REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8498 OF 2013

C.I.T. & ANR. APPELLANT(s)

VERSUS

M/S YOKOGAWA INDIA LTD. RESPONDENT(s)

WITH

CIVIL APPEAL Nos. 8496/2013, 8497/2013, 8502/2013, 8508/2013, 8511/2013, 8512/2013, 8514/2013, 8516/2013, 8517/2013, 8520/2013, 8925/2013, 8926/2013, 8928/2013, 8788/2012, 8790/2012, 8534/2013, 8563/2013, 8564/2013, 8923/2013, 8924/2013, 8930/2013, 8931/2013, 8232/2015, 9253/2015, CIVIL APPEAL No.12253/2016 (arising out of S.L.P.(C) No. 36441/2013), CIVIL APPEAL No.12252/2016 (arising out of S.L.P.(C) No. 36442/2013), CIVIL APPEAL No.12205/2016 (arising out of S.L.P.(C) No. 977/2014), CIVIL APPEAL No.12207/2016 (arising out of S.L.P.(C) No. 2328/2014), CIVIL APPEAL No.12250/2016 (arising out of S.L.P.(C) No. 10261/2014), CIVIL APPEAL No.12254/2016 (arising out of S.L.P.(C) No. 8391/2015), CIVIL

APPEAL No.12206/2016 (arising out of S.L.P.(C) No. 13840/2015), CIVIL APPEAL No.12251/2016 (arising out of S.L.P.(C) No. 18157/2015), CIVIL APPEAL No.12208/2016 (arising out of S.L.P.(C) No. 26484/2015), CIVIL APPEAL No.12203/2016 (arising out of S.L.P.(C) No. 1652/2013), CIVIL APPEAL No.12204/2016 (arising out of S.L.P.(C) No. 13861/2016) and CIVIL APPEAL No.12255/2016 (arising out of S.L.P. (C) No. 33728/2016).

J U D G M E N T

RANJAN GOGOI, J.

Leave granted in all the special leave petitions.

2. The true and correct meaning and effect of the provisions of Section 10A of the Income Tax Act, 1961 (hereinafter referred to as "the Act") is the principal issue arising for determination of the Court. At the outset, it must be made clear that the decision of this Court with regard to the provisions of Section 10A of the Act would equally be applicable to cases governed by the provisions of Section 10B

in view of the said later provision being *pari materia* with Section 10A of the Act though governing a different situation.

3. The broad question indicated above may be conveniently dissected into the following specific questions arising in the cases under consideration.

(i) Whether Section 10A of the Act is beyond the purview of the computation mechanism of total income as defined under the Act. Consequently, is the income of a Section 10A unit required to be excluded before arriving at the gross total income of the assessee?

(ii) Whether the phrase "total income" in Section 10A of the Act is akin and *pari materia* with the said expression as appearing in Section 2(45) of the Act?

(iii) Whether even after the amendment made with effect from 1.04.2001, Section 10A of the Act continues to remain an exemption section and not a deduction section?

(iv) Whether losses of other 10A Units or non 10A Units can be set off against the profits of 10A Units before deductions under Section 10A are effected?

(v) Whether brought forward business losses and unabsorbed depreciation of 10A Units or non 10A Units can be set off against the profits of another 10A Units of the assessee.

4. At the very outset, Section 10A of the Act as it existed prior to its amendment by the Finance Act of 2000 with effect from 1.04.2001; subsequent to the aforesaid amendment and the provisions of Section 10A of the Act, as further amended by the Finance Act, 2003 with retrospective effect from 1.04.2001 may be conveniently set out below.

5. Section 10A of the Act, as it stood prior to the amendment made by the Finance Act, 2000, (amendment effective from 1.4.2001) was as follows:

> "10A. (1) Subject to the provisions of this section, any profits and gains derived by an assessee from an industrial undertaking to which this

section applies shall not be included in the total income of the assessee.

(2) This section applies to any industrial undertaking which fulfils all the following conditions, namely:—

(i) …

(*ia*) in relation to an undertaking which begins to manufacture or produce any article or thing on or after the 1st day of April, 1995, its exports of such articles or things are not less than seventy-five per cent of the total sales thereof during the previous year;

(ii) …

Provided …

(iii) …

(3) The profits and gains referred to in sub-section (1) shall not be included in the total income of the assessee in respect of any *ten* consecutive assessment years, beginning with the assessment year relevant to the previous year in which the industrial undertaking begins to manufacture or produce articles or things.

