IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2019

CORAM

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

Tax Case Appeal Nos.714, 716 to 720 and 723 of 2014

The Commissioner of Income tax,
Chennai. ..Appellant in all Appeals

-vs-

M/s.INautix Technologies India Pvt. Ltd.,
10th Floor, Tidel Park,
4, Canal Bank Road,
Taramani, Chennai-600 113. ..Respondent in all Appeals

APPEALS under Section 260A of the Income Tax Act, 1961 against the common order dated 09.08.2011, made in I.T.A.Nos.541/Mds/2006, 1439/Mds/2007, 1630/Mds/2007, 2091, 2092, 2093 & 2179/Mds/2010 on the file of the Income Tax Appellate Tribunal 'B' Bench, Chennai for the assessment years 2002-03, 2003-04, 2003-04, 2004-05, 2005-06, 2006-07 and 2006-07 respectively against the order dated 24/09/2010 made in ITA.No.641/06-07/A.III on the file of the Commissioner of Income Tax Appeals(III), Chennai 600 034 for the Assessment year 2004-05 against the order dated 22/09/2010 made in ITA.No.619/09-10/A.III on the file of the Commissioner of Income Tax(A)-III Chennai -34, for the Assessment year 2006-07 against the order dated 31/12/2009 made in PAN.No.AAACI6177K on the file of the Assistant Commissioner of Income Tax, Company Circle II(3), Chennai -34 for the Assessment year 2006-07 against the order dated 26/08/2008 made in IX6-012/AAACI6177K on the file of the Assistant Commissioner of Income Tax, Company Circle II(3), Chennai 34 for the Assessment Year 2005-06 against the order dated 31/01/2007 made in ITA.No.147/06-07 on the file of the Commissioner of Income Tax(Appeals)-XII, Chennai -34 for the Assessment year 2003-04 against the order dated 23/11/2006 made in IX6-012/AAACI6177K on the file of the Assistant Commissioner of Income Tax Company Circle II(3), Chennai-34 for the assessment year 2004-05 against the order dated 28/02/2006 made in IX6-012/AAACI6177K, on the file of the Assistant Commissioner of Income Tax Company Circle II(3) Chennai -34 for the

Assessment year 2003-04 against the order dated 17/01/2006 made in ITA.No.188/2005-06/A.III, on the file of the Commissioner of Income Tax (Appeals)-III, Chennai -34 for the Assessment year 2002-03 against the order dated 28/03/2005 made in GIR/PAN.No. IX6-012/AAACI6177K on the file of the Assistant Commissioner of Income Tax, Company Circle II(3), Chennai -34 for the Assessment year 2002-03.

For Appellant : Mr.Karthik Ranganathan, SSC
(In all Appeals) assisted by Mr.S.Rajesh, Standing Counsel

For Respondent : Mr.N.V.Balaji
(In all Appeals)

COMMON JUDGMENT
(Delivered by T.S.Sivagnanam, J.)

These appeals filed by the Revenue under Section 260A of the Income-tax Act, 1961 are directed against the common order dated 09.08.2011, made in I.T.A.Nos.541/Mds/2006, 1439/Mds/2007, 1630/Mds/2007, 2091, 2092, 2093 & 2179/Mds/2010 on the file of the Income Tax Appellate Tribunal 'B' Bench, Chennai for the assessment years 2002-03, 2003-04, 2003-04, 2004-05, 2005-06, 2006-07 and 2006-07 respectively.

2.The appeals were admitted on 03.12.2014, on the following substantial questions of law:-

"T.C.A.No.714 of 2014:-

(i) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the expenditure incurred in foreign currency is to be excluded from the export turnover and also from the total turnover?

(ii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the expenditure incurred in foreign currency for the technical services rendered outside India for the assessment years 2003-04, 2004-05, 2005-06 and 2006-07 is to be allowed?

(iii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that foreign exchange fluctuation gain was to be

excluded from the eligible profits for the purpose of computation of deduction under Section 10A?

