IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Appeal No.125 of 2009

M/s.Control Techniques India Private Ltd.,
117-B, Developed Plot Industrial Estate,
Perungudi,
Chennai-600 096. ... Appellant

Vs.

The Assistant Commissioner of Incometax,
Company Cirlce-I(3),
Chennai-600 034. ... Respondent

Common Prayer : Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'A' Bench, Chennai, dated 23.05.2008 in ITA No.700/(Mds)/07 for the assessment year 2003-04, against the order of Commissioner of Income Tax (Appels III) Chennai-34, dated 23.1.2007 in ITA:469/2005/2006/A-III, and arising out of the assessment order of Assistant Commissioner of Income Tax Company Circle-I(3)-Chennai dated 30.11.2005 in PAN/GINo-AAACC1343b/CX4-243.

For Appellant : Mr.R.Venkatanarayanan
for M/s.Subaraya Aiyar

For Respondent : Mr.T.Ravikumar
Senior Standing Counsel

J U D G M E N T

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

This appeal by the Assessee is directed against the order of the Income Tax Appellate Tribunal "A" Bench, Chennai, dated 23.05.2008 in ITA No.700/(Mds)/07 for the assessment year 2003-2004.

2. The above Tax Case Appeal has been admitted on 09.03.2009, on the following substantial questions of law :-

> "1. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the appellant is not entitled to deduction under Section 80 IB of the Act in respect of the customer site service charges, repair centre service charges, warranty claims, direct shipment commission and interest income as not derived from the business of industrial undertaking ?
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> 2. Whether on the facts and in the circumstances of the case, the Tribunal failed to appreciate that the above receipts have direct nexus with the profits and gains derived from the undertaking and hence eligible for deduction under Section 80IB of the Act ?"

3. Learned counsel on either side submitted that in the Assessee's own case for the earlier Assessment Year 1997-98, the substantial questions of law framed for consideration by this Court in this appeal is identical to the substantial questions of law framed in T.C.A.No.61 of 2008 and the Division Bench of this Court dismissed the appeal filed by the Assessee. The operative portion of the judgment reads as follows :

> "12. The entire materials placed on record would undoubtedly establish that in the case on hand, the assessee's claim has been tested on touchstone not only by the fact finding authority (the Assessing Officer), but also by the CIT (A) and ITAT, being the last fact finding authority and having filtered the claim of the assessee, making him eligible to the extent the law permits. In the whole process of order passed by the ITAT, no perversity of approach has been found by us. Therefore, re-iterating the well-established principle of law that while sitting on appeal under Section 260A of the Act, this Court cannot set aside the factual findings recorded by the fact finding authorities, particularly in the absence of any adverse approach by them vide M.Janardhana Rao V. Joint CIT [(2005) 2 SCC 324], we answer the substantial question of law framed, against the assessee and in favour of the Revenue."

4. We find that the above decision is squarely applicable to the case on hand and in fact, the Tribunal also took note of the decision taken by the Assessee's own case by the Tribunal vide order dated 20.07.2006.

5. Thus, following the decision of the Division Bench of this Court referred to supra, the Tax Case Appeal filed by the Assessee is dismissed and the substantial questions of law are answered against the Assessee and in favour of the Revenue. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

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

2.The Assistant Commissioner of Income Tax Company Circle I(3),
Chenna-34i.

3.The Commissioner of Income Tax (Appeals)-III,
Chennai.

4.The Record Keeper,
VR Section,
High Court, Madras.

+1cc to Mr.T.Ravikumar, Advocate Sr.56260
+1cc to Mr.Subbaraya Aiyar, Advocate Sr.56031

sv[co]
srg 16/10/2018