

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

Tax Case (Appeal) Nos.206 & 207 of 2009

M/s.California Software Co., Ltd.
T.S.No.140, Block No.2&9
5th Floor, Elnet Software City
C.P.T.Road, Taramani
Chennai 600 113. Appellant in TCA 206/2009

M/s.California Software Co., Ltd.
1205, D Block, TIDEL Park
No.4, Canal Bank Road, Taramani
Chennai 600 113. Appellant in TCA 207/2009

Vs.

The Commissioner of Income Tax-I
Chennai. Respondent in both TCAs

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'A' Bench, Chennai dated 24.07.2008 in against the order of the Commissioner of income Tax Appeals-XII, 121, Mahatma Gandhi Road, Nungambakkam, Chennai-34 dated 15/06/2006 in ITA.No.134/05-06 against the order of the Assistant Commissioner of Income Tax vide PAN.No.CR.I.No./PA No.AABCC8506b dated 11/03/2005 for the assessment year 2002-03.I.T.A.No.2049/Mds/06 and against the order of the Commissioner of Income Tax (Appeals)-III, 121 Mahatma Gandhi Road Chennai 600 034 dated 11/11/2003 in ITA.No.254/2003-04/A III against the Deputy Commissioner of Income Tax, Company Circle-1(3) Chennai dated 14/08/2003 in Cr.No./PA No.CX4-117/AABCC8506D for the assessment year 2001-2002, I.T.A.No.557/Mds/04 respectively.

For Appellant : Mr.R.Kumar
for M/s.T.N.Seetharaman

For Respondent : Mr.T.Ravi Kumar
Senior Standing Counsel

C O M M O N J U D G M E N T

(Judgment of the Court was delivered by DR.VINEET KOTHARI,J)

The Assessee M/s.California Software Co., Ltd. has filed these appeals under Section 260A of the Act, calling in question the correctness of the order passed by the Income Tax Appellate Tribunal, 'A' Bench, Madras dated 24.07.2008, wherein the Tribunal held that the Assessee is not entitled to deduction under Section 10-A / 10-B of the Act.

2. The appeals have been admitted by the Coordinate Bench of this Court on 22.04.2009 on the following substantial questions of law:

"T.C.A.No.206 of 2009

1.Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in upholding the addition of Rs.1,11,07,792/- as deemed income of the assessee company under Section 41(1) of the Income Tax Act, 1961?

2.Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that the assessee company is not eligible for relief in respect of the sum of Rs.2,22,07,792/- under Section 10B of the Income Tax Act, 1961 as amended by the Finance Act, 2001 w.e.f. 01.04.2001?

3. Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that the denying relief under Section 10B of the Act ignoring that the sum of Rs.1,11,07,792/- is a reversal credit entry of the debit entries of Rs.11,35,556/- and Rs.99,72,236/- made in assessment years 2000-01 and 2001-02 and are of the same nature and, accordingly the amount credited this year is eligible for the relief claimed vide decision CIT Vs.Abdul Rahman Industries (2007) 293 ITR 475 (Mad)?

4.Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that the interest of Rs.60,20,491/- earned by the assessee on loan advanced to its wholly owned subsidiary in USA for working capital is not business income of the assessee overlooking the principles laid down by the Supreme Court for determining the true nature of the Income?"

"T.C.A.No.207 of 2009

1. Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that the interest of Rs.45,88,500/- earned by the assessee on loan advanced to its wholly owned subsidiary in USA for working capital is not business income of the assessee overlooking the principles laid down by the Supreme Court for determining the true nature of the income?

2. Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in denying the relief in respect of interest amount of Rs.45,88,500/- under Section 10B of the Act as amended by the Finance Act, 2001 w.e.f.1.04.2001?

3. Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in holding that sum of Rs.2,29,353/- being payments made by the appellant's employees in lieu of notice period are not eligible for deduction under Section 10B of the Act?"

