

In the High Court of Judicature at Madras

Dated : 08.10.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case Appeal No.1248 of 2008

M/s.ISOFT R&D Pvt. Ltd.,
Chennai-34. ...Appellant

Vs

The Assistant Commissioner of
Income Tax, Company Circle II(3),
121, Nungambakkam High Road,
Chennai-34. ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 12.5.2008 in ITA No.465/Mds/2007 on the file of the Income Tax Appellate Tribunal Chennai 'A' Bench for the assessment year 2003-04.

For Appellant : Ms.Sree Lakshmi Valli

For Respondent : Mr.Karthik Ranganathan

Judgment was delivered by T.S.SIVAGNANAM,J

We have heard the learned counsel on either side.

2. The Revenue preferred this appeal challenging the order passed by the Income Tax Appellate Tribunal dated 12.5.2008 in ITA.No.465/Mds/2007 for the assessment year 2003-04.

3. The above appeal has been admitted on 19.8.2008 on the following substantial questions of law :

[i. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the cost of the acquisition of the computer software is capital in nature and is not liable to be deducted as revenue expenditure in computing the income ?

ii. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in holding that the expenditure on foreign exchange is liable to be reduced from the export consideration in arriving at the export turnover ? and

iii. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in holding that while the expenditure incurred in foreign exchange is liable to be deducted from the export consideration to arrive at the export turnover, the same is not liable to be deducted from the total turnover to arrive at the denominator in the formula ?]

4. The learned counsel for the appellant fairly submits that substantial question of law No.1, as framed above, cannot be answered in the light of the fact that the assessee has been granted the benefit under Section 10A of the Income Tax Act, 1961 and that the issue has become academic.

5. Recording the said submission, substantial question of law No.1 is left open and not decided.

6. With regard to the third substantial question law, the learned counsel for the assessee as well as the learned counsel for the Revenue agree that the issue is squarely covered by the decision of the Hon'ble Supreme Court in the case of CIT Vs. HCL Technologies Ltd. [reported in (2018) 404 ITR 0719].

7. The operative portions of the said judgment in HCL Technologies Ltd., are 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 Section 10A 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.¶

8. In view of the above, the third substantial question of law is answered in favour of the assessee and against the Revenue.

9. The learned counsel for the assessee submits that the second substantial question of law need not be answered on account of the facts and circumstances of the case.

10. This submission is recorded and the second substantial question of law is left unanswered.

11. In the light of the above, the appeal filed by the assessee is partly allowed only with regard to the third substantial question of law, which is answered in favour of the assessee. No costs.

08.10.2018

Internet : Yes

To

The Income Tax Appellate Tribunal, Chennai 'A' Bench.

RS

T.S.SIVAGNANAM,J

AND

V.BHAVANI SUBBAROYAN,J

RS

TCA.No.1248 of 2008

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