(iv) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the refunds from CST is to be included as profit of the undertaking for the purpose of computing deduction under Section 10A?

(v) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the loss from the provision of works station is to be treated as business loss as against the loss from other sources?

(vi) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the expenditure incurred in foreign currency from export turnover and total turnover is to be excluded while computing deduction under Section 10A?

(vii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the yielding of revenue forms part of export turnover while computing deduction under Section 10A? and

(viii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in exclusion of items from the export turnover which is contrary to clause (iii) to explanation of Section 10B while dealing with Rs.123.41 lakhs from the export turnover?

T.C.A.No.716 of 2014:-

(i) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the expenditure incurred in foreign currency is to be excluded from the export turnover and also from the total turnover? and

(ii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the expenditure incurred in foreign currency for the technical services rendered outside India for the assessment year 2003-04, 2004-05, 2005-06 and 2006-07 is to be allowed?

T.C.A.No.717 of 2014:-

(i) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the loss from the provision of works station is to be treated as business loss as against the loss from other sources?

(ii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the exclusion of expenditure incurred in foreign currency from export turnover and total turnover is to be made for the purpose of claiming deduction under Section 10A?

(iii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in dismissing the departmental appeal on unyielding of revenue forming part of export turnover for the purpose of computation of deduction under Section 10A is to be allowed? and

(iv) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that a sum of Rs.123.41 lakhs being receipt not realized within the financial year is also to be included in the export turnover, as it was not excluded from the total turnover and for maintaining parity?

T.C.A.No.718 of 2014:-

(i) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the expenditure incurred in foreign currency is to be excluded from the export turnover and also from the total turnover? and

(ii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the expenditure incurred in foreign currency for the technical services rendered outside India for the assessment year 2003-04, 2004-05, 2005-06 and 2006-07 is to be allowed?

T.C.A.No.719 of 2014:-

(i) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the

expenditure incurred in foreign currency is to be excluded from the export turnover and also from the total turnover?

(ii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the expenditure incurred in foreign currency for the technical services rendered outside India for the assessment year 2003-04, 2004-05, 2005-06 and 2006-07 is to be allowed? and

(iii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the expenditure incurred in foreign currency from export turnover and total turnover is to be excluded while computing deduction under Section 10A?

T.C.A.No.720 of 2014:-

(i) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the expenditure incurred in foreign currency is to be excluded from the export turnover and also from the total turnover?

(ii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the expenditure incurred in foreign currency for the technical services rendered outside India for the assessment year 2003-04, 2004-05, 2005-06 and 2006-07 is to be allowed? and

(iii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the expenditure incurred in foreign currency from export turnover and total turnover is to be excluded while computing deduction under Section 10A?

T.C.A.No.723 of 2014:-

(i) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the expenditure incurred in foreign currency is to be excluded from the export turnover and also from the total turnover?

(ii) Whether on the facts and in the circumstances of the case, the Income Tax

Appellate Tribunal was right in holding that the expenditure incurred in foreign currency for the technical services rendered outside India for the assessment year 2003-04, 2004-05, 2005-06 and 2006-07 is to be allowed? and

(iii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the expenditure incurred in foreign currency from export turnover and total turnover is to be excluded while computing deduction under Section 10A?"

3.Heard Mr.Karthik Ranganathan, learned Senior Standing Counsel assisted by Mr.S.Rajesh, learned Standing Counsel for the appellant - and Mr.N.V.Balaji, learned counsel for the respondent.

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 08.08.2019 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 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 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

/True Copy/

Sub Assistant Registrar

To

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

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

3.The Assistant Commissioner of Income Tax
Company Circle II(3), Chennai.

4.The Commissioner of Income Tax Appeals XII,
Chennai -34.

+1 cc to M/s.N.V.Balaji, Advocate Sr.No. 72482

AKM/11.02.2021/7P- 6C /

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