3. The Assessee Company had offered stock option scheme to its employees in the preceding assessment years and following the SEBI guidelines and standard accounting practices, the said amount was debited to the Profit and Loss Account of the Assessee Company. The option given to the employees to convert the said stock option into equity shares of the company was not exercised by the employees in subsequent years, as the rates of such stocks went down and therefore, the company reversed the said entries and the differential amount was treated as income to the Assessee under Section 41 of the Income Tax Act. The question arose as to whether such income of the Assessee under Section 41 of the Act could be treated as 'export income' of the Assessee and was therefore entitled to deduction under Section 10-A/10-B of the Act, which issue was decided by the learned Tribunal against the Assessee with the following reasons.

"7.....

We considered this issue. We are not able to agree with the argument of the ld.C.A. This amount of Rs.1,11,07,792/- is not in the nature of profits and gains derived by the assessee from the export of articles or things for the profits and gains derived by a hundred percent export-oriented undertaking from the

export of articles or things or computer software. As it is evidenced from the simple facts of the case, the amount of Rs.1,11,07,792/- has not been added to the income of the assessee-company as profits and gains derived from the export. Sub-section (3) of Section 10B further provides that the relief is available only if the sale proceeds of articles or things or computer software exported out of India are received in, or brought into India by the Assessee in convertible foreign exchange. It means the receipt of convertible foreign exchange should arise out of the sale proceeds of the articles specified in Section 10B by way of exports. Therefore, nothing other than sale proceeds is contemplated for the relief provided under Section 10B. There must be exports; exports must be of specified goods; the consideration must be in the form of sale proceeds and actual receipts must be in convertible foreign exchange. All the above terms have to be satisfied in order to claim relief under Section 10B. Obviously, the case of the assessee does not stand to the above tests. Therefore, the first argument that the assessee that the relief under Section 10B should be given on the income of Rs.1,11,07,792/- is dismissed.

9. The alternative contention of the Id.C.A., is that the said amount of Rs.1,11,07,792/- does not take the colour of income at all. According to the Id.C.A., the earlier debit entry was passed only to satisfy the norms prescribed by the SEBI while offering Employees' stock option and later the reversal entry was made as the scheme was not materialised. Therefore, according to the Id. C.A., the expenses as well as the income were credited only by book entries and in fact there is no question of income at all. The credit has been occurred in the Profit & Loss Account only because of the necessity of accounting. Therefore, on the basis of real income concept, the amount of Rs.1,11,07,792/- cannot be treated as income at all."

4.The learned counsel for the Assessee however submitted that the controversy is covered by the judgment of a Division Bench of this Court in the case of "Camiceria Apparels India Pvt Ltd -Vs- A.C.I.T" in TCA No.1972 and 1973 of 2008 decided on 04.02.2019, which followed the Full Bench judgment of the Karnataka High Court in case of "C.I.T -Vs- Hewlett Packard Global Soft Ltd" decided on 30.10.2017 reported in (2017) 87 Taxmann.com 182 (Kar) (FB), to which one of us (Dr.Vineet Kothari, J.) was a party. The relevant extract from the above

said judgments are quoted below for ready reference.

Extract from Camiceria Apparels India Pvt Ltd -Vs- A.C.I.T"

19. The relief provided for in terms of Sections 10A, 10B and other special provisions addresses relief to be granted to specified categories of undertakings, specified either by the activities carried on by them or their location (in STPI/FTZ/EOU). The provision is attracted to the entire income derived from the 'business of the eligible undertaking' as contrasted distinguished from the provisions of Section 80 IA falling under Chapter VI A, which provides for a deduction only in respect of the income derived from/by the eligible undertakings. The use of the word "business" in the context of the grant of the relief widens the scope of such benefit encompassing all incomes generated by such business activities.

