IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Tax Case (Appeal) No.267 of 2009

Commissioner of Income Tax,
Chennai. ... Appellant

-vs-

M/s.Cherry Tech Solutions Ltd.,
(formerly M/s.Cherry Soft Technologies Ltd.)
4 MAC House, Sardar Patel Road,
Guindy, Chennai-600 032.
PAN No.AAACC 9028P ... Respondent

Tax Case (Appeal) filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income-tax Appellate Tribunal Bench 'A' Chennai, dated 26.09.2008, in I.T.A.No.815/Mds/2007 for the assessment year 2003-04.

Against the order of the Commissioner of Income Tax Appeals III, Chennai 600 034 dated 09.02.2007 in I.T.A.No.721/2005-06/A-III in the Assessment Year 2003-04.

Against the order of the Assistant Commissioner of Income Tax Company Circle I(3), Chennai dated 28.02.2006 in G.I.No/PAN AAACC9028P in the Assessment Year 2003-04.

For Appellant : Mrs.R.Hemalatha,
Senior Standing Counsel

For Respondent : Mr.Vijayaraghavan
For M/s.Subbaraya Aiyar,
Padmanabhan, Ramamani

JUDGMENT

(Delivered by T.S.Sivagnanam, J.)

This appeal, filed by the Revenue under Section 260A of the Income-tax Act, 1961 (hereinafter referred to as “the Act”) , is directed against the order of the Income-tax Appellate Tribunal Bench 'A' Chennai, dated 26.09.2008, in I.T.A.No.815/Mds/2007 for the assessment year 2003-04.

2. The appeal has been admitted, on 23.04.2009, on the following substantial question of law:-

> "Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that, expenditure incurred in foreign currency which are excluded from the export turnover should also be excluded from total turnover in order to grant relief under 10A of the Income Tax Act, 1961?"

3. Heard Mrs.R.Hemalatha, learned Senior Standing Counsel for the appellant/Revenue; and Mr.Vijayaraghavan, learned counsel for the respondent/assessee.

4. The learned counsel for the assessee submitted that the substantial question of law framed for consideration has been answered by the Hon'ble Supreme Court in CIT vs. HCL Technologies Ltd., (2018) 302 CTR 0191 (SC), wherein the Hon'ble Supreme Court held that definition of total turnover given under Sections 80HHC and 80HHE of the Act cannot be adopted for the purpose of Section 10A of the Act.

5. The Revenue cannot dispute the above legal position, which has been settled by the Hon'ble Supreme Court. In the light of the same, the appeal is dismissed and the substantial question of law is answered against the Revenue. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

abr

To

1. The Income-tax Appellate Tribunal Bench 'A' Chennai.
Rajaji Bhavan, Besant Nagar, Chennai 90.

2. The Income Tax Appeals III, Chennai 34.

3. The Income Tax Company Circle I(3), Chennai.

+1 cc to Mr.M/s.Subbaraya Aiyar, Advocate Sr.No.79390
+1 cc to Mr.T.Ravi Kumar, Advocate Sr.No.79238

Tax Case (A) No.267 of 2009

MG(CO)
CSL/17.12.2018