

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2020

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

T.C.A.No.511 of 2019

M/s.Harland Clarke Holding Software
India Pvt Ltd
Suite, 305, Delta Wing,
3rd Floor, Raheja Towers,
No.177, Anna Salai,
Chennai - 600 002.

..Appellant

Versus

The Deputy Commissioner of Income Tax,
Corporate Circle - 2(2)
Wanaparthi Block, Nungambakkam,
Chennai - 600 034.

..Respondent

Prayer:- Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras 'D' Bench, Chennai, dated 30.10.2018 made in I.T.A.No.113/Chny/2018 relating to the Assessment Year 2013-14. Against the order of the Deputy Commissioner of Income Tax Nungambakkam Chennai 34 dated 26.10.2017 PAN/GIR No.AAHCS4742D in the assessment year 2013-2014.

Against the order of the Deputy Commissioner of Income Tax Nungambakkam Chennai 34 dated 5.12.2016 PAN/GIR No.AAHCS4742D in the assessment year 2013-2014.

Against the order of the Deputy Commissioner of Income Tax Greaves Road Chennai 6 dated 28.10.2016 No H-502/TPO-2(1) A.Y2013-2014.

For Appellant : Mr.R.Vijayaraghavan
For M/s.Subbaraya Aiyar Padmanabhan

For Respondent : Mr.Karthik Ranganathan
Senior Standing counsel

JUDGMENT

[Order of the Court was made by T.S.SIVAGNANAM, J.]

This appeal has been filed by the assessee under Section 260 A of the Income Tax Act, 1961 ('the Act' for brevity), challenging the order dated 30.10.2018 passed by the Income Tax Appellate Tribunal, Chennai, 'D' Bench ('the Tribunal' for brevity) in I.T.A.No.113/Chny/2018 for the Assessment Year 2013-14. This appeal was admitted on 26.07.2019 on the following Substantial Questions of Law:

"1. Whether the impugned order passed by the Tribunal not to exclude companies like Infosys BPO Limited is perverse in law and facts and contrary to the provisions of Chapter X of the Act read with Rule 10B(2) of the Rules?

2. Whether the order of the Tribunal in not excluding Hartron Communication Limited, ICRA Online Limited and E4e Healthcare Business Services Private Limited is perverse in law and facts and contrary to the provisions of Chapter X of the Act read with Rule 10B(2) of the Rules?

3. Whether, on the facts and circumstances of the case, the Tribunal order is bad in law in not providing working capital adjustment on the comparable companies as per Rule 10B(3) of the Income Tax Rules and the other provisions of Chapter X of the Act?

4. Whether the Tribunal ought to have given 60% rate of depreciation on the computer software used by the appellant as per the provisions of the Act read with the Rules and

5. Whether the Tribunal order ought to have directed the Assessing officer to grant the MAT Credit due to the appellant?"

2. We have heard Mr.R.Vijayaraghavan for M/s.Subbaraya Aiyar Padmanabhan, learned counsel for the appellant/assessee and Mr.Karthik Ranganathan, learned Senior Standing counsel for the respondent/Revenue.

3. The learned counsel for the appellant / assessee, on instructions, submitted that the appellant / assessee intends to avail the benefit of Vivad Se Vishwas Scheme ('VVS Scheme' for brevity) and in this regard, the assessee is taking steps to file the application / declaration in Form No.I.

4. It may not be necessary for this Court to decide the Substantial Questions of Law framed for consideration on account of certain subsequent developments. The Government of India enacted the Direct Tax Vivad Se Vishwas Act, 2020 (Act 3 of 2020) to provide for resolution of disputed tax and for matters

connected therewith or incidental thereto. The Act of the Parliament received the assent of the President on 17th March 2020 and published in the Gazette of India on 17th March 2020.

5. In terms of the said Act, the assessee has been given an option to put an end to the tax disputes, which may be pending at different levels either before the First Appellate Authority or before the Tribunal or before the High Court or before the Hon'ble Supreme Court of India. Under Section 2(j) "disputed tax" has been defined. In terms of Section 3, where a declarant means a person, who files a declaration under Section 4 on or before the last date files a declaration to the designated authority in accordance with the provisions of Section 4 in respect of tax arrears, then, notwithstanding anything contained in the Income Tax Act or any other law for the time being in force, the amount payable by the declarant shall be determined in terms of Section 3(a-c) thereunder.

6. The First Proviso to Section 3 states that in case, where an Appeal or Writ Petition or Special Leave Petition is filed by the Income Tax authority on any issue before the Appellate Forum, the amount payable shall be one-half of the amount in the table stipulated in Section 3 calculated on such issue, in such a manner as may be prescribed. The second proviso deals with the cases, where the matter is before the Commissioner (Appeals) or before the Dispute Resolution Panel. The third proviso deals with cases, where the issue is pending before the Income Tax Appellate Tribunal. The filing of the declaration is as per Section 4 of the Act and the particulars to be furnished are also mentioned in the Sub Sections of Section 4. Section 5 of the Act deals with the time and manner of the payment and Section 6 deals with Immunity from initiation of proceedings in respect of offence and imposition of penalty in certain cases. Section 9 of the Act deals with cases, where the Act 3 of 2020 will not be applicable.

7. As observed, the assessee is given liberty to restore this appeal in the event the ultimate decision to be taken on the declaration to be filed by the assessee under Section 4 of the said Act is not in favour of the assessee. If such a prayer is made, the Registry shall entertain the prayer without insisting upon any application to be filed for condonation of delay in restoration of the appeal and on such request made by the assessee by filing a Miscellaneous Petition for Restoration, the Registry shall place such petition before the Division Bench for orders.

8. In the light of the above, we direct the appellant / assessee to file the Form No.I and the competent authority shall process the application / declaration in accordance with the Act and pass appropriate orders as expeditiously as possible

preferably within a period of six (6) weeks from the date on which the declaration is filed in the proper form.

9. With this direction, the Tax Case Appeal stands disposed of with the aforementioned liberty and Consequently, the Substantial Questions of Law are left open. No costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

To

1.The Income Tax Appellate Tribunal,
Balaji Bhavan, Besant Nagar,
'D' Bench, Chennai-90.

2.The Deputy Commissioner of Income Tax,
Nungambakkam, Chennai-34.

3. The Ministry of Finance Income Tax Department
Dispute Resolution Panel 2
80 feet Road Koramangala BMTC Building,
Income Tax Office, Bangalore-560095.

4. The Deputy Commissioner of Income Tax,
Room No.506 V Floor,
16 Greams Road, BSNL Building,
Chennai-600006.

Copy to:

The Assistant Registrar,
AE Section, High Court, Madras.

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