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

\+ **ITA 560/2008**
\+ **ITA 795/2009**
\+ **ITA 796/2009**

N.K.PARWANDA ..... Appellant

Through

versus

COMMISSIONER OF INCOME TAX .... Respondent

Through : Mr. Zoheb Hossain, Sr. Standing Counsel with Mr. Deepak Anand, Jr. Standing Counsel for Revenue.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

<u>O R D E R</u>

% **30.08.2018**

The following question of law arises in all these three appeals :

> *"Whether the translation services provided by the assessee to its foreign clients through the internet amounts to data processing and, consequently, falls within the ambit of computer software as referred to in Section 80 HHE of the Income Tax Act, 1961 read with the notification issued by the Central Board of Direct Taxes being Notification No.SO 890 (E) dated 26.09.2000?"*

The facts of the cases briefly are that for the relevant assessment years (Assessment Years 2002-03: 2004-05 and 2005-06) which are covered in these three appeals, the assessee claimed the benefit of Section 80HHE, contending that it was providing translation services through the internet to its clients. The assessee is a proprietor of M/s International Academy of Foreign Languages (IAFL). During the year, the assessee has shown translation and interpretation export for services rendered to foreign clients and claimed deduction. For all these years, the Assessment Officer held that the nature of receipts could not be characterized as export of software within the meaning of Section 80HHE. Upon being asked to do so, the assessee explained that deduction sought was permissible stating that explanation (b) to Section 80HHE allows customised electronic data and enables service providers to seek exemption in view of the Central Board of Direct Taxes's (CBDT) notification No.SO 890 (E) dated 26.09.2000.

The Assessment Officer however, declined to grant relief. The assessee appealed to the Commissioner. The CIT (A), after considering the text of the provisions under Section 80HHE and notification No.SO 890 (E) and also taking into account the then prevailing decision of the Income Tax Appellate Tribunal (ITAT) in *New Delhi Television Ltd. v. Deputy Commissioner of Income Tax,* (2004) 1 S0T 116 (Delhi) passed in ITA No.1757(Del)/2003 (decided on 26.07.2004) held that the services so provided fell within the prescription of data processing as they were customized data and therefore, conforming to Explanation (b).

The relevant extract of the CIT(A)'s decision for the assessment year 2002-03 reads as follows :

> "4. *Now the contention of the appellant is found to be correct. The entire procedure of the transactions between the assessee and his buyer abroad and the samples submitted to explain the same make it clear that the appellant was engaged in data processing and transactions of the same to his clients abroad. As a result of this only he received foreign exchange. Now as per the notification of the CBDT as referred to above, as per item No. (iv) of the notification the assessee's business is covered under the head "data processing". As the business activity of the appellant was also part of Information technology enabled products or services he was entitled to deduction under section 80HHE. As per explanation (b) to section 80HHE the appellant was engaged in supplying customized electronic date to his foreign clients through Internet and as per the notification of the Board, the appellant should have been allowed deduction under section 80HHE. The appellant's case is squarely covered with the decision of the ITAT, Delhi Bench 'A' New Delhi in the case of NDTV Vs. DCIT in ITA No. 1757 (Delhi) of 2003 dated 267.04. In that case it was held that 'No doubt the main provisions of section 80HHE are in regard to deduction on account of computer software. However, if explanation (b) of sub-section (5) is taken into consideration, then it will be seen that many other items are included, which includes customized electronic data also. The Board in its instructions dated 26.9.2000 had enlarged the scope of deduction under section 80HHE whereby Explanation (b) to section 80 HHE(5) expanded to scope by including various information technology enabled products or*

services. In these items, the item data processing is also included which is at No.(iv) of the Board Instruction dated 26.9.2000. The Board instructions which came through Notification No.890E)/[Notification No. 115211F.No.143/49/3000 TPL] are binding on the department authorities. Therefore, no doubt remained that the activities done by the assessee as customized electronic data were covered under the provisions of section 80HHE, as the scope of Explanation (b), sub-section (5), has been enlarged. Various stages in regard to collecting the customized electronic data had been explained" Similar facts exist in the appellants' case also and thus he was entitled to deduction under section 8-HHE."

The Revenue's appeal was that neither the definition of computer programme nor processed electronic data cover the kind of service provided by an assessee. It was submitted that until the computer software or something analogous to it is developed and provided by an assessee, the benefit of Section 80HHE could not be claimed. This contention was accepted by the ITAT, which held as follows :

"*8. As per explanation to section 80HHE even any customize electronic data or product or services of similar nature as notified by the Board which is transmitted or exported from India will also be treated as "computer software". As noted above the Board has issued notification No.S.O. 890 (E) dated 26.09.2000. It is the contention of the assessee that the nature of service rendered by the assessee falls under the clause 'Back-Office Operation' or 'Data Processing' or 'Support Centres'. All these clauses are not defined but giving its* *natural or grammatic meaning, the nature of services rendered by the assessee that is translation services do not fall into any such categories. The data in the form of text in foreign language is not processed through the medium of computer but merely translated and the translated text are uploaded in the computer and transmitted through the use of Internet. Thus it cannot be considered as Data Processing. It cannot be considered as Back-Office Operation too as in the said operations the data received in one form is processed which are used in administration. It do not fall in the clause Support Centres also as the job of the assessee is not to provide any support to the main job of the client. The client is not expert at translation and hence such translation work is assigned to the assessee who after doing such translation work sends back the text of translated scripts. Any activity, which requires use of Internet, do not automatically become Data Processing job or a computer software. The decision of Income-tax Appellate Tribunal A Bench New Delhi in the case of NDTV (supra) will not assist the case of the assessee. ...."*

