IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.8.2019

Coram :

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

Tax Case Appeal No.779 of 2016

The Commissioner of Income Tax,
Corporate Circle 3(1), Chennai-34 ...Appellant

Vs

M/s.Tocheunglee Stationery
Manufacturing Company Pvt. Ltd.,
Polivakkam-602002. ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 23.9.2015 made in ITA.No.1363/Mds/2015 on the file of the Income Tax Appellate Tribunal, Chennai 'B' Bench for the assessment year 2008-09, against the order dated 26/02/2015 made in ITA.No.580/CIT(A)-11/2013-14 on the file of the Commissioner of Income Tax (Appeals) -II and against the order dated 29.12.2011 on the file of the Assistant Commissioner of Income Tax, Company Circle-III(2), made in GIR.No./PAN.No.AAACT4112B for the Assessment year 2008-09.

For Appellant : Mr.M.Swaminathan, SSC assisted by Ms.V.Pushpa, SC

For Respondent : Mr.V.S.Jayakumar

Judgment was delivered by T.S.Sivagnanam,J

We have heard Mr.M.Swaminathan learned Senior Standing Counsel assisted by Ms.V.Pushpa, learned Standing Counsel appearing for the appellant - Revenue and Mr.V.S.Jayakumar, learned counsel appearing for the respondent - assessee.

2. This appeal, filed by the Revenue under Section 260A of the Income Tax Act, 1961 is directed against the order dated 23.9.2015 made in ITA.No. 1363/Mds/2015 on the file of the

Income Tax Appellate Tribunal, Chennai 'B' Bench for the assessment year 2008-09.

3. The appeal was admitted on 08.11.2016 on the following substantial questions of law :

> "i. Whether on the facts and in the circumstances of the case, the findings of the Tribunal were right 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 or expenses if any incurred in foreign exchange while computing deduction under Section 10b of the Income Tax Act ? And
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> ii. Whether, on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that for the purpose of applying formula under Sub-Section (4) of Section 10B, the freight, telecommunication charges or insurance attributable to the delivery of the articles or things or computer software outside 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?"

4. The learned Senior Standing Counsel for the appellant submits that the above appeal is 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 this case is less than the threshold limit.

5. In the light of the said submissions, the above tax case appeal is dismissed on account of the low tax effect. The substantial questions of law framed are left open. In the event the tax effect 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 appeal to be heard and decided on merits. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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

2.The Commissioner of Income Tax(Appeals)-II,
Chennai -34.

3.The Assistant Commissioner of Income Tax,
Company Circle -III(2), Chennai -34.

+1 cc to M/s.M.Swaminathan,Advocate Sr.No. 75841
+1 cc to M/s.V.S.Jayakumar,Advocate Sr.No. 75719

AKM/12.11.19/3P-6C /

TCA.No.779 of 2016