In the High Court of Judicature at Madras

Dated : 10.8.2015

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

and

The Honourable Mr.Justice T.MATHIVANAN

Tax Case Appeal No.537 of 2015

The Commissioner of Income Tax,
Chennai ...Appellant/Appellant

Vs

M/s.Venture Lighting India Ltd.,
Chennai-45. ...Respondent/Respondent

APPEAL under Section 260A of the Income Tax Act against the order dated 10.3.2014 made in I.T.A.No.2166/Mds/2012 on the file of the Income Tax Appellate Tribunal, 'B' Bench, Chennai.Against the order of the commissioner of income tax appeals - III Chennai -34 dated 8/8/2011-12 /A.III for the Assessment year 2008-09 against the order of the Assistant commissioner of Inc ome tax company circle III (4) chennai-34 dated 9/12/2011 and made in GIRNo./PAN 469-V /AAACA 9284H for the Assessment Year 2007-08.

For Appellant : Mr.Swaminathan for Mr.T.Ravikumar
For Responden : Mr.S.Sridhar

Judgment was delivered by V.RAMASUBRAMANIAN,J

The Revenue has come up with the above appeal under Section 260A of the Income Tax Act, questioning the correctness of the order of the Income Tax Appellate Tribunal that directed the Assessing Officer to include the gain made by the assessee due to the fluctuation in the foreign exchange rate.

2. Heard Mr.Swaminathan, learned Standing Counsel for the Department. Mr.S.Sridhar, learned counsel takes notice for the respondent.

3. The respondent filed its return of income for the assessment

year 2008-2009 on 24.9.2008 returning on income of Rs.11,33,84,761/-. The case was selected for scrutiny and notice under Section 143(2) was issued.

4. The Assessing Officer, after following the procedure prescribed by law, passed an order on 9.12.2011, disallowing a portion that arose due to the difference in the exchange rate of foreign currency and which proved to be a gain for the assessee and which was included in the profits of business.

5. The assessee filed a statutory appeal and the same was allowed partly, in so far as the gain made out of the fluctuation in the rate of exchange is concerned. On another aspect namely the one relating to the expenditure incurred in travel, the appeal was dismissed.

6. As against that portion of the order of the Appellate Commissioner disallowing the claim in relation to Section 10A, the Revenue filed an appeal before the Tribunal. The Tribunal dismissed the appeal by an order dated 10.3.2014 following the decision of this Court in CIT Vs. Pentasoft Technologies Limited made in T.C.A.No.599 of 2010 dated 13.7.2010 [347 ITR 578]. Hence the present appeal.

7. As pointed out by the Appellate Commissioner and the Tribunal, Sub-Section (4) of Section 10A states that for the purpose of Sub-Sections (1) and (1A), the profits derived from export of articles or things or 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.

8. Though it is contended by Mr.Swaminathan, learned Standing Counsel for the Department that the profits should have been derived actually from the export of articles and that the gain made out of fluctuation of the foreign exchange rate cannot be taken to be a profit derived from the export, we do not think that the said interpretation can be accepted. The fact that the rate of foreign exchange keeps fluctuating is something that is always taken note of by importers as well as exporters while quoting a rate for any article for import or export. That it is so, it is well demonstrated after the advent of the contract of derivatives in India. Therefore, the view taken by a Bench of this Court in 347 ITR 578 is perfectly in order. In the said decision, this Court held that the fluctuation of the exchange value was not in the hands of the assessee and that

therefore, it is part of the profits derived.

9. Supplementing to the said reasoning, we would like to point out that the very rate quoted by every assessee, who imports or exports goods, in-builds within itself, the rate of fluctuation in the market and the trend reflected. Therefore, it would certainly be a profit derived from export within the meaning of Sub-Section (4) of Section 10-A.

10. Accordingly, the above appeal is dismissed. No costs.

-Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

To

1. The Income Tax Appellate Tribunal,
   B Bench,
   Chennai.
2. The Commissioner of
   Income Tax Appeals)iii
   Chennai-34
3. The Assistant Commissioner of
   Income Tax Company
   Circel III (4)
   Chennai -34

+1 cc Mr.S.Sridhar,Advocate(sr.41461)
+1 cc to Mr.M.Swaminathan,Advocate(sr.41281)

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Jsv(co)
cp 07/10/2015