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.149 of 2010

Commissioner of Income Tax,
Chennai. .. Appellant

vs.

M/s.Beach Minerals Company Pvt.,
No.32/2 BMC House, Halls Road,
Egmore, Chennai - 8. .. Respondent

Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal "C" Bench, Chennai dated 07.09.2009 passed in I.T.A.No.1828/Mds/2008 has been filed against the order of the Commissioner of Income Tax(Appeals)III Chennai 34 in I.T.A.No.520/2007-2008/A III for the assessment year 2005-2006 dated 20.06.2008 ,I.T.A. No. 520/2007-2008/AIII has been filed against the order of the Assistant Commissioner of Income Tax, Company, Circle I(z) Chennai in PAN/GIR.No. AAFFB5187W dated 26.12.2007 for the assessment year 2005-2006.

For Appellant : Mr.T.Ravi Kumar

For Respondent : Mr.Sree Balaji

JUDGMENT

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

The Revenue is on appeal by raising the following substantial question of law in respect of the assessment year 2005-2006:

> "Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the expenditure incurred on freight charges, terminal handling charges and shipment expenses which are to be excluded from the export turnover should be excluded

from the total turnover also while calculating the relief under Section 10B?"

2.Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent.

3.The assessee is a company and it filed its return of income after claiming deduction under Section 10B of the Income Tax Act. The assessee had incurred freight charges, terminal handling charges and shipment expenses during the assessment year. The Assessing Officer, by reducing the expenditure from the export turnover, held that the adjustments cannot be made in the total turn over. Aggrieved by the same, the assessee filed an appeal before CIT (Appeals) and the same was allowed. Against which, the Revenue filed an appeal before the Income Tax Appellate Tribunal and the Tribunal also allowed the appeal in favour of the assessee. Aggrieved against the same, the present appeal is preferred by the Revenue by raising the above stated question of law.

4.When the matter is taken up for hearing, learned counsel appearing for the respondent submits that the issue is covered by the decision of the Honourable Supreme Court in Commissioner of Income Tax Vs. HCL Technologies Ltd., ((2018) 93 taxmann.com 33 (SC)) in favour of the assessee and against the Revenue, wherein it is held as under:

> 19.In the instant case, if the deductions on freight, telecommunication and insurance attributable to the delivery of computer software under Section 10A 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 make the formula unworkable and absurd. Hence, we are satisfied that such deduction shall be allowed from the total turnover in same proportion as well.
>
> 21.On the issue of expenses on technical services provided outside, we have to follow the same principle of interpretation as followed in the case of expenses of freight, telecommunication etc., otherwise the formula of calculation would be futile. Hence, in the

same way, expenses incurred in foreign exchange for providing the technical services outside shall be allowed to exclude from the total turnover.

22.In view of above discussion, we are of the considered view that these instant appeals are devoid of merits and deserve to be dismissed. Accordingly, all the connected matters and interlocutory applications, if any, are disposed of with no order as to costs."

4.In such view of the matter, this Tax Case Appeal is dismissed. No costs.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

1. The Income Tax Appellate Tribunal,
   "C" Bench, Chennai.

2. The Commissioner of Income Tax
   (Appeals)III Chennai.

3. The Assistant Commissioner of Income Tax
   Company Circle I(z) Chennai.

+1 CC to Mr.T. Ravikumar, Advocate sr 43856.
+1 CC to Mr. Sree Balaji, Advocate sr 44445.

T.C.(A).No.149 of 2010

RJI(CO)
SP(23/07/2018)