$~34 & 36

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 928/2007

C.I.T ..... Appellant

Through: Mr.Rohit Madan, Adv.

versus

HONEYWELL INTERNATIONAL(INDIA) PVT LTD ..... Respondent

Through: Mr.Deepak Chopra, Mr.Harpreet Ajmani, Ms.Ananya Kapoor, Ms.Rashi Khanna, Mr.Rohan Khare and Ms.Akanksha Choudhary, Advs.

\+ ITA 212/2015

COMMISSIONER OF INCOME TAX-V ..... Appellant

Through: Mr.N.P.Sahni, Sr.Standing Counsel and Mr.Nitin Gulati, Jr.Standing Counsel

versus

QUALCOMM INDIA PVT.LTD. ..... Respondent

Through: Mr.Deepak Chopra, Mr.Harpreet Ajmani, Ms.Ananya Kapoor, Ms.Rashi Khanna, Mr.Rohan Khare and Ms.Akanksha Choudhary, Advs.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.K.GAUBA

O R D E R

% 20.05.2015

ITA 928/2007

1. The question of law framed in this case is as follows:

"*Whether ITAT was correct in law in confirming the order passed by the CIT(A) and thereby allowing the set off of losses of ₹2,46,93,358/- of the*

amorphous division of the assessee against the profit of the other Units?

2. Brief facts are that the assessee claimed set off of ₹2,46,93,358/- relatable to its unit entitled to exemption under Section 10A of the Income Tax Act, against the profits of the other units for the relevant year i.e. Assessment Year (AY) 2003-04.

3. This Court notices that the previous judgements of two Division Benches in *CIT vs. Tei Tecnologies Pvt. Ltd.* (2014) 361 ITR 36 and *CIT vs. Kei Industries Ltd.* (ITA No. 386/2013) decided on 13.03.2015 have accepted the revenue's decision that such set off is impermissible.

4. Leraned counsel for the assessee relied upon a circular No.7/(DV)/2013 dated 16.07.2013 issued by the CBDT. The said circular, *inter alia*, after noting the previous legislative history of Section 10A/10B and the definition of 'total income' (Section 2(45) of the Income Tax Act) stated as follows:-

> *"5.1 All income for the purposes of computation of total income is to be classified under the following heads of income and computed in accordance with the provisions of Chapter IV of the Act-*
>
> *Salaries*
> *Income from house property*
> *Profits and gains of business and profession*
> *Capital gains*
> *Income from other sources*
>
> *5.2 The income computed under various heads of income in accordance with the provisions of Chapter IV of the Income-tax Act shall be aggregated in accordance with the provision of Chapter VI of the Income-tax Act, 1961. This means that first the income/loss from various sources, i.e. eligible and ineligible units, under the same head are aggregated in accordance with the provisions of section 70 of the Act. Thereafter, the income*

from one head is aggregated with the income or loss of the other head in accordance with the provisions of section 71 of the Act. If after giving effect to the provisions of sections 70 and 71 of the Act there is any income (where there is no brought forward loss to be set off in accordance with the provisions of section 72 of the Act) and the same is eligible for deduction in accordance with the provisions of Chapter VI-A or section 10A, 10B etc. of the Act, the same shall be allowed in computing the total income of the assessee.

5.3 If after aggregation of income in accordance with the provisions of section 70 and 71 of the Act, the resultant amount is a loss (pertaining to the assessment year 2001-02 and any subsequent year) from eligible unit it shall be eligible for carry forward and set off in accordance with the provisions of section 72 of the Act. Similarly, if there is a loss from an ineligible unit, it shall be carried forward and may be set off against the profits of eligible unit or ineligible unit as the case may be, in accordance with the provisions of section 72 of the Act.

6. The provisions of Chapter IV and Chapter VI shall also apply in computing the income for the purpose of deduction under section 10AA and 10BA of the Act subject to the conditions specified in the said sections."

5. The decision in *Kei Industries* (supra) noted the divergence of judicial opinion – one favouring the Revenue taken by the Karnataka and Delhi High Court (in *Tei Technologies* (supra)) and the other, favouring the assessee, taken by Bombay High Court and the Gujrat High Court. The Court after analyzing all these decisions was of the opinion that previous ruling in *Tei Technologies* (supra) that set off is impermissible was justified. In these circumstances, the reliance placed by the assessee, upon the aforesaid circular is unpersuasive. The question of law framed is answered in favour of the Revenue and against the assessee in the above terms.

ITA 212/2015

1. The question of law framed in this case is as follows:

"Did the ITAT fall into error in allowing the set off of the loss claimed by the Bangalore Unit from the profit of the Mumbai Unit, overlooking that the loss making unit claimed benefit under Section 10A whereas the Mumbai Unit was not an eligible unit."

2. The above question is answered by this Court in its judgment in *CIT vs. Kei Industries Ltd.* (ITA No. 386/2013) decided on 13.03.2015.

3. Following the decision, the question is answered in favour of the Revenue and against the assessee.

4. The appeal is allowed in the above terms.

S. RAVINDRA BHAT, J

R.K.GAUBA, J

MAY 20, 2015
mr