



DEL HC: Section 10b Export Profit Computation Doesn't Restrict Inter-Unit Loss Set-Off

Facts of the Case:

Aricent Technologies Holding Ltd (formerly Flextronics Software System Ltd) operated 10 software export units, 6 of which were export-oriented units eligible for deduction u/s 10B of the Income-tax Act, 1961. For AY 2005-06, its Gurgaon unit (Unit V) incurred a business loss of Rs. 1,34,24,747, and the assessee sought to set off this loss against profits of its other (non-10B) undertakings. The Assessing Officer denied the set-off, holding that section 10B income doesn't enter gross total income and must be excluded at source so do not travel to section 72, and hence losses of an eligible unit cannot be set off. The CIT(A) allowed the assessee's appeal, treating section 10B as a deduction (not exemption) provision, relying on *Hindustan Unilever v. DCIT* (325 ITR 102). The Tribunal reversed this, following the Delhi High Court's *KEI Industries* ruling (373 ITR 574), and disallowed the set-off.

Observations and Ruling of the High Court:

The Delhi High Court held that *KEI Industries* was decided under the pre-2000 exemption regime, whereas section 10B (post-2000) is a deduction provision, aligning with section 10A as interpreted in Karnataka High Court ruling in *Yokogawa India Ltd.* (341 ITR 385), affirmed by the Supreme Court in 391 ITR 274. Deduction u/s 10B must be computed at the gross total income stage of the eligible unit alone, without affecting the applicability of sections 70, 71 and 72 for set-off/carry-forward of losses. CBDT Circular No. 7/DV/2013 (para 5.3) reinforced this position. The Court set aside the Tribunal's order and restored the CIT(A)'s decision, ruling in favour of the assessee.

Citation:

Aricent Technologies Holding Ltd [TS-1253-HC-2026(DEL)]

Our Comments:

The High Court has time and again observed that section new 10B is a deduction provision, not an exemption. It is once again upheld that losses of an eligible 10B unit remain eligible for intra-head / inter-head set-off and carry-forward u/ss 70–72.