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

\+ ITA 96/2018

PR. COMMISSIONER OF INCOME TAX-6 ..... Appellant

Through: Mr. Sanjay Kumar, Jr. Standing Counsel with Mr. Rahul Chaudhary, Sr. Standing Counsel.

versus

NOKIA SOLUTIONS & NETWORKS INDIA PVT. LTD.

..... Respondent

Through: Ms. Rashmi Chopra and Mr. Amit Shrivastava, Advocates.

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

O R D E R

% 30.01.2018

This appeal by the Revenue challenges the findings of the Income Tax Appellate Tribunal (hereinafter referred to as 'ITAT'), and urges two grounds; firstly, whether the remission of liability was correctly brought to tax under Section 41(1)(a) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), and secondly, whether the exemption ultimately upheld under Section 10A of the Act, was warranted having regard to Explanation 2 (iv) to Section 10A of the Act – that requires the exclusion of telecommunication charges from export turnover.

The assessee is engaged in manufacturing digital electronic switching systems etc. and computer software and also rendering software services; it was eligible to STP benefits and was admitted to it. The assessee had filed its return for the assessment year 2004-05 and declared an income of ₹11,31,01,629/-. The Assessing Officer (‘AO’) completed the scrutiny assessment by adding back under Section 41(1) of the Act the sum of ₹9,26,66,536/- towards waiver of sales tax. The AO also brought to tax the sum of ₹29,28,194/- under Section 10A of the Act with reference to Explanation 2(iv) of the Act. The CIT(A) granted relief to the assessee on both counts. In doing so, the CIT(A) applied the judgment of Bombay High Court passed in the case of *Commissioner of Income Tax vs. Sulzer India Limited*, (2014) 369 ITR 717 (Bom) which had held that the disallowance of the kind made under Section 41(1) of the Act was not justified. On the other aspect, the CIT(A) was of the opinion that the Explanation 2(iv) to Section 10A of the Act did not apply. The ITAT confirmed the findings of the CIT(A).

At the outset, the assessee, which is represented in Court on advance notice, points out that the ratio in the case of *Sulzer India Limited* (supra) was approved by the Supreme Court in *Commissioner of Income tax vs. M/s Balkrishna Industries Ltd.*, (2017) 88 Taxmann.com 273. Reading of the judgment would clearly show that the decision in *Sulzer India Limited* (supra) was quoted with the approval and the reasoning endorsed in para 9 of the Supreme Court judgment. The facts in this case are identical with that of the Sales Tax Deferral Scheme of the State of West Bengal in which the State had identically permitted the collection of sales tax but deferred the payment by 12 years. The assessee, like in the case of *Sulzer India Limited* (supra), approached for a pre-deposit, which was permitted. In the circumstances, it was held that Section 41(1) of the Act does not apply. On an application of the principles approved in the case of *M/s Balkrishna Industries* (supra), the Court is of the opinion that no question of law arises.

So far as the second question i.e. Explanation 2(iv) to Section 10A of the Act is concerned, this issue is covered by the decision in the case of Commissioner of *Income Tax vs. Genpact India*, (2011) 15 Taxmann.com 234 (Del.). In that case, the Court turned down the submission of the Revenue that the telecommunication charges are to be excluded in the concept of export turnover. For the same reasons in this case too, the Court is of the opinion that the decision of the ITAT does not call for interference. No question of law arises.

The appeal is therefore dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

JANUARY 30, 2018
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