$~15

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

% *Date of decision: 11.08.2026*
Date of uploading: 14.08.2026

\# **CNR No. DLHC010496882019**

\+ ITA 1015/2019 & CM APPL. 54663/2019

ARICENT TECHNOLOGIES HOLDING LTD (FORMERLY KNOWN AS FLEXTRONICS SOFTWARE SYSTEM LTD.
.....Appellant

Through: Mr. Ajay Vohra, Sr. Advocate with Mr. Neeraj Jain, Mr. Aniket D Agarwal & Mr. Abhishek Singhvi, Advocates.

versus

DCIT,CIRCLE-11(1), NEW DELHI .....Respondent

Through: Mr. Siddhartha Sinha, SSC with Ms. Easha Gurung, JSC.

CORAM:
HON'BLE MR. JUSTICE DINESH MEHTA
HON'BLE MR. JUSTICE RAJNEESH KUMAR GUPTA

J U D G M E N T

DINESH MEHTA, J. (***ORAL***)

1. Directed against the order dated 21.05.2019 of the Income Tax Appellate Tribunal, Delhi Bench: "I-1", New Delhi *(hereinafter referred to as 'Tribunal')* in ITA/42/Del/2013, the present appeal relates to Assessment Year 2005-06.

2. A short but important question of law involved in this case is, that the appellant-assessee has 10 units in business of export of software, out of which 6 units are export oriented units.

Signature Not Verified
Digitally Signed
By:NAVEEN KUMAR
Signing Date:14.08.2026
15:11:27

3. During the assessment year 2005-06, one of its unit (i.e. unit V at Gurgaon) incurred business loss amounting to Rs. 1,34,24,747/-. There is no dispute about the fact that said unit was eligible for benefits under Section 10B of the Income Tax Act, 1961 *(hereinafter referred to as 'the Act of 1961').*

4. The appellant-assessee while preparing its computation of income had claimed set off of such loss of Rs. 1.34 Crores against profits of other undertakings.

5. During the course of assessment proceedings, the Assessing Officer denied the set off of such loss against the income of other business undertakings. As per the Assessing Officer, the income eligible for deduction under Section 10B of the Act of 1961 would not enter into gross total income, as it is required to be deducted at the source level itself and losses of the eligible undertaking are required to be excluded at the source as per the provisions of Section 72 of the Act of 1961. And, hence will not be applicable to the losses of eligible undertaking. The AO further observed that there is no provision in the Act to allow set off or carry forward of the losses of the eligible undertaking.

6. Being aggrieved with such denial or action of the Assessing Officer, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals), who allowed the appeal *vide* order dated 31.10.2012, *inter alia*, holding that Section 10B of the Act of 1961 is not a provision of exemption, but a provision for deduction, while relying upon decision in the case of ***Hindustan Unilever Ltd. v. DCIT*** reported in **[2010] 325 ITR 102 (Bom).**

7. The aforesaid order of the CIT was assailed by the department by way

Signature Not Verified
Digitally Signed
By:NAVEEN KUMAR
Signing Date:14.08.2026
15:11:27

of an appeal before the Tribunal, which came to be partly allowed by the Tribunal vide impugned order dated 21.05.2019.

8. While allowing the appeal on the ground in question, the Tribunal dealt with the judgment of this Court in the case of ***Commissioner of Income Tax. v. KEI Industries Ltd.*** reported in **[2015] 373 ITR 574 (Delhi)** and ***Commissioner of Income Tax and Anr. v. Yokogawa India Ltd.*** **[2012] 341 ITR 385 (Karn.)** of the Karnataka High Court which was affirmed by Hon'ble the Supreme Court in **[2017] 391 ITR 274 (SC),** held as under:

> *"9. In light of above settled position, which is equally applicable to cases governed by the provisions of section 10B, in view of the later provisions being pari materia with section 10A, the deduction contemplated u/s 10B is qua the eligible undertaking and without reference to the other eligible or non-eligible units or undertakings of the assessee. It has further been held in the said decision that 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 and at that stage, the aggregation 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.*
>
> *10. Applying the legal proposition so laid down in the instant case, it is explicit that for the purposes of claiming deduction u/s. 10B, deduction has to be allowed on standalone basis in respect of income earned by the eligible unit alone. Similarly, where the eligible unit has incurred a loss, no deduction u/s 10B will be allowed and at the same time, there is no requirement to set off such business loss from the eligible unit against the business income from the eligible/non-eligible units and then offer the net income*

