In the High Court of Judicature at Madras

Dated : 01.8.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case Appeal No.540 of 2019

M/s.Cognizant Technology Solutions
India Private Limited, Chennai-18 ...Appellant

Vs

The Commissioner of Income Tax,
International Taxation,
4th Floor, BSNL Building
Greams Road, Chennai 600 006. ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 to set aside the order dated 20.11.2018 made in ITA.No.689/Chny/2015 on the file of the Income Tax Appellate Tribunal, Chennai 'B' Bench for the assessment year 2012-13 against the order of the Commissioner of Income Tax (Appeals)16 Nungambakkam Chennai 34 made in I.T.A. No. 73 CTI(A)-16/13-14 dated 22.01.2015 against the order of the Income Tax Officer(International TaxationI(1) Chennai made in PAN/TAN-AAACD3312M dated 17.01.2014.

For Appellant : Mr.N.V.Balaji
For Respondent : Mr.Karthik Ranganathan
assisted by Mr.S.Rajesh

Judgment was delivered by T.S.Sivagnanam,J

We have heard Mr.N.V.Balaji, learned counsel for the appellant and Mr.Karthik Ranganathan, learned Senior Standing Counsel assisted by Mr.S.Rajesh, learned Standing Counsel accepting notice for the respondent.

2. This appeal, filed by the assessee under Section 260A of the Income Tax Act, 1961 (for short, the Act), is directed against the order dated 20.11.2018 made in ITA.No.689/Chny/2015 on the file of the Income Tax Appellate Tribunal, Chennai 'B' Bench (for brevity, the Tribunal) for the assessment year 2012-

3. The assessee has filed this appeal by raising the following substantial questions of law :

> "i. Whether, on the facts and in the circumstances of the case and in law, the Tribunal was right in remitting the issue of tax deduction at source on software AMC and software licence payments made by the appellant without deciding whether the appellant was liable to deduct tax at source, particularly when the facts before it in respect of the same were in fact examined by the Income Tax Officer, which is evident from the order passed under Section 201 of the Act and were undisputed facts ?
>
> ii. Whether the appellant was liable to deduct tax at source in respect of the payments made towards software AMC and software licence considering the provisions of the Act and the DTAAs, particularly when no income accrued to the recipient in India ? And
>
> iii. Is the finding of the Tribunal that it could not conclude the nature of transaction in respect of payments made to M/s.JQ Network Pte Ltd in respect of software licence not perverse, particularly when the appellant had placed all the material before it ?"

4. Substantial question of law Nos.1 and 2 pertain to the same issue and the third substantial question of law pertains to a different issue.

5. On a perusal of the order passed by the Tribunal, we find that the Tribunal remanded both the issues for a fresh consideration by the Assessing Officer.

6. The learned counsel for the appellant submits that the assessee had relied upon the decision of a Coordinate Bench of the Tribunal in the assessee's own case for the assessment year 2008-09 wherein the stand of the assessee that the tax was not required to be deducted on AMC charges paid to non resident companies was accepted by the Tribunal and that in spite of the said decision, the Tribunal remanded the matter for a fresh consideration. On the second issue namely with regard to the third substantial question of law, it is submitted that the remand was uncalled for, as materials were available before the Tribunal and in fact, those materials were placed before the Assessing Officer and the Commissioner of Income Tax (Appeals)

[for short, the CIT(A)], who had rendered a finding and that the Tribunal ought to have tested the correctness of the findings rendered by the CIT(A) instead of remanding the matter.

7. In our considered view, the Tribunal, being the last fact finding body in the hierarchy of authorities, would be justified in remanding the matter, if, according to the Tribunal, the details require a deeper examination. The reasons assigned by the Tribunal for remanding the issues to the Assessing Officer, to our mind, does not appear to be perverse or untenable. Thus, we are not inclined to interfere with the order passed by the Tribunal remanding the issues for a fresh consideration by the Assessing Officer.

8. For the above reasons, the above tax case appeal fails and is accordingly dismissed. Consequently, the substantial questions of law are left open. No costs.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

To
1.The Income Tax Appellate Tribunal, Chennai 'B' Bench.

2.The Commissioner of Income Tax (Appeals 16)
2nd floor, Main Building
121, M.G.Road
Nungambakkam, Chennai 34.

3.O/o The Income Tax officer
(International Taxation)I(1)
VII Floor, Annexe Building
121, Nungambakkam High Road
Chennai 600 034.

+1 CC to Mr.N.V.Balaji, Advocate sr 66471.
+1 CC to Mr. Karthik Ranganathan, Advocate sr 65678.



TCA.No.540 of 2019

NRL(CO)
SP(06/09/2019)