IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2018

CORAM :

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

Tax Case Appeal Nos.362 and 363 of 2009

M/s.Sabdhagiri Telecom,
C-1, K.R.V.Complex,
347, 7th Street,
Gandhipuram,
Coimbatore-641 012 .... Appellant in both the Appeals

-vs-

The Income Tax Officer,
Ward-1(1), Coimbatore. ... Respondent in both the Appeals

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the common order of the Income Tax Appellate Tribunal Chennai 'D' Bench, dated 28.11.2008 in ITA No.2109/Mds/2006 and ITA No.1788/Mds/2007 for the Assessment years 2003-04 and 2004-05. Against the order of the Commissioner of Income Tax (Appeal -I), Coimbatore in Appeal No.446/06-07 and Appeal No.446/05-06, dated 30.08.2006 and against the order of the Income Tax Officer Ward II(1), Coimbatore, in PAN No.AASFS1417R/2004-05 dated 06.12.2006 and PAN No.AASFS1417F/2003-04, dated 27.02.2006.

For Appellant : Mr.V.C.Janardhanan

For Respondent : Mr.T.R.Senthilkumar
Sr.Standing Counsel

COMMON JUDGMENT

[Judgement of the Court was delivered by T.S.Sivagnanam, J.]

These appeals by the appellant/assessee, under Section 260-A of the Income Tax Act, 1961 (The 'Act' for brevity), are directed against the common order passed by the Income Tax

Appellate Tribunal, Madras 'D' Bench, in ITA No.2109/Mds/2006 and ITA No.1788/Mds/07, for the Assessment years 2003-04 and 2004-05, respectively.

2.These Appeals have been admitted on 21.04.2009, on the following Substantial Question of Law:

> "Whether on the facts and circumstances of the case, the Tribunal was right in holding that the assessee is not a basic telecommunication service provider as per Section 80IA(4)(ii) and therefore, not entitled for deduction under Section 80IA?"

3.The assessee filed their return of income for the assessment years 2003-04 and 2004-05, admitting a total income of Rs.'Nil'. The assessments were completed under Section 143 (3) of the Act, vide assessment orders dated 27.2.2006 and 6.12.2006. The Assessing Officer held that the nature of service done by the assessee is that of commission agent of BSNL and they do not render any telecommunication service. Therefore, the deduction claimed by the assessee, under Section 80IA 4(ii) of the Act, was rejected. The assessee preferred appeals before the Commissioner of Income Tax (Appeals) ('CITA' for brevity), who by a common order dated 30.08.2006 allowed the appeals. The Revenue, being aggrieved by such order, preferred appeals to the Tribunal. However, it appears that none appeared for the assessee before the Tribunal and the Tribunal, by the impugned order held that the assessee is collecting charges on commission basis on behalf of BSNL and therefore, cannot be said to be a provider of telecommunication services. Accordingly, the appeals filed by the Revenue were allowed and the orders passed by the CITA were set aside. The assessee is before us challenging the said common order passed by the Tribunal.

4.We have heard Mr.V.C.Janardhanan, the learned counsel for the appellant/assessee and Mr.T.R.Senthilkumar, the learned Senior Standing Counsel for the Revenue.

5.The CITA, while allowing the assessee's appeals, had examined the agreement entered into between the assessee and the BSNL and took note of the Certificate issued by the BSNL stating that the assessee is an authorised GEPABX (Group Electronic Private Automated Branch Exchange) franchise of BSNL and is operating telephone exchanges and providing Basic Telecommunication services to its customers in Gandhipuram and Raja Street, for which, agreements have been entered into between the BSNL and the assessee. The CITA, on perusal of the terms and conditions of the agreements, held that the assessee is operating telephone exchanges and providing basic telecommunication services to its customers, and therefore, the interpretation of the Assessing Officer that the assessee is not providing 'basic telecommunication services' is incorrect. Further, after taking note of the statutory provision, viz., Section 80IA(4)(ii) of the Act, the CITA held that from the agreement entered into between the assessee and the BSNL and the Certificate dated 22.08.2006 issued by the BSNL it is clear that the assessee is providing 'basic telecommunication services' to its customers and therefore, held that the assessee is entitled to claim deduction under Section 80IA(4)(ii) of the Act and accordingly directed the Assessing Officer to allow the claim for deduction, as claimed by the assessee, in its return of income for the relevant assessment years.

