IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2019

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Appeal Nos.373 and 376 of 2015

The Commissioner of Income Tax,
Chennai. ...Appellant in both cases

Vs

M/s.Avalon Technologies P. Ltd.,
TPI Block, B-7, First Main Road,
MEPZ-SEZ, Tambaram, Chennai - 600 045.
PAN: AACCA4147K ...Respondent in both cases

APPEALS under Section 260A of the Income Tax Act, 1961 against the common order dated 31.10.2014 made in ITA.Nos.2267 and 2270/Mds/2013 on the file of the Income Tax Appellate Tribunal, Chennai 'A' Bench for the assessment years 2005-06 and 2008-09 against the order dated 30.09.2013 made in ITA.NO.318/5321/13-14 on the file of the Commissioner of Income Tax (A)(C), Chennai.

Against the order the order dated 12.12.2008,25.11.2009,02.10.2010, and 23.12.2011 made in PAN/GIR: AACCA4147K /AX6-178 on the file of the Deputy Commissioner of Income Tax Company Circle(1), chennai for the Assessment Year 2005-2006 to 2008-09.

For Appellant:Mr.T.Ravikumar, SSC assisted by
Ms.R.Hemalatha, SSC
For Respondent:No appearance

COMMON JUDGMENT
(Judgment was delivered by T.S.Sivagnanam,J)

We have heard Mr.T.Ravikumar, learned Senior Standing Counsel assisted by Ms.R.Hemalatha, learned Standing Counsel appearing for the appellant - Revenue.

2.These appeals, filed by the Revenue under Section 260A of the Income Tax Act, 1961, are directed against the common order dated 31.10.2014 made in ITA.Nos.2267 and 2270/Mds/2013 on the file of the Income Tax Appellate Tribunal, Chennai 'A' Bench for the assessment years 2005-06 and 2008-09.

3.The appeals were admitted on 22.07.2015 on the following substantial questions of law :

> “i) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in directing the Assessing Officer to recompute the income in the light of the decision of the Special Bench in the case of Sak Soft by excluding the freight and insurance expenses both from the Export turnover and also from the total turnover while computing deduction under Section 10A of the Income Tax Act?
>
> ii) Is not the finding of the Tribunal bad, especially when Explanation 2(iv) to Section 10A defines the word "Export Turnover" whereby it had been clearly stated that it would not include freight, telecommunication charges attributable to the delivery of the articles or things or computer software outside India or expenses if any incurred in foreign exchange while computing deduction under Section 10A of the Income Tax Act?
>
> iii) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that for the purpose of applying the formula under Section 10B, the freight, telecommunications charges, which are required to be excluded from export turnover as defined under Explanation 2(iii) of Section 10B of the Act should also be excluded from total turnover even though the statute has provided for such exclusion only from the export turnover?"

4.The learned Senior Standing Counsel for the appellant submits that the above appeals are not pursued by the

Revenue on account of the low tax effect in terms of Circular No.17/2019 dated 08.8.2019 issued by the Central Board of Direct Taxes. By the said Circular, the monetary limit for filing or pursuing an appeal before the High Court has been increased to Rs.1 Crore. It is further submitted that the tax effect in the respective cases is less than the threshold limit.

5. In the light of the said submissions, the above tax case appeals are dismissed on account of the low tax effect. The substantial questions of law framed are left open. In the event the tax effect in the respective cases is above the threshold limit fixed in the said circular, liberty is granted to the Revenue to make a mention to this Court to restore the appeals to be heard and decided on merits. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

cse

To

1.THE INCOME TAX APPELLATE TRIBUNAL, CHENNAI 'A' BENCH.

2.THE COMMISSIONER OF INCOME TAX (A)(C)-II, CHENNAI.

3.THE DEPUTY COMMISSIONER OF INCOME TAX COMPANY CIRCLE(1), CHENNAI

+1cc to Mr.T.Ravikumar , Advocate SR.No. 73327

TCA.Nos.373 and 376 of 2015

rsv
A.SK(20/11/2019)