Signature Not Verified
Digitally Signed
By:NAVEEN KUMAR
Signing Date:14.08.2026
15:11:27

> *for taxation. Accordingly, the losses of the eligible undertaking amounting to Rs. 1,34,24,747/- cannot be set off against the income of other business undertakings for the year under consideration. In the result, the ground of appeal of the Revenue's appeal is allowed."*

9. Mr. Ajay Vohra, learned Senior Counsel for the appellant, took the Court through the scheme of Section 10B of the Act of 1961 and while pointing out that it provides for deduction and the judgment of ***KEI Industries*** (***supra***) of Delhi High Court deals with provision, as stood prior to 2000, which provided for exemption. He argued that this Court's observation in the case of ***KEI Industries*** **(*supra*),** that set off was impermissible, was in the context of the principle that Section 10B of the Act 1961 provided for an exemption, whereas such view of this Court has been reversed by Hon'ble the Supreme Court in the judgment rendered in the case of **Yokogawa India Ltd. (SC)** ***(supra)***.

10. He submitted that the Tribunal's impugned order which is premised on the reasoning of Delhi High Court's judgment in the case of **KEI Industries (*supra*)** is not correct in the eye of law and if the principles enunciated by Hon'ble the Supreme Court in the case of **Yokogawa India Ltd. (SC)** ***(supra)*** read with judgment of Karnataka High Court rendered in the case of **Yokogawa India Ltd (Karn) (*supra*)** are taken into consideration, it is clear that Hon'ble the Supreme Court has in express terms approved the view which was taken by the Karnataka High Court and the stand of the assessee.

11. Having invited Court's attention towards placitum 31, 32 of ***Yokogawa India Ltd*** **(Karn) (*supra*)**, learned Senior Counsel submitted that the

Signature Not Verified
Digitally Signed By:NAVEEN KUMAR
Signing Date:14.08.2026 15:11:27

Karnataka High Court had relied upon the judgment of Bombay High Court in the case of **Hindustan Unilever (*supra*)** and dealt with its para no. 29 which supported the view that the assessee had taken. It will not be out of place to reproduce the relevant part of the judgment of Karanataka High Court in the case of **Yokogawa India Ltd. (Karn) *(supra)***:

> *"31. After making all such computations, the assessee would be entitled to the benefit of set off or carry forward of loss as provided under section 72 of the Act. That is the benefit which is given to the assessee under the Act irrespective of the nature of business which he is carrying on. The said benefit is available even to undertakings under section 10B of the Act. The expression "deduction of such profits and gains as derived by an under-taking shall be allowed from the total income of the assessee", has to be understood in the context with which the said provision is inserted in Chapter III of the Act. Sub-section (4) of section 10A clarifies this position. It provides that the profits derived from export of articles or things from computer software shall be the amount which bears to the profits of the business of the undertaking, 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 undertaking. Therefore, it is clear that though the assessee may be having more than one undertaking for the purpose of section 10A it is the profit derived from export of articles or things or computer software from the business of the undertaking alone that has to be taken into consideration and such profit is not to be included in the total income of the assessee. It is only after the deduction of the said profits and gains, the income of the assessee has to be computed.*
>
> *32. The provisions of this sub-section will apply even*

> *in the case where an assessee has opted out of section 10A by exercising his option under sub-section (8). As discussed, it is permissible for an assessee to opt in and opt out of section 10A. In the year when the assessee has opted out, the normal provisions of the Act would apply. The profits derived by him from the STP undertaking would suffer tax in the normal course subject to various provisions of the Act including those of Chapter VI-A. If in such a year, the assessee has suffered losses, such losses would be subject to inter source and inter head set off. The balance, if any, thereafter can be carried forward for being set off against profits of the subsequent assessment years in the normal course. Unabsorbed depreciation also merits a similar treatment."*

12. It will not be out of place to reproduce the operative portion of the judgment of Hon'ble the Supreme Court which affirmed the aforesaid view of the Karnataka High Court. The relevant portion of **Yokogawa India Ltd. (SC)** ***(supra)*** reads as under:

> *"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."*

13. Learned Senior Counsel further submitted that apart from the aforesaid judgments, the CBDT itself had issued a Circular bearing no.7/DV/2013 dated 16.07.2013 to clarify the confusion in this regard.

