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.No.769 of 2009

Commissioner of Income Tax,
Chennai. ... Appellant/Appellant

-vs-

M/s.Cognizant Technology Solutions
India Pvt.Ltd. ... Respondent/Respondent

Appeal filed under Section 260A of the Income Tax Act,1961, against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench, dated 13.03.2009, passed in ITA No.2477/Mds/2007, appeal prefrred against order passed by the Commissioner of Income Tax (Appeals) III, Chennai-34 dated 25.09.2007 made in ITA No.779/2006-07/A-III appeal against the order passed by the Additional Commissioner of Income Tax, Company Range -I, Chennai, dated 18.12.2006 made in AAACD312M/CX2-019.

For appellant : Mr.T.Ravikumar,
Senior Standing Counsel.

For respondent : Mr.K.Magesh

JUDGMENT

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

Revenue has filed this appeal under Section 260A of the Income Tax Act, aggrieved by order dated 13.03.2009, passed by the Income Tax Appellate Tribunal, (in short, 'Tribunal') in respect of Assessment Year 2004-2005.

2. The substantial question of law framed for determination in this appeal is as follows :

> "Whether on the facts and circumstances of the case, the Tribunal was right in holding that the expenditure incurred on telecommunication charges relatable to delivery of software outside India would also not form part of the total turnover for the purpose of Section 10B of the Act ? "

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 Case (Appeal) is dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To

1.Income Tax Appellate Tribunal,
Madras 'A' Bench, Chennai.

2. The Commissioner of Income Tax, Chennai.

3. The Commissioner of Income Tax (Appeals) Chennai-34.

4. The Additional Commissiioner of Income Ta, Company Range -I,
Chennai.

+1cc to Mr.T.Ravi Kumar, Advocate SR.No.2662

+1cc to Mr.K.Magesh, Advocate SR.No.2996

T.C.A.No.769 OF 2009

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