

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE M.S.RAMESH

TAX CASE (APPEAL) NOS.83 TO 86 OF 2017

The Commissioner of Income Tax
Chennai ... Appellant in all TCAs

Vs.

M/s.Cognizant Technology Solutions India Pvt.Ltd.
Vice President Global Finance
38, Whites Road, 3rd Floor
Chennai 600 014
PAN AAACD3312M ... Respondent in all TCAs

Prayer:-

Appeals under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras "C" Bench, Chennai, dated 30.09.2015, passed in ITA Nos.1771/Mds/2007, 209/Mds/2007, 1784/Mds/2007 & 2536/Mds/2007 for the Assessment Years 2002-03, 2003-04, 2002-03 & 2004-05 respectively.

Against the Order of the Commissioner of Income Tax (Appeals)XII, 121, Mahatma Gandhi Road, Nungambakkam, Chennai-34, in ITA.No.135/05-06, order dated 28.02.2007, in ITA.No.709/2005-06, order dated 06.12.2006, ITA.No.135/2005-06, order dated 28.02.2007 in ITA.No.779/2006-07-A-III, order dated 25.09.2007, against the order of the Assistant Commissioner of Income Tax Company Circle-I (3), Chennai in PAN/GI.No.AAACD3312M/CX4361, PAN/GI.No.AAACD3312M/CX2-019, PAN/GI.No.AAACD3312M/CX4361, PAN/GI.No.AAACD3312M/CX2-019 in Assessment Years 2002-03, 2003-04, 2002-03 & 2004-05.

For Appellant : Mr.T.Ravikumar

For Respondent : Mr.N.V.Balaji

J U D G M E N T
(Delivered by Dr.Vineet Kothari,J)

The learned counsel appearing for both sides fairly submitted that various questions of law arising in the present Tax Appeals by the Revenue are covered by decisions of different Division Benches of this Court and therefore, the questions raised in the present appeals can be answered accordingly, with respect to Section 10A and 10B of the Income Tax Act.

2. In view of the above submission, the following order is passed.

3. The summary of the coverage of various questions in the form of a chart prepared by both the counsel jointly, is quoted below for ready reference:

S.No .	Issue	SQL and Appeal No.	Covered by
1	Tax holiday on provisions no longer required written back (towards link charges and annual day expenses)	TCA No.83 of 2017 (SQL 1 & 2) TCA No.84 of 2017 (SQL 3 & 4) TCA No.85 of 2017 (SQL 1, 2 & 3)	Covered in favour of the Assessee by the order of this Hon'ble Court in TCA Nos.206 & 207 of 2009 in the case of M/s. California Software
2	Denial of tax holiday u/s 10A / 10B in respect of Foreign exchange fluctuation gain (net)	TCA No.83 of 2017 (SQL 3)	Covered in favour of the Assessee by the order of this Hon'ble Court reported in 347 ITR 578 in the case of M/s. Pentasoft Technologies
3	Exclusion of (i) Foreign currency expenditure (Ground 2); and (ii) telecommunication expenditure (Ground 3) from export turnover for computing tax holdiaiy deduction	TCA No.84 of 2017 (SQL 1 & 2) TCA No.86 of 2017 (SQL 1 & 2)	Covered in favour of the Assessee by the order of this Hon'ble Court in TCA No.312 of 2011 in the case of Zylog Systems

S.No .	Issue	SQL and Appeal No.	Covered by
4	Set off of brought forward losses before allowing tax holdiay deduction	TCA No.86 of 2017 (SQL 3)	Covered in favour of the Assessee by the order of the Supreme Court in the case of Yokogawa India Ltd. and the order of this Hon'ble High Court in TCA No.228 of 2011 in the case of M/s. Comstar and TCA No.115 of 2016 in the case of M/s. Visual Graphics

4. The questions of law raised in all the appeals are quoted below:

TCA No.83 of 2017 - Assessment Year 2002-03

(1) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the deduction under Section 10A in respect of provisions written back are to be allowed?

(2) Is not the finding of the Tribunal bad since provisions written back included in the claim for deduction under Section 10A was not derived by an undertaking from the export of article or thing or computer software?