(4) Notwithstanding anything contained in any other provision of this Act, in computing the total income of the assessee of the previous year relevant to the assessment year immediately succeeding the last of the relevant assessment years, or of any previous year, relevant to any subsequent assessment year,—

(i) section 32, section 32A, section 33, section 35 and clause (*ix*) of sub-section (1) of section 36 shall apply as if every

allowance or deduction referred to therein and relating to or allowable for any of the relevant assessment years, in relation to any building, machinery, plant or furniture used for the purposes of the business of the industrial undertaking in the previous year relevant to such assessment year or any expenditure incurred for the purposes of such business in such previous year had been given full effect to for that assessment year itself and accordingly sub-section (2) of section 32, clause (*ii*) of sub-section (3) of section 32A, clause (*ii*) of sub-section (2) of section 33, sub-section (4) of section 35 or the second proviso to clause (*ix*) of sub-section (1) of section 36, as the case may be, shall not apply in relation to any such allowance or deduction;

(ii) no loss referred to in sub-section (1) of section 72 or sub-section (1) or sub-section (3) of section 74 and no deficiency referred to in sub-section (3) of section 80J, in so far as such loss or deficiency relates to the business of the industrial undertaking, shall be carried forward or set off where such loss, or, as the case may be, deficiency relates to any of the relevant assessment years;

(iii) no deduction shall be allowed under section 80HH or section 80HHA or section 80-I or section 80-IA *or section 80-IB* or section 80J in relation to the profits and gains of the industrial undertaking; and

(iv) in computing the depreciation allowance under section 32, the written down value of any asset used for the purposes of the business of the industrial undertaking shall be computed as if the assessee had claimed and been actually allowed the deduction in respect of depreciation for each of the relevant assessment years.

(5) …

(6) The provisions of sub-section (8) and sub-section (9) of section 80-I shall, so far as may be, apply in relation to the industrial undertaking referred to in this section as they apply for the purposes of the industrial undertaking referred to in section 80-I.

(7) …

(8) …

6. Section 10A was substituted by the Finance Act, 2000 with effect from 1.4.2001 in the following terms:

"10A. (1) Subject to the provisions of this section, 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 beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce such articles or things or computer software, as the case may be, shall be allowed from the total income of the assessee:

Provided that where in computing the total income of the undertaking for any assessment

year, its profits and gains had not been included by application of the provisions of this section as it stood immediately before its substitution by the Finance Act, 2000, the undertaking shall be entitled to deduction referred to in this sub-section only for the unexpired period of the aforesaid ten consecutive assessment years:

Provided further that where an undertaking initially located in any free trade zone or export processing zone is subsequently located in a special economic zone by reason of conversion of such free trade zone or export processing zone into a special economic zone, the period of ten consecutive assessment years referred to in this sub-section shall be reckoned from the assessment year relevant to the previous year in which the undertaking was first set up in such free trade zone or export processing zone:

Provided also that the profits and gains derived from such domestic sales of articles or things or computer software as do not exceed twenty-five per cent of total sales shall be deemed to be the profits and gains derived from the export of articles or things or computer software.

Provided also that no deduction under this section shall be allowed to any undertaking for the assessment year beginning on the 1st day of April, 2010 and subsequent years.

(2) This section applies to any undertaking which fulfils all the following conditions, namely :—

(*i*) …

(*a*) …

(*b*) …

(*c*) …

(*ii*) …

(3) …

(4) For the purposes of sub-section (1), the profits derived from export of articles or things or computer software shall be the amount which bears to the profits of the business, 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 assessee.

