

In the High Court of Judicature at Madras

Dated : 16.8.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case Appeal No.1015 of 2009

The Commissioner of Income Tax,
Chennai-III

...Appellant

Vs

M/s.Pentasoftware Technologies Ltd.,
Chennai-24.

...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 07.1.2009 made in ITA.No.2252/Mds/2007 on the file of the Income Tax Appellate Tribunal, Chennai 'B' Bench for the assessment year 2000-01, against the order of the Commissioner of Income Tax (Appeals)-VI, Chennai, dated 25/05/2007 made in ITA No.335/2004-05 and against the assessment order of the Deputy Commissioner of Income Tax, Central Circle III (4) Chennai dated 31/03/2003 under section 143(3) of the IT Act for the Assessment year 2000-01.

For Appellant : Mrs.R.Hemalatha, SSC

For Respondent : Ms.Sree Lakshmi Valli for
Mr.N.Muthukumar

Judgment was delivered by T.S.Sivagnanam, J

We have heard Mrs.R.Hemalatha, learned Senior Standing Counsel appearing for the appellant - Revenue and Ms.Sree Lakshmi Valli, learned counsel appearing for the respondent - assessee.

2. This appeal, filed by the Revenue under Section 260A of the Income Tax Act, 1961 (for short, the Act) is directed against the order dated 07.1.2009 made in ITA.No.2252/Mds/2007 on the file of the Income Tax Appellate Tribunal, Chennai 'B' Bench (for brevity, the Tribunal) for the assessment year 2000-01.

3. The appeal was admitted on 09.11.2009 on the following reframed substantial questions of law :

"i. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that foreign exchange gains should form part of the profits for the purpose of deduction under Section 10A?

ii. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the income from training activity, sale of hardware and software and 39.33% of 'miscellaneous income' are part and parcel of income for exemption under Section 10A, citing the Third Proviso to Section 10A, as per which, the domestic turnover including the said income did not exceed 25% of the total turnover, without noticing that the Proviso was not applicable to the assessment year 2000-01 and applied only for the assessment year 2001-02? And

iii. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in confirming the order of the Commissioner of Income Tax (Appeals) by merely observing that there was no merit in the ground raised by the Revenue on the issue of deletion of depreciation of Rs.7,06,47,733?"

4. So far as the first substantial question of law is concerned, it is the submission of Ms.Sree Lakshmi Valli, learned counsel appearing on behalf of the assessee that it is covered in favour of the assessee and against the Revenue in the assessee's own case in TCA.No.599 of 2010 dated 13.7.2010 for the assessment year 2001-02, wherein a Division Bench of this Court held that gain due to fluctuation in foreign exchange rate is directly related to the export sales of the assessee and cannot be treated as other than part of profit from export.

5. Per contra, Mrs.R.Hemalatha, learned Senior Standing Counsel for the Revenue would contend that the said decision cannot be applied to the facts of the present case, which is for the assessment year 2000-01, as the Tribunal as well as the Commissioner of Income Tax (Appeals)-VI, Chennai-34 [for brief, the CIT(A)] failed to examine the nexus for the expenses incurred for export turnover.

6. We have carefully gone through the order passed by the CIT(A) as well as that of the Tribunal and we find that nowhere the Revenue raised such a contention either before the CIT(A) or

before the Tribunal.

7. Ms.Sree Lakshmi Valli, learned counsel for the respondent - assessee has produced before us a copy of the Fifth Annual Report 1999-2000 and pointed out that the earnings in foreign currency were only from software development services and products other than exports and that there was no other source of earnings.

8. In the light of the fact that the Revenue did not canvass this issue either before the CIT(A) or before the Tribunal, they are precluded from doing so in the present proceedings. Hence, by applying the law laid down in the assessee's own case in TCA.No.599 of 2010 dated 13.7.2010, the first substantial question of law is answered against the Revenue and in favour of the assessee.

9. It is the submission of Mrs.R.Hemalatha, learned Senior Standing Counsel for the Revenue that the CIT(A) and the Tribunal erroneously applied the Third Proviso to Section 10A of the Act, which came into effect substituting Section 10A as it originally stood, by the Finance Act, 2000 with effect from 01.4.2001 and would be applicable only from the assessment year 2001-02 whereas the present appeal relates to the assessment year 2000-01. Therefore, it is submitted that the Tribunal committed an error in deciding the issue in favour of the assessee.

10. Ms.Sree Lakshmi Valli, learned counsel for the assessee submits that prior to substitution of the Third Proviso to Section 10A by the Finance Act, 2000 with effect from 01.4.2001, the assessee had the benefit of the substantive provision namely Section 10A(2)(ia) of the Act, which reads as follows :

"Special Provision in respect of newly established industrial undertakings in free trade zones :

.....