(3) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the gain on foreign exchange fluctuation is eligible for deduction under Section 10A even though the said gain nothing to do with the realized income from the eligible undertaking and was a result of restatement of outstanding balances on the last date of the financial year?

TCA No.84 of 2017 - Assessment Year 2003-04

(1) Whether on the facts and in the circumstances of the case, the Tribunal was correct in holding that the communication charges are to be excluded both from the total turnover and the Export turnover while computing deduction under Section 10A especially when the explanation clearly stipulates that in the case of Export turnover alone it is to be deducted?

(2) Is not the finding of the Tribunal bad, especially when Section 10A postulate that the expenditure incurred in foreign exchange in providing technical services outside India has to be reduced from the export turnover only and not from the total turnover?

(3) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the deduction under Section 10A in respect of provisions written back are to be allowed?

(4) Is not the finding of the Tribunal bad since provisions written back included in the claim for deduction under Section 10A was not derived by an undertaking from the export of article or thing or computer software?

TCA No.85 of 2017 - Assessment Year 2002-03

(1) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the deduction under Section 10A in respect of provisions written back are to be allowed?

(2) Is not the finding of the Tribunal bad since provisions written back included in the claim for deduction under Section 10A was not derived by an undertaking from the export of article or thing or computer software?

(3) Whether on the facts and in the circumstances of the case, the Tribunal was right in upholding the order of CIT(A) which remanded back the issue on account of annual day expenses is proper especially when the annual day events was celebrated in the year 2001 for which expenses were provided in the year 2000?

TCA No.86 of 2017 - Assessment Year 2004-05

(1) Whether on the facts and in the circumstances of the case, the Tribunal was correct in holding that the communication charges are to be excluded both from the total turnover and the Export turnover while computing deduction under Section 10A especially when the explanation clearly stipulates that in the case of Export turnover alone it is to be deducted?

(2) Is not the finding of the Tribunal bad, especially when Section 10A postulate that the expenditure incurred in foreign exchange in providing technical services outside India has to be reduced from the export turnover only and not from the total turnover?

(3) Whether the Tribunal was right in holding that the benefit of deduction under Section 10A could

be allowed before setting off of brought forward losses?

5. The relevant extract of the judgments by which the aforesaid issues and questions are covered are also quoted below for ready reference.

6. As regards substantial questions of law relating to deduction under Section 10A in respect of provisions written back towards link charges and annual day expenses and the said claim was not derived by an undertaking from the export of article or thing or computer software, the same is covered by the decision of this Court in M/s. California Software Co. Ltd. v. The Commissioner of Income Tax [(2020) TaxCorp (DT) 82481 (HC-Madras), wherein, reliance was placed on the decisions in Camiceria Apparels India Pvt. Ltd. v. ACIT [TCA Nos.1972 & 1973 of 2008] and CIT v. Hewlett Packard Global Soft Ltd. [(2017) 87 Taxmann.com 182(Kar.) (FB), the relevant portion of which reads as under:

"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."

7. As far as the substantial question of law with regard to Foreign Exchange Fluctuation Gain is concerned, the same is covered by the decision in CIT v. M/s. Pentasoft Technologies Ltd. [(2010) 347 ITR 578 (Mad.)], the relevant portion of the same is quoted below:

"4. In order to allow a claim under Section 10A of the Act, what all is to be seen is whether such benefit earned by the assessee was derived by virtue of export made by the assessee. The exchange value based on upward or downward of the Rupee value is not in the hands of the assessee. In other words, the assessee does not determine the exchange value of the Indian Rupee. It has to be remembered but for the fact that the assessee is an expot house, there was no question of earning any foreign exchange. Therefore, when the fluctuation in foreign exchange rate was solely relatable to the export business of the assessee and the higher Rupee value was earned by virtue

of such exports carried out by the assessee, there is no reason why the benefit of Section 10 (A) should not be allowed to the assessee."