Signature Not Verified
Digitally Signed
By:NAVEEN KUMAR
Signing Date:14.08.2026
15:11:27

14. He invited Court's attention towards Paragraph Nos. 5 & 5.2 of the aforesaid Circular and submitted that hardly anything remains to be argued by the Revenue, as the Circular is binding upon all authorities under the Act of 1961.

15. Mr. Siddharth Sinha, learned Senior Standing Counsel, on the other hand argued that the Tribunal has taken a correct view of the matter and correctly held that the assessee cannot claim set off of the loss of one unit against the profits or income of the other units.

16. He submitted that since the profits under Section 10B of the Act of 1961 do not conceive any set off, the benefit of the same cannot be given. He further submitted that the expression used under Section 10B of the Act of 1961 is "profit and gains" and since expression "loss" is not given, the assessee cannot claim set off of loss simply because one of its units has suffered or incurred loss.

17. Heard learned counsel for the parties and perused the relevant law.

18. Facts in the instant case are undisputed. The basic bone of contention between the appellant and the respondent, is as to whether the appellant was justified in claiming set off of amount of Rs. 1,34,24,747/- being loss of its Gurgaon unit (Unit No.V) against the profits or income of other eligible undertakings for the purpose of arriving at the profit and gains under Section 10B of the Act of 1961.

19. As per the provisions of Section 10B(1) of the Act of 1961, profit or gain of each eligible unit from export turnover is required to be separately calculated. Such calculation is necessary or required only for the purpose of calculating the quantum of deduction under Section 10B of the Act of 1961.

Signature Not Verified
Digitally Signed
By:NAVEEN KUMAR
Signing Date:14.08.2026
15:11:27

But calculation of export profits for the purpose of calculation of deduction under Section 10B of the Act of 1961 by itself does not change the treatment of profit or loss of each unit when the combined profit of the assessee is to be calculated. In other words, calculation of export profit under Section 10B of the Act of 1961 is confined to Section 10B alone and it does not have any bearing on Section 70/71 or 72 of the Act of 1961. Hence, there cannot be denial of set off of loss or carry forward of the loss of eligible undertaking.

20. Moving on to the judgment passed by Hon'ble the Supreme Court in the case of **Yokogawa India Ltd. (SC)** ***(supra).*** We find that Hon'ble the Supreme Court has affirmed the view of Karnataka High Court in the case of **Yokogawa India Ltd. (Karn)** ***(supra)***. A simple look at the reproduced part of Karnataka High Court in para no. 11 above shows that if in a year, the assessee has suffered losses, such losses would be subject to inter-source and inter-head set off. The balance, if any, thereafter can be carried forward for being set off against profit of the subsequent Assessment Years in a normal course.

21. Similar view has been echoed in para no. 5.3 of the Circular dated 16.07.2013 bearing No.7/DV/2013:

> *"5.3 If after aggregation of income in accordance with the provisions of sections 70 and 71of the Act, the resultant amount is a loss (pertaining to 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."*

22. In view of the aforesaid discussion, we are of the considered opinion

Signature Not Verified
Digitally Signed
By:NAVEEN KUMAR
Signing Date:14.08.2026
15:11:27

that the appeal filed by the assessee merits acceptance and the question reproduced *here-infra* framed by this Court deserves to be answered in affirmative and in favour of the assessee:

> *"Whether in the circumstances of the case, the Tribunal erred in law in not allowing the set-off for loss of a unit eligible for deduction under Section 10B of the Act against taxable profits of other non-eligible units considering that profits from other eligible units had not been brought to tax?"*

23. Ordered accordingly. The impugned order of the Tribunal dated 21.05.2019 and the assessment order dated 31.12.2008 are set aside. Consequence to follow.

24. The appeal stands allowed.

25. The pending application is also disposed of accordingly.

DINESH MEHTA
(JUDGE)

RAJNEESH KUMAR GUPTA
(JUDGE)

AUGUST 11, 2026/*nk*

Signature Not Verified
Digitally Signed
By:NAVEEN KUMAR
Signing Date:14.08.2026
15:11:27