(5) …

(6) Notwithstanding anything contained in any other provision of this Act, in computing the total income of the assessee of the previous year relevant to the assessment year immediately succeeding the last of the relevant assessment years, or of any previous year, relevant to any subsequent assessment year,—

(i) Section 32, section 32A, section 33, section 35 and clause (*ix*) of sub-section (1) of section 36 shall apply as if every allowance or deduction referred to therein and relating to or allowable for any of the relevant assessment years, in relation to any building, machinery, plant or furniture used for the purposes of the business of the undertaking in the previous year relevant to such assessment year or any expenditure incurred for the purposes of such business in such previous year had been

given full effect to for that assessment year itself and accordingly sub-section (2) of section 32, clause (*ii*) of sub-section (3) of section 32A, clause (*ii*) of sub-section (2) of section 33, sub-section (4) of section 35 or the second proviso to clause (*ix*) of sub-section (1) of section 36, as the case may be, shall not apply in relation to any such allowance or deduction;

(*ii*) no loss referred to in sub-section (1) of section 72 or sub-section (1) or sub-section (3) of section 74 in so far as such loss relates to the business of the undertaking, shall be carried forward or set off where such loss relates to any of the relevant assessment years;

(*iii*) no deduction shall be allowed under section 80HH or section 80HHA or section 80-I or section 80-IA or section 80-IB in relation to the profits and gains of the undertaking; and

(*iv*) in computing the depreciation allowance under section 32, the written down value of any asset used for the purposes of the business of the undertaking shall be computed as if the assessee had claimed and been actually allowed the deduction in respect of depreciation for each of the relevant assessment year.

(7) The provisions of sub-section (8) and sub-section (10) of section 80-IA shall, so far as may be, apply in relation to the undertaking referred to in this section as they apply for the purposes of the undertaking referred to in section 80-IA."

7. Section 10A was further amended by the Finance Act of 2003 with retrospective effect from 1.04.2001. For the purposes of the present case, the amendments introducing Section (1A); making the provisions of sub-section (4) subject to the provisions of Sections (1) and (1A) and making the benefit of the provisions of Sections 32, 32A, 33, 35 and clause (ix) of Section 36(1) and also Sections 72(1) and 74(1) and (3) operative from the assessment year 2001-2002 alone would be significant.

8. The cardinal principles of interpretation of taxing statutes centers around the opinion of Rowlatt, J. in Cape Brandy Syndicate vs. Inland Revenue Commissioner[1] which has virtually become the *locus classicus*[2]. The above would dispense with the necessity of any further elaboration of the subject notwithstanding the numerous precedents available

1 (1921) 1 KB 64

2 A classical passage : a standard passage Important for the elucidation of a word or subject [See : Webster's Third New International Dictionary Vol. II Pg. 1329]

inasmuch as the evolution of all such principles are within the four corners of the following opinion of Rowlatt, J.

> "…in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

9. The amendment of Section 10A of the Act, by the Finance Act, 2000 with effect from 1.4.2001, specifically uses the words 'deduction of profits and gains derived by an eligible unit …… from the total income of the assessee'. There are other provisions of Section 10A, as amended, which could be suggestive of the fact that by the amendment made by Finance Act, 2000, Section 10A had changed its colour from being an exemption section to a provision providing for deduction. Yet, Section 10A continued to remain in Chapter III of the Act which Chapter deals with incomes which do not form part of the total income. There are several Circulars that have been placed before us by the contesting parties to explain the purpose and object of the amendment. Having looked at the

aforesaid Circulars, issued from time to time, what we find is a fair amount of ambiguity therein as to the true nature and effect of the amendment. Specifically, we may refer to Circular No. 7 dated 16.07.2013 as well as Circular No. 01/2013 dated 17.01.2013 which appear to be conflicting and contradictory to each other; in the former Circular the provision, i.e., Section 10A is referred to as providing for deductions whereas the later Circular uses the expression "exemption" while referring to the provisions of Sections 10A and 10B of the Act. Even the Income Tax Return Forms i.e. Form No. 1 dated 17.08.2001 and Form No. 6 for the assessment year 2012-13 are equally contradictory. The appellant Revenue would, however contend that, *ex facie,* from the language appearing in Section 10A it is crystal clear that the aforesaid provision of the Act, as amended by Finance Act, 2000 provides for deductions from the gross total income, notwithstanding the use of the words 'total income' in Section 10A. Exemptions provided for under the old Section 10A have been discontinued by the Legislature. According to the Revenue, where the purport and effect of the

statute is clear from the language used there is no scope to turn to Chapter notes or the marginal notes so as to understand Section 10A to be an exemption section on the basis that the said provision is still included in Chapter III of the Act. Reliance in this regard has been placed on the decision of this Court in ***Tata Power Co. Ltd***. vs. ***Reliance Energy Ltd***.[3] wherein at page 687, it is held that:

