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.465 of 2010

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

vs.

M/s.Cognizant Technology Solutions
India P. Ltd.,
30, Whites Road, II Floor,
Chennai - 14. .. Respondent/Appellant

Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal "D" Bench, Chennai dated 31.08.2009 passed in I.T.A.No.1159/Mds/2007 against the order of the Commissioner of Income Tax, Chennai I, Chennai dated 26.03.2007 in C.No. 218 (10)/CIT-I/263/2006-2007 for the assessment year 2002-2003.

For Appellant : Mr.T.Ravi Kumar
For Respondent : Mr.N.V.Balaji

JUDGMENT

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

The Revenue is on appeal by raising the following substantial questions of law in respect of the assessment year 2002-2003:

"1.Whether on the facts and in the circumstances of the case, the Income Tax 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 Sec.10A of the Act?

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

3.The assessee is a company engaged in the business of software development and it filed its return of income after claiming deduction under Section 10B of the Income Tax Act. The Assessing Officer did not exclude the expenditure incurred relatable to delivery of software outside India from the export turnover for the purpose of computing deduction under Section 10B of the Act. The assessment order was revised by the Commissioner of Income Tax and aggrieved by the same, the assessee filed an appeal before the Tribunal. 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 questions 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.
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> 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.
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> 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(CS-IV)

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
   Chennai I
   Room No. 701, VII Floor
   New Block, 121 Mahathma Gandhi Road
   Chennai 34.

+1 CC to Mr.T. Ravikumar, Advocate sr 43855.
+1 CC to Mr.N.V. Balaji, Advocate sr 43779.

T.C.(A).No.465 of 2010

SP(27/07/2018)