20. Such special deduction is intended as a benefit to a special class of undertakings and as stated by the Supreme Court in the case of Bajaj Tempo LTD. Vs. Commissioner of Income Tax, Bombay [(1992) 3 SCC 78]. Since a provision intended for promoting economic growth has to be interpreted liberally, the restriction on it, too, has to be construed so as to advance the 'objective of the section and not to frustrate it';. We thus reject the reliance of the Revenue on the decisions referred to since they are distinguishable in law for the reasons stated above.

21. The assessee before us has lost throughout in the proceedings before the lower authorities and the issue has been held against it based on a decision of the Tribunal in the case of ABI Showatech (India) Ltd. V. DCIT that inturn relies on the judgment of this Court in the case of Menon Impex (supra) and other orders of the Tribunal itself.

22. In the case of Menon Impex (supra), the legal distinction argued before us and noted above has evidently not been placed for consideration before that Bench which decides the matter against the assessee following the judgment of the Supreme Court in the case of CIT V. Sterlings Foods ((1999) 237 ITR 579), that has been rendered in the context of section 80I of the Act.

23. As far as the decision of this Court in India Comnet (supra) is concerned, the matter travelled in appeal to the Supreme Court which has, in its judgment reported in 354 ITR 673 remanded the matter to the Income Tax Appellate Tribunal for a decision afresh

after detailed examination of the transaction in question.

24. In the light of the above discussion, we conclude stating that where the sole activity engaged in by the assessee is export, all incomes generated by the conduct of the business of the unit would be eligible to the benefits under section 10A/10B. The orders of the authorities below are reversed and the issue answered in favour of the assessee and against the Revenue. The substantial question of law is answered in favour of the assessee and against the Revenue. The Tax Case (Appeals) are allowed. No costs."

Extract from "C.I.T -Vs- Hewlett Packard Global Soft Ltd"

37. On the above legal position discussed by us, we are of the opinion that the Respondent assessee was entitled to 100% exemption or deduction under Section 10A of the Act in respect of the interest income earned by it on the deposits made by it with the Banks in the ordinary course of its business and also interest earned by it from the staff loans and such interest income would not be taxable as "Income from other Sources" under Section 56 of the Act. The incidental activity of parking of Surplus Funds with the Banks or advancing of staff loans by such special category of assessee covered under Section 10A or 10B of the Act is integral part of their export business activity and a business decision taken in view of the commercial expediency and the interest income earned incidentally cannot be delinked from its profits and gains derived by the Undertaking engaged in the export of Articles as envisaged under Section 10-A or Section 10-B of the Act and cannot be taxed separately under Section 56 of the Act.

38. We therefore affirm and agree with the view expressed by the first Division Bench of this Court in the case of Motorola India Electronics (P) Ltd., (supra) and we do not agree with the view taken by the subsequent Division Bench on 10/04/2014 in the present case.

39. Both the questions thus framed above are answered in favour of the Respondent Assessee and against the Revenue in terms indicated above and the matter is sent back to the Division Bench for deciding this Appeal in accordance with the aforesaid opinion."

5. In view of the aforesaid two precedents, to which no contrary view has been cited before us, we are inclined to take a view that the income brought to tax under Section 41 of the Act by reversal of the entry with regard to the stock option given to the employees is also in the nature of 'export income' and therefore, the Assessee is entitled to exemption / deduction under Section 10-A / 10-B of the Act and the view taken by the learned Tribunal is not sustainable.

6. Accordingly, the present appeals filed by the Assessee deserve to be allowed and the same are accordingly allowed. The questions of law framed above are answered in favour of the Assessee and against the Revenue. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/
Sub Asst. Registrar

KST
To

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

2.Commissioner of Income Tax Appeals-XII
No.121 Mahatma Gandhi Road
Nungambakkam Chennai-34

3.The Commissioner of Income Tax
Appeals-III
121, Mahatma Gandhi Road
Chennai-34

4.The Deputy Commissioner
of Income Tax
Company Circle-1(3)
Chennai

+2 ccs to Mr.T.Ravikumar Advocate sr11583

T.C. (A) Nos.206 & 207 of 2009

nrl(co)
aa09/03/2020