> "89. Chapter headings and the marginal notes are parts of the statute. They have also been enacted by Parliament. There cannot, thus, be any doubt that it can be used in aid of the construction. It is, however, well settled that if the wordings of the statutory provision are clear and unambiguous, construction of the statute with the aid of "chapter heading" and "marginal note" may not arise. It may be that heading and marginal note, however, are of a very limited use in interpretation because of its necessarily brief and inaccurate nature. They are, however, not irrelevant. They certainly cannot be taken into consideration if they differ from the material they describe."

10. The Revenue further contends that by virtue of the amendment made by Finance Act, 2000, deductions under Section 10A are required to be made and allowed at the stage of computation of total income under Chapter VI of the Act

3 (2009) 16 SCC 659

notwithstanding the absence of any specific provision in Chapter VI to the said effect. In fact, the Revenue contends that in view of the clear language of Section 10A, as brought about by the amendment, a parallel or consequential amendment in Chapter VI of the Act was wholly unnecessary.

11. On the other hand, on behalf of the assessees, it is contended that though there may be some features of deduction brought in by the amendment to Section 10A, as for example, disallowance of profits in regard to domestic sales, the legislative intent in retaining Section 10A in Chapter III of the Act would clearly demonstrate the true nature of the said provision of the Act even after amendment thereof by the Finance Act of 2000. Deductions from the total income which is nowhere envisaged under the Act and the reference to the total income of the undertaking, referred to in several sub-sections of Section 10A, would indicate that the total income referred to in Section 2(45) has no application to the computation under Section 10A and the reference therein is

only to the total income of the eligible unit/undertaking. The provisions of Section 10A(6), as amended by Finance Act of 2003 retrospectively with effect from 1.4.2001, has also been stressed upon to contend that with effect from the assessment year 2001-02 losses and unabsorbed depreciation of eligible units would be allowable for set off immediately on the expiry of the period of tax holiday i.e. 10 years. The provisions of Sections 32, 32A, 33, 35 and part of 36 do not separately apply to an eligible unit during the period of tax holiday. During the said period the deduction under the aforesaid sections of the Act are deemed to have been made. Similarly, under Section 10A(6)(ii) losses referred to in Section 72(1) or 74(1) and 74(3) are also eligible to be carried forward to the assessment year following the end of the holiday period commencing from the assessment year 2001-02. All these, according to the learned counsels for the assessees, suggest that, though heterogeneous elements exist in Section 10A, the provision is really an exemption provision. Alternatively, according to the learned counsels, even if Section 10A is

understood to be providing for deductions, the stage of such deductions would be immediately after computation of profits and gains of business and before the aggregate of incomes under different heads of other loss making eligible units or non-eligible units of the assessee are taken into account. In other words, it is immediately after the computation of profits and gains of business of the undertaking that the deduction under Section 10A is required to be made. There is no question of such deductions being computed at the stage of application of provisions of Chapter VI of the Act.

12. We have considered the submissions advanced and the provisions of Section 10A as it stood prior to the amendment made by Finance Act, 2000 with effect from 1.4.2001; the amended Section 10A thereafter and also the amendment made by Finance Act, 2003 with retrospective effect from 1.4.2001.

13. The retention of Section 10A in Chapter III of the Act after the amendment made by the Finance Act, 2000 would be

merely suggestive and not determinative of what is provided by the Section as amended, in contrast to what was provided by the un-amended Section. The true and correct purport and effect of the amended Section will have to be construed from the language used and not merely from the fact that it has been retained in Chapter III. The introduction of the word 'deduction' in Section 10A by the amendment, in the absence of any contrary material, and in view of the scope of the deductions contemplated by Section 10A as already discussed, it has to be understood that the Section embodies a clear enunciation of the legislative decision to alter its nature from one providing for exemption to one providing for deductions.

