IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 09-04-2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

T.C.A.No.981 OF 2009

M/s.Teledata Informatics Limited. ...Appellant/Respondent

-vs-

The Assistant Commissioner of Income Tax,
Company Circle - III (2),
Chennai. ...Respondent/Respondent

Prayer: Tax Case Appeal filed under Section 260A of the Income Tax Act,1961, against the order of the Income Tax Appellate Tribunal, Chennai 'C' Bench, dated 14.08.2008, passed in ITA No.2427/Mds/2007 and against the order of the Commissioner of Income Tax (Appeals)VIII, Chennai dated 02.08.2007 made in Appeal No.CIT(A) VIII CHE/280/2006-2007 for the assessment year 2003-2004 and against the order of the Assistant Commissioner of Income Tax, Company Circle III(2) Chennai 34 dated 29.03.2006, made in P.A.No./GI No. 323330-T/AAACT/2976K for the assessment year 2003-2004.

For Appellant : Ms.M.Parimala Devi
for Mr.R.Vijayaraghavan

For Respondent: Mrs.Premalatha,
Standing Counsel.

JUDGMENT
(By Dr.Vineet Kothari,J.)

Assessee has filed this Appeal under Section 260A of the Income Tax Act,1961, in short, 'Act', aggrieved by the order, dated 14.08.2008, partly allowing the Appeal filed by the Revenue and setting aside the order passed by the learned Commissioner of Income Tax (Appeals) on 02.08.2007, by which, the Appeal filed by the Assessee was allowed.

2. This Appeal was admitted by a Co-ordinate Bench of this Court on 26.10.2009 only on the following two Substantial Questions of Law, though five Questions were suggested by the

Assessee :

> ''1.Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the CIT (Appeals) was justified in not allowing the claim of the appellant when no such claim was made before the Assessing Officer ?
>
> 2. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that loss due to exchange fluctuation arising on account of valuing the receivables from sales as per exchange rate on the last day of the accounting year was only contingent and notional and hence not allowable as deduction ?''

3. On the above questions admitted by this Court, Ms.M.Parimala Devi, learned counsel for the Assessee, representing Mr.R.Vijayaraghavan, has submitted that the learned Tribunal, in Paragraph 2.2 of its order, had relied upon a judgment rendered by the Uttarakhand High Court in the case of Commissioner of Income Tax v. Oil & Natural Gas Corporation Ltd., (2008) 301 ITR 415, while disallowing the 'Foreign Exchange Fluctuation Losses', suffered by the Assessee. She further submitted that the said judgment of the Uttarakhand High Court stood set aside and reversed by the Hon'ble Supreme Court later on in the appeal filed by Oil & Natural Gas Corporation Ltd. in Oil & Natural Gas Corporation Ltd. v. Commissioner of Income Tax, (2010) 322 ITR 180 (SC). She, therefore, submitted that the Disallowance made by the learned Tribunal, setting aside the order of the learned CIT (Appeals), which was in favour of the Assessee and restoring the order of the Assessing Officer, is no longer sustainable in law and hence the same has to be set aside.

4. On the other issue of 'Deduction' under Section 10B of the Act on the export turnover, learned counsel for the Assessee raised certain issues, which were in the suggested questions, which are quoted below for ready reference :

> ''1. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the expenses between the STP and Non-STP divisions should be distributed on turnover basis ?
>
> 2. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the depreciation on software used in domestic sales should be set off against the export profits for the purpose of computing

deduction u/s.10B ?

3. Whether the Tribunal failed to appreciate that Section 10B provides for deduction of such profits and gains derived by an undertaking from the export of computer software and therefore the setting off of depreciation on software used in domestic sales against export profits would not result in profits derived from exports but reduce the profits on account of inappropriate adjustment ?''

5. However, since the above questions were not admitted in the present Appeal and having gone through the order passed by the learned Tribunal, we are of the opinion that the matter deserves to be restored back to the learned Tribunal for considering the entire appeal filed by the Revenue de novo, in view of the subsequent development of law by the aforesaid judgment of the Hon'ble Supreme Court in the case of Oil & Natural Gas Corporation Limited, cited supra, and also other case laws, which the Assessee may rely upon, for the purpose of 'Deduction' under Section 10B of the Act.

6.Accordingly, this Appeal filed by the Assessee is allowed and the impugned order passed by the learned Tribunal, dated 14.08.2008, is set aside and the Appeal filed by the Revenue is restored back to the file of the learned Tribunal for deciding the same afresh in accordance with law. Both the parties will be free to raise their respective contentions before the learned Tribunal. No costs.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

1. Income Tax Appellate Tribunal,
Chennai 'C' Bench,
Chennai.

2.The Commissioner of Income Tax (Appeals)VIII
Chennai.

3.The Assistant Commissioner of Income Tax,
Company Circle – III (2),
Chennai.

+1 CC to Mr.Subbaraya Aiyar Padmanabhan, Advocate sr 35216.
+1 CC to Ms.S.Premalatha, Advocate sr 34670.

T.C.A.No.981 OF 2009

MR(CO)
SP(27/05/2019)