6.The Tribunal reversed the decision of the CITA on a very slender point by stating that the assessee is collecting commission charges and therefore, not a provider of telecommunication services. We are unable to accept the finding recorded by the Tribunal for more than one reason. Firstly we fully subscribe to the finding rendered by the CITA and we are satisfied that the assessee is providing 'basic telecommunication services'. Our conclusion is strengthened by referring to the relevant Rules in the Indian Telegraph Rules 1951 (the 'Rules' for brevity) and the Telecom Regulatory Authority of India Act, 1997 ('TRAI Act' for brevity).

7.In Rule 2(e) of the Indian Telegraph Rules, 'Departmental Exchange' is defined to be a telephone exchange, which is installed, maintained and controlled by the Telegraph Authority. Clause (i) of Rule 2(e) of the Rules defines 'Electronic Exchange' to mean an electronically operated and maintained Telephone Exchange of the stored programme controlled type, which uses a computer for the establishment of telephone calls. Rule 2(k) of the Rules defines "Exchange System" to mean any Departmental Telephone Exchange or Exchanges and any lines connected therewith declared by the Telegraph Authority to be an exchange system. Rule 2(jj) defines 'Private Branch Exchange' means an exchange provided for any one party and connected to a departmental exchange. Rule 2(kk) defines "Private Exchange" to mean a telephone exchange provided exclusively for the use of an organisation or an individual and not connected to the public network.

8.Section 2(k) of the TRAI Act, 1997 defines 'telecommunication service' in the following terms:

> “'Telecommunication service' means service of any description (including electronic mail, voice mail, data services, audio tax services, video tax services, radio paging and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing images and sounds or intelligence of any nature, by wire, radio, visual or other electromagnetic means but shall not include broadcasting services”.

9.We find that the definition of 'telecommunication service', as defined under Section 2(k) of the TRAI Act, is a very wide and comprehensive definition, which includes services of any description, which is made available to users by means of any transmission or reception of signs, signals etc. Thus, the definition being very wide and inclusive definition, it would encompass all types of services regardless of the description and definitely it would encompass the type of service rendered by the assessee and therefore, we have no hesitation to hold that the type of service rendered by the assessee is a 'basic telecommunication service'. Furthermore, the official website of the BSNL also shows EPABX as one of the enterprises services provided by BSNL. The official website of BSNL also states that it permits telephone subscribers to use their own PABX/EPABX connected to the BSNL network under certain commercial/technical conditions. Thus, this type of service done by the assessee is an authorised 'telecommunication service' in association with BSNL. Our above view is strengthened by the decision of the Gujarat High Court at Ahmedabad in TCA No.1098 of 2005 etc., in the case of Commissioner of Income Tax Vs. Himanshu v.Shah and others, dated 16.12.2014. The Tribunal examined an identical question, where the assessees, who were franchisees of BSNL and who were permitted to instal, maintain and operate in-dialling PABX under franchisee to support the Department, can be treated to have provided 'basic telephone services' entitling them for deduction under Section 80IA of the Act. The Court held in favour of the assessee. Further in the decision of ITAT, Mumbai Bench, in ITA No.1654/Mum/10, dated 21.12.2009 in the case of Income Tax Officer v. Quick Telecom, Mumbai, the Mumbai Tribunal also examined an identical agreement as that of the agreement entered into by the assessee with BSNL and held that merely because the services are provided in association with MTNL (in that case), it does not mean that the assessee is not providing the 'basic telecommunication services'.

10.Thus, for all the above reasons, we find that the interpretation given by the Commissioner of Income Tax (Appeals) is perfectly valid and proper and the interference by the Tribunal to such an order was uncalled for.

In the result, the Tax Case Appeals filed by the appellant/assessee are allowed and the common order passed by the Tribunal is set aside and the orders passed by the Commissioner of Income Tax (Appeals) are restored and the Substantial Question of Law is answered in favour of the assessee. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

msk

To

1.The Income Tax Appellate Tribunal Madras 'D' Bench.

2. The Commissioner of Income Tax (Appeals)-1, Coimbatore

3. The Income Tax Officer, Ward -II(1), Coimbatore

+2cc to Mr.VC.Janardhanan, Advocate SR.No.77728

+1cc to Mr.T.R.Senthilkumar, Advocate SR.No.77642

T.C.A.Nos.362 and 363 of 2009

SVN(CO)
GMY(19/12/2018)