It has begun or begins to manufacture or produce articles or things during the previous year relevant to the assessment year-

.....

in relation to an undertaking which begins to manufacture or produce any article or thing on or after the 1st day of April, 1995, its exports of such articles or things are not less than seventy-five per cent of the total sales thereof during the previous year."

11. We have perused the order passed by the Tribunal and we find that there is inconsistency in the order in the sense that the Tribunal, in paragraph 4 of the order, considered the issue relating to net income from training activity, which was held to be part and parcel of the assessee's income entitled

to exemption under Section 10A of the Act. The Tribunal, after taking note of its decision in the assessee's group companies' case in ITA.Nos.338/Mds/2001 and 594/Mds/2002 dated 17.2.2006, remanded the matter back to the file of the Assessing Officer for deciding the issue afresh after examining the true nature of the training activities and character of income earned by the assessee out of such activity.

12. Having held so, the Tribunal, in paragraph 10 of the impugned order, dismissed the Revenue's appeal and upheld the order passed by the CIT(A) with regard to the miscellaneous income namely 39.33%, which was, according to the assessee, derived from its own training centres. The Tribunal could have followed its earlier order in the assessee's group companies' case and remanded the issue and could not have rejected the Revenue's appeal and affirmed the finding with regard to the miscellaneous income. Therefore paragraph 10 of the impugned order passed by the Tribunal requires to be set aside.

13. The learned counsel for the respondent - assessee points out that the Central Board of Direct Taxes issued a circular in Circular No.717 dated 14.8.1995, which gives explanatory notes on the provisions of the Finance Act, 1995. It is pointed out in paragraphs 21.3 and 21.4 of the said Circular with regard to the benefits provided to units in free trade zones. Hence, it is submitted that de hors the findings of the CIT(A) with regard to the Third Proviso to Section 10A of the Act, the assessee has got a strong case based on the substantive provision such as Section 10A of the Act prior to its substitution by the Finance Act, 2000 with effect from 01.4.2001.

14. In the light of the fact that the matter has been remanded to the Assessing Officer for verification and for a fresh consideration, we give liberty to the assessee to raise this contention before the Assessing Officer during the course of hearing on such remand. Therefore, the second substantial question of law is answered accordingly.

15. With regard to the third substantial question of law, Mrs.R.Hemalatha, learned Senior Standing Counsel would contend that the Tribunal, in paragraph 9 of the order, did not render any finding as to why the Revenue's appeal does not merit consideration and that it had rejected the Revenue's appeal virtually by a single line order. The Tribunal stated that on going through the detailed order passed by the CIT(A) on the point relating to the deletion of disallowance of depreciation amounting to Rs.70,64,71,733/-, it found that there was no merit in the grounds raised by the Revenue.

16. It may be true that the order passed by the Tribunal does not contain elaborate reasons. But, the Tribunal affirmed the order passed by the CIT(A). Therefore, we are required to see as to whether the order passed by the CIT(A) contains sufficient reasons, which prompted the Tribunal to confirm the same. The discussion starts from paragraph 4.6 of the order

passed by the CIT(A) dated 25.5.2007 and the crux of the discussions is contained in paragraph 4.6.3. On a reading, it is evidently clear that the CIT(A) has done a thorough and elaborate exercise and arrived at a finding. This view was found proper by the Tribunal and therefore, the Revenue's appeal was dismissed.

17. In any event, we do not find any substantial question of law arising for consideration on the said ground. Therefore, the third substantial question of law requires to be decided against the Revenue and is accordingly decided against the Revenue.

18. In the result, the above tax case appeal is disposed of. Substantial questions of law 1 and 3 are answered against the Revenue. So far as the second substantial question of law is concerned, the same is left open, as we have affirmed the order of the Tribunal remanding the matter to the Assessing Officer for a fresh consideration. As observed by us earlier, we leave it open to the assessee to canvass all the points before the Assessing Officer on such remand. No costs.

Sd/-

Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

RS

To

- 1.The Income Tax Appellate Tribunal, Chennai 'B' Bench.
2. The Commissioner of Income Tax Appeal VI, Chennai
3. The Deputy Commissioner of Income Tax,
Central Curcke UUU (4), Chennai.

+1cc to Mr.T.Ravikumar, Advocate SR.No.69597

+1cc to Mr.N.Muthukumar, Advocate SR.No.70057

TCA.No.1015 of 2009

GP(CO)
GMY(19/09/2019)