The assessee relies upon the decision of this court in the *Commissioner of Income Tax v. New Delhi Television Ltd.,* ITA No.40/2005 (decided on 31.08.2017) which confirmed the ruling of the ITAT. It is further argued by the assessee that the court analyzed the provision i.e. Explanation (b) to Section 80HHE and rejected the Revenue's contention that the expression "*or any other customized electronic data*" has to take colour from the main part of the said explanation. It was emphasized that the decision in

Commissioner of Income Tax v. New Delhi Television Ltd. (supra), dissected the definition of computer software. The first part exhaustively dealt with as to what was "*computer software*", but it was an inconclusive definition which also took within its field a disjunctive "*or*" tending to expand the meaning of the expression. Thus, the export of news programmes was held to be customized electronic data. It is stated by the assessee that, likewise, providing translation services, both through electronic devices as well as through the human interface, and their packing in electronic format for onward transmission through the medium of the internet is nothing but export of customised electronic data and therefore, falls within the expanded meaning of "*computer software*".

Ld. counsel for the Revenue submitted that there is a distinction between the facts of the present case and the case of *Commissioner of Income Tax v. New Delhi Television Ltd.* (supra). In the latter, news programmes were entirely created, published and seen through the medium of the internet, whereas in the present case, the translation of the transmission could well be done manually, although sent *via* the medium of the internet. Ld. counsel also drew the attention of the court to the fact that explanation (b) to Section 80HHE(1) is a later addition and that notification No.SO 890 (E) was issued before the explanation was added.

The decision in *Commissioner of Income Tax v. New Delhi Television Ltd.* (supra) had relied upon an earlier judgment of this court in *Commissioner of Income Tax v. Kiran Kapoor,* ITA No.13/2015. The quotation cited in *New Delhi Television Ltd.* of *Kiran Kapoor* is as follows :

> *"15. ... The expression "computer software" is wide enough to embrace diverse activities. To eliminate any doubt, the reference to "customized electronic data" in the second Explanation to Section 10B (2), Parliament enabled the Board (CBDT) to include (by notification) diverse activities – which involve export of software, etc. The Notification relied on in the present case uses the expressions "(iii) Content Development or animation (iv) Data Processing... (vii) Human Resources Services" and "(ix) Legal Databases". Here, the very first head "content development or animation" describes the process and is wide enough to cover compilation of material or data and its transformation into a ready to print/ ready to publish book. It is also a "legal database". ..."*

The relevant extract of the decision in *Commissioner of Income Tax v. New Delhi Television Ltd.* (supra) which discussed as to what constitutes computer software is as follows :

> "*25. Turning to clause (b) of the Explanation to Section 80 HHE of the Act, the Court is unable to agree with the contentions of Mr. Singh, learned counsel for the Revenue that the words "or any customised electronic data" has to take colour from the main part of clause (b) of the Explanation and cannot be construed independent of it.*

26. There are two parts to the definition 'computer software'. First is the exhaustive definition where the word "computer software" is used and this is followed by 'any computer programme recorded on any disc, tape, perfotated media'. Then there is the inclusive part of the definition where the word includes any such programme or any customised electronic data. The expression 'any customized electronic data' is preceded by the disjunctive 'or' which clearly indicates that any customized electronic data would also be considered to be 'computer software' under the inclusive part of the definition. The principle of ejusdem generis will not apply in the instant case particularly in the context under which this provision was introduced.

27. Circular No.772 dated 23rd December 1998 explained the rationale behind introduction of these words. It acknowledged that "software exports grown exponentially in recent years" and there was need to increase India's market share in the international arena. Therefore, the expression 'any customized electronic data' requires a liberal interpretation. The amendment to clause (b) of the Explanation makes it more explicit. Section 80HHF(1) now envisages computer software including television news software. Therefore, the position for the AY 2000-01 onwards is not in doubt."

In the present case, the assessee provides transaction services to its overseas clients. The translated material or content is reduced to electronic format in the form of data fields and then transmitted by the internet. In one sense, the use of computers and electronics predominates the entire lifecycle of the business. Consequently, this court upholds that the view of the CIT (A) was recorded in accordance with the parliamentary intent and also conforms to the notification No.SO 890 (E) dated 26.09.2000 issued by the CBDT. Following the judgment of *Commissioner of Income Tax v. New Delhi Television Ltd.* (supra), this court, therefore, is of the opinion that the previous decision in *New Delhi Television Ltd.* (supra) is conclusive and in favour of the assessee. The question of law framed is accordingly answered in favour of the assessee and against the Revenue.

The appeals are allowed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

AUGUST 30, 2018
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