IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.07.2018

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THE HONOURABLE MR. JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

T.C.(A). No.141 of 2010

Commissioner of Income Tax,
Chennai. .. Appellant/Appellant

vs.

M/s.AIG Systems Solutions Pvt. Ltd.,
4th Floor, Prince Kushal Towers,
96, Anna Salai, Chennai. .. Respondent/Respondent

Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal "A" Bench, Chennai dated 11.09.2009 passed in I.T.A.No.1267/Mds/08 as against order of the Commissioner of Income Tax (Appeals)-III Chennai made in ITA.No.945/2006/07 dated 28.02.2008 as against the Assessment order of the Income Tax Officer, Company Ward -I(1), Chennai dated 29.12.2006 for the assessment year 2004-05.

For Appellant : Mr.T.Ravi Kumar
For Respondent : No appearance

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

This appeal has been filed by the Revenue, being aggrieved against the oder of the Tribunal, which in turn confirmed the order of the C.I.T. (Appeals) by formulating the following substantial questions of law in respect of the assessment year 2004-2005:

> "1.Whether on the facts and the circumstances of the case, the Appellate Tribunal was right in directing the Assessing Officer to recompute the income of the assessee in the light of the decision of the Special Bench of the Appellate Tribunal in the case of Sak Soft Ltd., 121 TTJ Chennai (SB) 865?

2.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the expenditure incurred relatable to delivery of software outside India would also not form part of the total turnover for the purpose of Section 10A of the Act?

2.Heard the learned counsels appearing for the parties.

3.A perusal of the order passed by the Tribunal would show that it has merely followed the decision of the Special Bench and it has been recorded in para 5 as under:

> "5.We have gone through the above decision vis-a-vis the facts obtaining in this case. It is worthwhile to reproduce para 39 of this Special Bench decision here below for ready reference:
>
> > 39.For the above reasons, we hold that for the purpose of applying the formula under sub-section (4) of Section 10B, the freight, telecom charges or insurance attributable to the delivery of articles or things or computer software outside India or the expenses, if any, incurred in foreign exchange in providing the technical services outside India are to be excluded both from the export turnover and from the total turnover, which are the numerator and the denominator respectively in the formula. The appeals filed by the department are thus dismissed. We make it clear that we have not decided the cases of the interveners and they will be decided by the respective benches in conformity with our decision."

4.The aforesaid decision stands as of now. Therefore, the substantial questions of law are answered against the Revenue.

5.Learned counsel appearing for the Revenue would submit that it is an order of remittal and it would be imperative to direct the respondent to co-operate with the assessing officer by producing the invoices. The invoices would contain the details. Therefore, until and unless the invoices are produced, the order of the Tribunal cannot be given effect to.

6.We find merit in the aforesaid submission. While dismissing the appeal, we are of the view that the respondent is duty bound to co-operate with the assessing officer to come to a just conclusion. The invoices are supposed to be maintained by the assessee as they are the records of the assessee. Therefore, the assessee will have to produce the invoices before the assessing officer so as to comply with the order of the Tribunal.

7.With the above observations, the tax case appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

The Registrar Income Tax Appellate Tribunal,
"A" Bench, Chennai.

+ 1 cc to Mr. T. Ravikumar, Advocate Sr.43854

T.C.(A).No.141 of 2010

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