IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2018

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THE HON'BLE MS. INDIRA BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MS.JUSTICE P.T.ASHA

T.C. (A) No.184 of 2018

The Commissioner of Income Tax
Chennai. .. Appellant

Vs

Polaris Consulting and Services Limited
No.244, Polaris House
Anna Salai, Chennai – 600 006. .. Respondent

PRAYER: Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'D' Bench, Chennai, dated 18.8.2017 made in I.T.A.No.765/Mds/2016.

For Appellant : Mr.T.Ravi Kumar
Standing Counsel

JUDGMENT

(Delivered by *Ms.Indira Banerjee, Chief Justice*)

This appeal has been filed on the following questions of law, which are, according to the appellant, substantial questions of law:

> *"Whether the Tribunal was right in directing the Assessing Officer to exclude expenditure incurred in foreign currency such as telecommunication expenses, travelling, software development charges, overseas project expenses, etc. from the total turnover while computing deduction under Section 10A of the Income Tax Act, 1961?"*

2. The question has been answered by the Supreme Court against the appellant by judgment and order dated 24.4.2018 in Civil Appeal Nos.8489-8490 of 2013 (*Commissioner of Income Tax, Central-III v. HCL Technologies Ltd.*) heard along with several other Civil Appeals and Special Leave Petitions.

3. The Supreme Court held:

> *17) The similar nature of controversy, akin this case, arose before the Karnataka High Court in **CIT** vs. **Tata Elxsi Ltd.,** (2012) 204 Taxman 321/17. The issue before the Karnataka High Court was whether the Tribunal was correct in holding that while computing relief under Section10A of the IT Act, the amount of communication expenses should be excluded from the total turnover if the same are reduced from the export turnover? While giving the answer to the issue, the*

High Court, inter-alia, held that when a particular word is not defined by the legislature and an ordinary meaning is to be attributed to it, the said ordinary meaning is to be in conformity with the context in which it is used. Hence, what is excluded from 'export turnover' must also be excluded from 'total turnover', since one of the components of 'total turnover' is export turnover. Any other interpretation would run counter to the legislative intent and would be impermissible.

....

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."*

3. The appeal is, therefore, not entertained.

(I.B., CJ.) (P.T.A., J.)

05.06.2018

Index : No

Internet : Yes

sasi

To:

1. The Registrar
   Income Tax Appellate Tribunal
   'D' Bench, Chennai.

2. The Deputy Commissioner of Income Tax
   Corporate Circle 5(2)
   Chennai – 600 034.

THE HON'BLE CHIEF JUSTICE

AND

P.T.ASHA,J.

(sasi)

T.C. (A) No.184 of 2018

05.06.2018