IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA-432-2014 (O&M)
Date of decision:- 29.04.2015

The Commissioner of Income Tax, Gurgaon

...Appellant

Versus

M/s Sun Life India Service Pvt. Ltd.

...Respondent

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE G.S. SANDHAWALIA

Present: Mr. Tajender K. Joshi, Advocate,
for the appellant .

Mr. Salil Kapoor, Advocate,
for the respondent.

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S.J. VAZIFDAR, A.C.J. (ORAL)

This is an appeal against the order of the Income Tax Appellate Tribunal dismissing the appellant's appeal against the order of the CIT (Appeals). The matter pertains to the assessment year 2007-2008. According to the appellant, following are the substantial questions of law:-

> *"(i) Whether on the facts and in the circumstances of the case, learned ITAT has erred in law in directing to exclude from the total turnover the corporate subsidy received for reimbursement of expenses to compute total turnover and export turnover for the purpose of computation of deduction under Section 10A of the Act?*
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> *(ii) Whether on the facts and in the circumstances of the case, learned ITAT has erred in law in directing to exclude from the total turnover the amount of ₹ 38.08 lacs communication charges to compute turnover and export turnover for the purpose of computation of deduction under Section 10A of the Act?*
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> *(iii) Whether on the facts and in the circumstances of the case, the learned ITAT has erred in law in directing to exclude from*

> *the total turnover corporate subsidy and communication charges to compute total turnover and export turnover for the purpose of computation of deduction under Section 10A of the Act by relying upon the decision of Hon'ble Supreme Court in the case of CIT Vs Laxmi Machine Works, 290 ITR 667 as the issues involved in the referred case and instant case are of totally different nature?*
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> *(iv) Whether on the facts and in the circumstances of the case, the learned ITAT has erred in law in relying upon the decision of Hon'ble Supreme Court in the case of CIT Vs Laxmi Machine Works, 290 ITR 667 whereas the issue involved in the referred case has been amended under Section 145A (a) with effect from 01.04.1999?"*

2. In the facts and circumstances of the present case, the substantial questions of law do not arise. The appellant had claimed deduction under Section 10A of the Income Tax Act, 1961 in respect of an amount of about ₹ 61.41 lacs. The dispute related, inter alia, to the question whether an amount of ₹ 6.83 crores received by way of a subsidy from the parent company of the assessee ought to be included in the export turnover or not. The appellant received an amount of ₹ 6.83 crores by way of subsidy towards reimbursement of pre-operative expenses from April, 2006 to October, 2006. The appellant started production in respect of the export goods only on 01.11.2006. The CIT (Appeals), therefore, held that the amount of ₹ 3.36 crores for the period prior thereto was reimbursement of expenses and could not form a part of the export turnover. However, the CIT (Appeals) also held that the same cannot form a part of the total turnover. The appellant's grievance is only to the effect that the entire amount of ₹ 6.83 crores ought to be taken as a part of the total turnover. The Tribunal found on facts that the amount could not be taken as a total turnover in any event on the parity of reasoning, namely, that the amount of about

₹ 3.36 crores had nothing to do with the rendering of services or export of services of the software. In that event, the amount could not be taken as a part of total turnover either.

3. There is nothing to indicate that the finding of fact in this regard is perverse.

4. The substantial questions of law, therefore, do not arise. Therefore, the appeal is dismissed.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(G.S. SANDHAWALIA)
JUDGE

29.04.2015
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