Supreme Court decision in the case of Wipro Ltd.

*By Ashutosh Mahajan**

In a recent decision dated 11-7-2022, in the case of Principal Commissioner of Income-tax v. M/s Wipro Ltd. (Civil Appeal No. 1449 of 2022), Hon'ble Supreme Court of India (SC) has decided on a number of questions related to section 10B and section 139(5) of the Income-tax Act (Act) as raised before it, details of which are discussed below:

Brief facts of the case

Assessee, an Export Oriented Unit (EOU) engaged in running a call centre and IT enabled & remote processing services, filed its return of income for the Assessment Year (AY) 2001-02 on 31-10-2001, declaring a loss. Assessee also stated by way of a note to return that since it is a 100% EOU entitled to deduction u/s 10B & therefore, no loss is being carried forward. Thereafter, the assessee filed a declaration on 24-10-2002 [i.e. much after the due date of filing of return of income and thus, not complying with the conditions laid down in section 10B(8)] that it does not want to avail deduction u/s 10B for the AY 2001-02. Assessee then filed a revised return u/s 139(5) on 23-12-2022 claiming carry forward of the losses.

Questions before Hon'ble Supreme Court & the decision

Some of the key questions raised and pronouncements made by SC are briefly given below:

Q.1: While the requirement of submission of declaration u/s 10B(8) is mandatory in nature, whether the time limit within which declaration u/s 10B(8) is to be filed is mandatory or directory?

Held that there is no ambiguity in the wording of section 10B(8), and there is absolute clarity that twin conditions of a) furnishing the declaration to the Assessing Officer (AO) in writing, and b) furnishing such declaration before the due date of filing return of income u/s 139)(1) are required to be fulfilled and therefore, both are mandatory conditions.

Q.2: Whether section 10B is an exemption provision or a deduction provisions?

Held that section 10B is an exemption provision and therefore, has to be strictly and literally complied with.

Q3.: Can the substantive statutory right of the assessee to opt out of section 10B be nullified by the procedural requirement regarding the timing of filing such declaration?

Held that the exemption provisions are to be strictly and literally complied with and the same cannot be construed as procedural requirement.

Q4.: Whether a revised return u/s 139(5) can be filed to altogether make a new claim?

Held that a revised return can be filed in a case where there is an omission or a wrong statement. However, a revised return cannot be filed to withdraw the claim of section 10B and for subsequently claiming the carry forward or set off of loss. Revised return can only substitute the original return u/s 139(1) but cannot transform it into a return u/s 139(3). Further held on the facts of the case that, taking a contrary stand to the position taken in original return by filing a revised return or making a new/additional claim in revised return is not permissible.

<u>Conclusion</u>

1. Decision that both the conditions to section 10B(8) are mandatory seems to be the correct interpretation of law.

2. There are ample judicial precedents to hold that a revised return can be filed after discovery of omission or wrong statement in the original return and further that this omission or wrong statement in the original return must be due to a bona fide inadvertence or mistake on the part of the assessee. [F. C. Agarwal v. CIT (1976) 102 ITR 408 (Gauh.), Sunanda Ram Deka v. CIT, (1994) 210 ITR 988 (Gauh.)].

The word 'omission' denotes an omission bona fide. Equally, the words 'wrong statement' will not take in 'a statement known to be false to the person who made the statement'. However, the word 'discovered' coming in section 139(5) makes it clear that at the time of discovering only a person who has furnished return finds out that an inadvertent omission or an unintended wrong statement has crept in the return filed by him. If a person who filed return was aware of the falsity of statement and incorrectness of the particulars of income even at the time when he filed original return, there is no question of that person subsequently discovering existence of omission or creeping in of wrong statement in the return already filed by him. [CIT v. A Sreenivasa Pai (2000) 242 ITR 29 (Kerala)].

3. Can it be said that with the passing of this judgement, an assessee would not be able to now make additional claims in the revised return nor it would be able to take positions in the revised return contrary to what were taken in the original returns? Further, whether this decision overrides the earlier decision of Supreme Court in the case of Goetze (India) Ltd. v. CIT (2006) 284 ITR 323 (SC) (though not very direct or detailed) wherein it was held that the AO was right in disallowing claim of deduction by way of a letter addressed to AO on the ground that there was no provision in the Act allowing an amendment in the return without a revised return?

   In the context of the case being discussed, non-filing of declaration u/s 10B(8) before the due date of filing the return of income has been held to be a defect which cannot be cured by either filing it later or filing a revised return u/s 139(5), and further that facts of the case do not meet the test of 'bona fide omission or wrong statement discovered later' so as to allow revision of return in this case. In our view, we should not read this judgement as a verdict prohibiting all kinds of amendments through a revised return till the time the test of bona fide omission or wrong statement discovered later is satisfied.

   In any case, there are decisions wherein it has been held that an assessee has a right to make additional claims by way of additional grounds in the appellate proceedings. [National Thermal Power Co. Ltd. v. CIT., (1998) 229 ITR 383 (SC)].

4. This judgement unsettles the old position as held in CIT v. Yokogawa India Ltd., (2017) 2 SCC 1, that section 10A (for that matter section 10B as well), as substituted by Finance Act, 2000 (w.e.f. 1-4-2001) is a provision for deduction, the stage of deduction would be while computing the gross total income of the eligible undertaking under Chapter IV and not at the stage of computation of total income under Chapter VI.

   It is trite law that Supreme Court is not bound by its own decisions and may overrule its previous decisions [Sajjan Singh v. State of Rajasthan, AIR 1965 SC 845]. It may overrule them either by expressly saying so or impliedly by not following them in a subsequent case. [C. N. Rudramurthy v. K. Barkathulla Khan, (1998) 8 SCC 275)]. Even so, the normal rule that judgements pronounced by the Supreme Court would be final, should not be ignored and unless considerations of a substantial and compelling character make it necessary to do so, the Supreme Court would be slow to doubt the correctness of the previous decisions or to depart from them. [Sajjan Singh v. State of Rajasthan, AIR 1965 SC 845].

**Ashutosh Mahajan is the Managing Partner at TeamLogic LLP.*