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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.2335 OF 2013

Commissioner of Income Tax-2 ..Appellant
Versus
Larsen & Tourbo Infotech Ltd. ..Respondent

....
Mr. Suresh Kumar a/w Ms. Samiksha Kanani for the Appellant.
Mr. J. D. Mistry, Senior Counsel, a/w Atul Jasani for the Respondents.
....

CORAM: M. S. SANKLECHA &
A. K. MENON, JJ.

DATE : 8TH MARCH, 2016

P.C.:

1. This Appeal filed by the Revenue under Section 260A of the Income Tax Act, 1961 (the "Act") challenges the order dated 31st January, 2013 passed by the Income Tax Appellate Tribunal ("Tribunal"). The impugned order relates to Assessment Year 2004-05.

2. The revenue has raised a following questions of law for our consideration:-

> "(a) Whether on the facts and circumstances of the case, the Tribunal was correct in law in holding that while computing the income exempt u/s 10A of the Income Tax Act, 1961, expenses of Rs.172,56,45,532/- in foreign exchange for providing technical services outside India should be excluded

from the “total turnover” by relying upon the decision of the Special Bench of the ITAT in the case of Sak Soft Ltd. [2009] 313 ITR (AT) 353 (Chennai), when the Income Tax Department has not accepted the principles laid down by the said decision and as an SLP has been filed by the Department in the case of Gems Plus Jewellery India Ltd. decided by the Bombay High Court reported in 330 ITR 175 (Bom.)?

(b) Whether on the facts and circumstances of the case, the Tribunal was correct in law in holding that while computing the income exempt u/s. 10A of the Income Tax Act, 1961, communication charges should be excluded from the “total turnover” by relying upon the decision of the Special Bench of the ITAT in the case of Sak Soft Ltd. [2009] 313 ITR (AT) 353 (Chennai), when the Income Tax Department has not accepted the principles laid down by the said decision and as an SLP has been filed by the Department in the case of Gems Plus Jewellery India Ltd. decided by the Bombay High Court reported in 330 ITR 175(Bom.)?

(c) Whether on the facts and circumstances of the case, the Tribunal was correct in law in not appreciating that while “export turnover” has been unambiguously defined in the Explanation 2(iv) to section 10A of the Income Tax Act, 1961, to exclude communication charges and expenses incurred in foreign exchange in providing the technical services outside India, there was no provision in the Act to exclude these items from the “total turnover”?”

3. We find that the impugned order of the Tribunal dismissed the Revenue's appeal by following the decision of this Court in ***Commissioner of Income Tax V/s. Gem Plus Jewellery India Ltd. (2011) 330 ITR 175.***

4. Mr. Suresh Kumar, learned counsel for the revenue very fairly states that the issue raised herein is stand concluded against the revenue by the decision of this Court in Gem Plus Jewellery India Ltd. (supra). However, he points out that the revenue is in appeal before the Apex Court from the order of this Court in Gem Plus Jewellery India Ltd. (supra). Be that as it may, as the questions as raised for our consideration are concluded by the decision of this Court in Gem Plus Jewellery India Ltd. (supra) and the same has not been shown to be stayed by the Apex Court.

5. In the above view, the questions as framed do not give rise to any substantial question of law. Thus, the questions as proposed are not entertained.

6. Accordingly, the Appeal is dismissed. No order as to costs.

(A. K. MENON, J.) **(M. S. SANKLECH, J.)**

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