IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2020

CORAM :

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

TAX CASE APPEAL NO.486 OF 2018

Commissioner of Income Tax
Chennai. ...Appellant

Vs

M/s.Servion Global Solutions Ltd.,
Plot No.4/600 & 4/197, 7th Street,
Dr.VSI Estate, Phase II,
Thiruvanmiyur, Chennai - 600 034.
PAN: AAACI0947F ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 23.11.2016 in ITA No.2010/Mds/2016 on the file of the Income Tax Appellate Tribunal Chennai 'C' Bench for the assessment year 2009-10 against the order of the Commissioner of Income Tax (Appeals)-15, No.121, Mahatma Gandhi Road, Nungambakkam, Chennai, dated 18/03/2016 made in ITA No.466/CIT(A)-15/13-14, Assessment Year 2009-2010.

Against order of the Deputy Commissioner of Income Tax Company Circle VI(2), 7th floor, Wanapathy Block, 121, Mahatma Gandhi Road, Chennai - 34, dated 22/03/2013 made in PAN NO.AAAC10947F, Assessment Year 2009-2010.

For Appellant : Mr.J.Narayanasamy
Standing Counsel
For Respondent : Mr.S.P.Chidambaram

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Judgment was delivered by T.S.SIVAGNANAM,J

We have elaborately heard Mr.J.Narayanasamy, learned Standing Counsel appearing for the appellant/revenue and Mr.S.P.Chidambaram, learned counsel appearing for the respondent.

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2.This appeal, filed by the revenue under Section 260A of the Income Tax Act, 1961 ("the Act" for brevity), is directed against the order dated 23.11.2016 passed by the Income Tax Appellate Tribunal, Chennai 'C' Bench (for brevity, the Tribunal) in ITA No.2010/Mds/2016 for the assessment year 2009-10.

3.This appeal was admitted on 05.12.2019 on the following substantial questions of law:

> "1.Whether on the facts and in the circumstances of the case the Tribunal was right in holding that the assessee is entitled for exemption under Section 10A when there is a clear violation of Section 10A(2)(ii) and without appreciating that STPI unit was not a new unit and it was formed by splitting up and reconstruction of the already existing business and the products, customers and employees were common to the pre existing unit and the unit for which the assessee claims exemption under Section 10A?
>
> 2.Whether on the facts and in the circumstances of the case the Tribunal was right in holding that the telecommunication expenses and foreign currency expenses were to be excluded from the total turnover for the purpose of arriving at eligible profit under Section 10A when the said expenses cannot be treated as a part of the total turnover and the section does not provide for such exclusion and whether the Tribunal order is perverse and against the accounting principle?"

4.The submission of the learned counsel appearing for the respondent/assessee is that both the Substantial Questions of law raised by the revenue have been decided against the revenue in the assessee's own case in T.C.A.Nos.241 and 647 of 2008 dated 04.06.2019.

5.Mr.J.Narayanasamy, learned Standing Counsel appearing for the appellant/revenue strenuously contended that the Assessing Officer has independently decided the issue for the assessment year under consideration, namely, 2009-10.

6.We have examined the facts of the case and also the judgment in T.C.A.Nos.241 and 647 of 2008 dated 04.06.2019 and we find that a fact finding exercise was done in the earlier round for the same issue. Therefore, we are of the firm view that both the Substantial Questions of law raised in this appeal are squarely covered by the decision in T.C.A.Nos.241 and 647 of 2008 dated 04.06.2019 and accordingly, needs to be answered against the revenue.

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7.In the result, the tax case appeal fails and is dismissed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Income Tax Appellate Tribunal, Madras 'C' Bench,Chennai.

2.The Commissioner of Income Tax(Appeals)-15,
No.121, Mahatma Gandhi Road, Nungambakkam,
Chennai - 600034.

3.The Deputy Commissioner of Income Tax Company Circle VI(2),
7th Floor, Wanapathy Block, No.121, Mahatma Gandhi Road,
Chennai - 600034.

4.The Commissioner of Income Tax,
Chennai.

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PP(CO)
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