A as has been held by the authorities below or be ignored as argued by the assessee.
- When sub-section (1) is considered in juxtaposition to sub-section (4) of section 10A, as applicable from the assessment year 2001-02, it becomes patent that the hitherto 'exemption' provision contained in section 10A has been converted into a 'deduction' provision. There is hardly any need to emphasize the difference between a deduction provision and an exemption provision. In respect of a provision providing exemption from an eligible business, the income does not enter into the computation of total income at all. On the other hand, the eligible income under a deduction provision, first falls for inclusion in the gross total income but thereafter a deduction is allowed to the extent provided in the provision. What is true in respect of positive income is also true in respect of negative income, *i.e.*, loss. In other words, loss from an eligible unit qualifying for exemption, does not enter into computation of total income. Such a loss is ignored at the very outset and is not taken into consideration while computing the total income similar to what is done with the exempt income. However, in the case of a deduction provision, loss of an eligible unit is computed and then after permissible set off is carried forward to the subsequent years as per the relevant provisions of

the Act. The crux of the matter is that in the case of an exemption provision, neither there arises any income attracting tax nor there results any loss eligible for set off or carry forward. On the other hand, in the case of deduction provision, there arises income otherwise chargeable to tax but subject to deduction and loss results which is available for set off and carry forward.

- When turned to section 10A for the assessment year 2001-02 onwards, it can be seen that it has been made a deduction provision. Under such circumstances, income from the eligible unit is firstly includible in the total income, subject to deduction; and loss, if any, is eligible for set off and carry forward. In the present circumstances, the Court is confronted with a situation in which the assessee suffered loss from the eligible unit for the assessment year 2002-03, when section 10A is a deduction provision as is the case for the assessment year 2003-04 under consideration. Not only the assessee suffered a loss of Rs. 72.70 lakhs in such preceding year from the eligible unit, it claimed and the revenue allowed its carry forward to the subsequent year(s) as per law. Now, when there has arisen positive income for the year under consideration, such brought forward loss from the eligible unit suffered during the immediately preceding year is required to be reduced from the amount of eligible profits for the current year before granting deduction under section 10A. The assessee cannot be allowed to eat the cake and have it too, by claiming on one hand that there is a business loss from the eligible unit for the preceding year which should be allowed to be carried forward and, at the same time, claim that such brought forward business loss should not be set off against the income of the eligible unit for the succeeding year while allowing deduction under section 10A. If the assessee's contention is accepted, it would make section 10A a deduction provision for the assessment year 2002-03 and an exemption provision for the assessment year 2002-04, which is manifestly impermissible because section 10A has been statutorily made a deduction provision from the assessment year 2001-02. As the assessee rightly claimed the carry forward of loss from the eligible unit for the immediately preceding year, such loss is required to be set off against the income for the current year before allowing deduction under section 10A.