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

\+ ITA 91/2018

PRINCIPAL COMMISSIONER OF INCOME TAX-9 ..... Appellant

Through: Mr. Sanjay Kumar, Jr. Standing Counsel for Income Tax Department.

versus

M/S WNS MORTGAGE SERVICES PVT. LTD. ..... Respondent

Through: Mr. Mayank Nagi, Adv.

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

O R D E R

% **29.01.2018**

CM APPL. 3489/2018 *(condonation of delay)*

In view of the reasons mentioned in the application, delay in filing the appeal is condoned.

The application stands disposed of.

ITA 91/2018

1. In this case for A.Y. 2007-08, the Assessing Officer had denied the deduction claimed by the assessee/respondent under Section 10A of the Income Tax Act, 1961 (hereafter referred to as "the Act"). The material part of the AO's finding was that the assessee had not provided any material to establish that it was

engaged in software manufacture and export and what it disclosed were transactions with the parent company and not with other independent parties. In these circumstances, the foreign inward remittances received were held not to constitute income qualifying for deduction under Section 10A of the Act.

2. The CIT(A) accepted the assessee's contention after detailed analysis of its transactions – vide a 65 page order, and, concluded that since the assessee was rendering services, which amounted to call centres, the question of establishing software export or software manufacture and export did not arise. In so holding, the CIT(A) relied upon the Circular of the CBDT. The ITAT confirmed the findings after noticing the decision rendered by it in the previous year.

3. Section 10A in its material particulars, defines "computer software" as meaning -

> *(a) Any computer program recorded on any disc, tape, perforated media or other information storage device or*
>
> *(b) Any customized electronic data or any product or service of similar nature."*

4. It is quite apparent that customized electronic data or product <u>or service</u> clearly falls within the description of an activity that qualifies for deduction under Section 10A. The lower authorities, we also note this, have relied upon certain other decisions, which take the extended or enlarged meaning of the expression "service" so as to imply not mere manufacture or production of articles or

goods but other services. This view is reflected by the Court's judgment in *Commissioner of Income Tax v. Kiran Kapoor* 372 ITR 321 (Del.).

5. In view of the above judgment and having regard to the nature of the services, and, furthermore, that the STPI clearances were granted for the particular activity i.e. call centre, the Court is of the opinion that there is no error of law, calling for interference.

The appeal is, therefore, dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

JANUARY 29, 2018
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