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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 253/2018 and CM APPL. 10056/2018

MCKINSEY KNOWLEDGE CENTRE INDIA PVT. LTD.

..... Appellant

Through Mr. Porus Kaka, Sr. Advocate with
Mr. Divesh Chawla, Mr. Harpreet
Singh Ajmani and Mr. Ankul Goyal,
Advs.

versus

PR. COMMISSIONER OF INCOME TAX, CIRCLE-6

..... Respondent

Through Mr. Rahul Chaudhary and
Ms. Vibhooti Malhotra, Advs.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

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15.03.2018

Admit.

Following question of law arises for consideration :

“Did the Tribunal (ITAT) erred in holding that the assessee/appellant did not urge the question with respect to applicability of Section 10A of the Income Tax Act in the given facts and circumstances of the case?”

Ms. Vibhooti Malhotra accepts notice of the appeal.

With the consent of the parties, the appeal was heard finally.

The short question which arises for consideration is the applicability of Section 10A to the assessee. The assessee - a wholly

owned subsidiary of McKinsey Holdings Inc. (which is in turn held by McKinsey & Company Inc.) provides support services in the area of export of computer software, IT-enabled services, data processing, customization of data, back office operations and acting as Centre providing research analysis and information to its associated enterprises (AE). It claimed deduction of the income reported from its computer software exporting units contending that it was an STP covered by the Ministry of Communications and Information Technology's policy of 20.04.1999. Its deduction was allowed from 2002-03 by the Revenue. This Court had occasion to consider the precise issue for intervening year (AY 2006-07) wherein the AO ruled that the assessee's business was not export of computer software. By its judgment [*The Commissioner of Income Tax-II vs. Mckinsey Knowledge Centre India Pvt Ltd* (ITA 217/2014 decided on 27.03.2015)] this Court noticed definition of "Computer Software" and also relied upon a circular dated 26.09.2000 issued by the Central Board of Direct Taxation (CBDT) SO 890(E). The Court thereafter concluded that the assessee's activities in the nature of providing back office support, data processing, customization of data, acting as back office of the operation company and support Centre etc were covered by Section 10A.

In the present case, the ITAT in para 20 appears to have recorded that the assessee during the course of its statements did not urge the grounds regarding the applicability of Section 10A. The assessee had preferred an application for rectification of that

statement under Section 254(2). On the previous date of hearing, this Court had enquired as to whether the assessee would prefer to press that application or urge its appeal. Today, it is submitted on its behalf by Mr. Porus Kaka, Id. Senior Counsel that the assessee has since withdrawn the application for rectification. The grounds of appeal preferred by the assessee to the ITAT *inter alia* read as follows :

“a) that the appellant is an IT-enabled company set up in accordance with the Software Technology Parks scheme of the Government of India and is engaged in rendering IT enabled services being customisation of data/data processing back office operations/acting as a support centre.

b) that Software Technology Parks of India ('STPI') confirmed that the appellant is engaged in provision of IT-enabled services in the nature of back office operations, data processing, back office operations data/customization of data and the said activities are covered as export of computer software under the STP scheme.

c) that the appellant acts as a support centre to McKinsey & Co., US and is therefore, eligible for deduction under section 10A of the Act.”

This ground in fact was reproduced by the ITAT in the initial portion of its order. The assessee apparently urged grounds in support of the appeal and even furnished a chart/written submissions detailing the claims that were accepted right from the inception i.e. 2002-03 to 2008-09. Furthermore, the grounds urged in support of the rectification too are part of the record. They too indicate that the assessee had urged these grounds. In these circumstances, the Court is

of the opinion that the ITAT fell into error in denying the benefit of Section 10A on the assessment that the assessee had given up that claim.

Following the judgment of this Court in ITA 217/2014 (decided on 27.03.2015), the question of law framed is answered in favour of the assessee and against the Revenue. The appeal is accordingly allowed. All the pending applications also stand disposed of. Order *dasti*.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

MARCH 15, 2018

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