IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 10-01-2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI

AND

THE HON'BLE DR.JUSTICE ANITA SUMANTH

T.C.A.Nos.1257 & 1258 of 2009

Commissioner of Income Tax,
Chennai. ...Appellant in both appeals/
Appeal in both

-vs-

M/s.Sak Soft Ltd. ...Respondent in both appeals/
Respondent in both

T.C.A.No.1257 of 2009 is filed under Section 260A of the Income Tax Act,1961, against the order of the Income Tax Appellate Tribunal, Chennai 'D' Bench, dated 06.03.2009, passed in ITA No.691/Mds/2007, appeal preferred against the order passed by the Commissioner of Income Tax (Appeals) XII, Chennai-34 dated 09.0.2006 made in I.T.A. No.231/05-06, appeal against the order passed by Income Tax Officer, company Ward VI(1), Chennai dated 24.03.2006 made in PAN GIR No.AADCS9979E/WSA 231 and against the order passed by the Income Tax Officer, Company Ward VI(1), Chennai, dated 10.03.2005 made in PAN No.GIR No.WSA 231/AADCS9979E.

T.C.A.No.1258 of 2009 is filed under Section 260A of the Income Tax Act,1961, against the order of the Income Tax Appellate Tribunal, Chennai 'D' Bench, dated 06.03.2009, passed in ITA No.1953/Mds/2007.

For appellant : Mr.T.R.Senthilkumar,
Senior Standing Counsel.

For respondent : Mr.R.Sivaraman

JUDGMENT

[Judgment of the Court was delivered by Dr.Anita Sumanth,J.]

Revenue has filed these appeals under Section 260A of the Income Tax Act, aggrieved by common order dated 06.03.2009, passed by the Income Tax Appellate Tribunal (in short, 'Tribunal'), in respect of Assessment Years 2002-2003 and 2003-2004 respectively.

2. The substantial question of law framed for determination in these appeals is as follows :

> "Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that for the purpose of applying the formula under sub-section (4) of Section 10B, the freight, telecom charges, or insurance attributable to delivery of articles or things or computer software outside India or expenses, if any, incurred in foreign exchange in providing the technical services outside India ought to be excluded both from the export turnover and from total turnover even though the statute has provided for such exclusion only from the export turnover ? "

3. Learned counsels before us concur on the position that the question has been resolved by a recent judgment of the Supreme Court in the case of Commissioner of Income Tax v. HCL Technologies Ltd., (2018) 404 ITR 719 (SC). The operative portion of the judgment is as follows :

> "19. In the instant case, if the deductions on freight, telecommunication and insurance attributable to the delivery of computer software under Section 10A of the IT Act are allowed only in Export Turnover but not from the Total Turnover then, it would give rise to inadvertent, unlawful, meaningless and illogical result which would cause grave injustice to the Respondent which could have never been the intention of the legislature.
>
> 20. Even in common parlance, when the object of the formula is to arrive at the profit from export business, expenses excluded from export turnover have to be excluded from total turnover also. Otherwise, any other interpretation makes the formula unworkable and absurd. Hence, we are satisfied that such deduction shall be allowed from the total turnover in same proportion as well.

> 21. On the issue of expenses on technical services provided outside, we have to follow the same principle of interpretation as followed in the case of expenses of freight, telecommunication etc., otherwise the formula of calculation would be futile. Hence, in the same way, expenses incurred in foreign exchange for providing the technical services outside shall be allowed to exclude from the total turnover."

4. In the light of the above, the question of law is answered in favour of the Assessee and against the Revenue.

5. The Tax Cases (Appeals) are dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To

1.The Income Tax Appellate Tribunal, Chennai 'D' Bench, Chennai.

2. The Commissioner of Income Tax, Chennai-III.

3. The Commissioner of Income Tax (Apeals)XII, Chennai-34.

4. The Income Tax Officer, Company Ward VI(1), Chennai.

+1cc to Mr.R.Sivaraman, Advocate SR.No.2887

+1cc to Mr.T.R.Senthilkumar, Advocate SR.No.2950

T.C.A.Nos.1257 & 1258 OF 2009

BS(CO)
GMY(15/02/2019)