14. The difference between the two expressions 'exemption' and 'deduction', though broadly may appear to be the same i.e. immunity from taxation, the practical effect of it in the light of the specific provisions contained in different parts of the Act would be wholly different. The above implications cannot be more obvious than from the case of Civil Appeal

Nos. 8563/2013, 8564/2013 and civil appeal arising out of SLP(C) No. 18157/2015, which have been filed by loss making eligible units and/or by non-eligible assessees seeking the benefit of adjustment of losses against profits made by eligible units.

15. Sub-section 4 of Section 10A which provides for pro rata exemption, necessarily involving deduction of the profits arising out of domestic sales, is one instance of deduction provided by the amendment. Profits of an eligible unit pertaining to domestic sales would have to enter into the computation under the head "profits and gains from business" in Chapter IV and denied the benefit of deduction. The provisions of Sub-section 6 of Section 10A, as amended by the Finance Act of 2003, granting the benefit of adjustment of losses and unabsorbed depreciation etc. commencing from the year 2001-02 on completion of the period of tax holiday also virtually works as a deduction which has to be worked out at a future point of time, namely, after the expiry of period of tax

holiday. The absence of any reference to deduction under Section 10A in Chapter VI of the Act can be understand by acknowledging that any such reference or mention would have been a repetition of what has already been provided in Section 10A. The provisions of Sections 80HHC and 80HHE of the Act providing for somewhat similar deductions would be wholly irrelevant and redundant if deductions under Section 10A were to be made at the stage of operation of Chapter VI of the Act. The retention of the said provisions of the Act i.e. Section 80HHC and 80HHE, despite the amendment of Section 10A, in our view, indicates that some additional benefits to eligible Section 10A units, not contemplated by Sections 80HHC and 80HHE, was intended by the legislature. Such a benefit can only be understood by a legislative mandate to understand that the stages for working out the deductions under Section 10A and 80HHC and 80HHE are substantially different. This is the next aspect of the case which we would now like to turn to.

16. From a reading of the relevant provisions of Section 10A it is more than clear to us that the deductions contemplated therein is qua the eligible undertaking of an assessee standing on its own and without reference to the other eligible or non-eligible units or undertakings of the assessee. The benefit of deduction is given by the Act to the individual undertaking and resultantly flows to the assessee. This is also more than clear from the contemporaneous Circular No. 794 dated 9.8.2000 which states in paragraph 15.6 that,

> "The export turnover and the total turnover for the purposes of sections 10A and 10B shall be of the undertaking located in specified zones or 100% Export Oriented Undertakings, as the case may be, and this shall not have any material relationship with the other business of the assessee outside these zones or units for the purposes of this provision."

17. If the specific provisions of the Act provide [first proviso to Sections 10A(1); 10A (1A) and 10A (4)] that the unit that is contemplated for grant of benefit of deduction is the eligible undertaking and that is also how the contemporaneous Circular of the department (No.794 dated 09.08.2000)

understood the situation, it is only logical and natural that the stage of deduction of the profits and gains of the business of an eligible undertaking has to be made independently and, therefore, immediately after the stage of determination of its profits and gains. At that stage the aggregate of the incomes under other heads and the provisions for set off and carry forward contained in Sections 70, 72 and 74 of the Act would be premature for application. The deductions under Section 10A therefore would be prior to the commencement of the exercise to be undertaken under Chapter VI of the Act for arriving at the total income of the assessee from the gross total income. The somewhat discordant use of the expression "total income of the assessee" in Section 10A has already been dealt with earlier and in the overall scenario unfolded by the provisions of Section 10A the aforesaid discord can be reconciled by understanding the expression "total income of the assessee" in Section 10A as 'total income of the undertaking'.

18. For the aforesaid reasons we answer the appeals and the questions arising therein, as formulated at the outset of this order, by holding that though Section 10A, as amended, is a provision for deduction, the stage of deduction would be while computing the gross total income of the eligible undertaking under Chapter IV of the Act and not at the stage of computation of the total income under Chapter VI. All the appeals shall stand disposed of accordingly.

……,J.
(**RANJAN GOGOI**)

……,J.
(**PRAFULLA C. PANT**)

NEW DELHI
DECEMBER 16, 2016.