In the High Court of Judicature at Madras

Dated : 12.10.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case Appeal Nos.1193 & 1194 of 2008

Commissioner of Income Tax,
Chennai ...Appellant

Vs

M/s.Polaris Financial Technology Limited (**cause title amended vide memo dated 11.10.2018 on 12.10.2018 by TSSJ & VBSJ)** ...Respondent

APPEALS under Section 260A of the Income Tax Act, 1961 against the common order dated 19.12.2007 in ITA Nos.535 & 536/Mds/2006 on the file of the Income Tax Appellate Tribunal Chennai 'B' Bench for the assessment years 2001-02 and 2002-03.

For Appellant : Mrs.R.Hemalatha
For Respondent : Mr.N.V.Balaji

COMMON JUDGMENT
(Judgment was delivered by T.S.SIVAGNANAM,J)

These appeals, by the Revenue under Section 260A of the Income Tax Act, 1961 (for brevity, the Act), are directed against the common order passed by the Income Tax Appellate Tribunal (for short, the Tribunal) dated 19.12.2007 in ITA.Nos.535 & 536/Mds/2006 for the assessment years 2001-02 and 2002-03.

2. The above appeals have been admitted on 13.8.2008 on the following substantial question of law :

> *"Whether, in the facts and circumstances of the case, the Tribunal was right in holding that the expenditure incurred in foreign exchange, which have been specifically excluded from export turnover by Explanation 2(iv) to Section 10A would also form part of the total turnover for the purpose of Section 10A of the Act ?"*

3. The question of law framed above has been answered by the Hon'ble Supreme Court in the case of ***CIT, Central III Vs. HCL Technologies Limited [reported in (2018) 404 ITR 719]*** wherein it has been held as follows :

> *"18. Accordingly, the formula for computation of the deduction under Section 10A of the Act would be as follows:*
>
> *Export Profit = total Profit of the Business X*
>
> *__________Export turnover as defined in Explanation 2(IV) of Section 10A of the IT Act + domestic sale proceeds*
>
> *19. In the instant case, if the deductions on freight, telecommunication and insurance attributable to the delivery of computer software under Section10A of the IT Act are allowed only in*

Export Turnover but not from the Total Turnover, then, it would give rise to inadvertent, unlawful, meaningless and illogical result which would cause grave injustice to the respondent which could have never been the intention of the Legislature.

20. Even in common parlance, when the object of the formula is to arrive at the profit from export business, expenses excluded from export turnover have to be excluded from total turnover also. Otherwise, any other interpretation makes the formula unworkable and absurd. Hence, we are satisfied that such deduction shall be allowed from the total turnover in same proportion as well.

21. On the issue of expenses on technical services provided outside, we have to follow the same principle of interpretation as followed in the case of expenses of freight, telecommunication etc., otherwise the formula of calculation would be futile. Hence, in the same way, expenses incurred in foreign exchange for providing the technical services outside shall be allowed to exclude from the total turnover.

22. In view of above discussion, we are of the considered view that these instant appeals are devoid of merits and deserve to be dismissed. Accordingly, all the connected matters and interlocutory applications, if any, are disposed of with no order as to costs."

T.S.SIVAGNANAM,J
AND
V.BHAVANI SUBBAROYAN,J

RS

4. Following the above, these tax case appeals are dismissed and the substantial questions of law framed for consideration are answered in favour of the assessee and against the Revenue. No costs.

12.10.2018

Internet : Yes

To
The Income Tax Appellate Tribunal, Chennai 'B' Bench.

RS

TCA.Nos.1193 & 1194 of 2008