8. The substantial questions of law with regard to Foreign Currency Expenditure and Communication Charges are concerned, the same are covered by a decision of this Court in CIT v. M/s. Zylog Systems Limited [TCA Nos.312 & 385 of 2011 dated 20.02.2020], wherein, it was held that such expenditure incurred by the Assessee in foreign currency will also be includible in the definition of 'export turnover' for the purpose of computing deduction under Section 10B of the Act.

9. As far as the substantial question of law with regard to Set off of brought forward losses before allowing tax holiday deduction is concerned, the same is covered by the decision in CIT v. M/s. Yokogawa India Ltd. [(2016) TaxCorp (DT) 67973 (SC)], the relevant portion of the same is quoted below:

"15. Sub-section (4) of Section 10A which provides for pro rata exemption, necessarily involving deduction of the profits arising out of domestic sales, is one instance of deduction provided by the amendment. Profits of an eligible unit pertaining to domestic sales would have to enter into the computation under the head "profits and gains from business" in Chapter IV and denied the benefit of deduction. The provisions of Sub-section (6) of Section 10A, as amended by the Finance Act of 2003, granting the benefit of adjustment of losses and unabsorbed depreciation etc. commencing from the year 2001-02 on completion of the period of tax holiday also virtually works as a deduction which has to be worked out at a future point of time, namely, after the expiry of period of tax holiday. The absence of any reference to deduction under Section 10A in Chapter VI of the Act can be understood by acknowledging that any such reference or mention would have been a repetition of what has already been provided in Section 10A. The provisions of Sections 80HHC and 80HHE of the Act providing for somewhat similar deductions would be wholly irrelevant and redundant if deductions under Section 10A were to be made at the stage of operation of Chapter VI of the Act. The retention of the said provisions of the Act i.e. Section 80HHC and 80HHE, despite the amendment of Section 10A, in our view, indicates that some additional benefits to eligible Section 10A units, not contemplated by Sections 80HHC and

80HHE, was intended by the legislature. Such a benefit can only be understood by a legislative mandate to understand that the stages for working out the deductions under Section 10A and 80HHC and 80HHE are substantially different. This is the next aspect of the case which we would now like to turn to.

16. From a reading of the relevant provisions of Section 10A it is more than clear to us that the deductions contemplated therein is qua the eligible undertaking of an assessee standing on its own and without reference to the other eligible or non-eligible units or undertakings of the assessee. The benefit of deduction is given by the Act to the individual undertaking and resultantly flows to the assessee. This is also more than clear from the contemporaneous Circular No. 794 dated 9.8.2000 which states in paragraph 15.6 that,

"The export turnover and the total turnover for the purposes of sections 10A and 10B shall be of the undertaking located in specified zones or 100% Export Oriented Undertakings, as the case may be, and this shall not have any material relationship with the other business of the assessee outside these zones or units for the purposes of this provision."

17. If the specific provisions of the Act provide [first proviso to Sections 10A(1); 10A (1A) and 10A (4)] that the unit that is contemplated for grant of benefit of deduction is the eligible undertaking and that is also how the contemporaneous Circular of the department (No.794 dated 09.08.2000) understood the situation, it is only logical and natural that the stage of deduction of the profits and gains of the business of an eligible undertaking has to be made independently and, therefore, immediately after the stage of determination of its profits and gains. At that stage the aggregate of the incomes under other heads and the provisions for set off and carry forward contained in Sections 70, 72 and 74 of the Act would be premature for application. The deductions under Section 10A therefore would be prior to the commencement of the exercise to be undertaken under Chapter VI of the Act for arriving at the total income of the assessee from the gross total income. The somewhat discordant use of the expression "total

income of the assessee" in Section 10A has already been dealt with earlier and in the overall scenario unfolded by the provisions of Section 10A the aforesaid discord can be reconciled by understanding the expression "total income of the assessee" in Section 10A as 'total income of the undertaking'.

18. For the aforesaid reasons we answer the appeals and the questions arising therein, as formulated at the outset of this order, by holding that though Section 10A, as amended, is a provision for deduction, the stage of deduction would be while computing the gross total income of the eligible undertaking under Chapter IV of the Act and not at the stage of computation of the total income under Chapter VI. All the appeals shall stand disposed of accordingly."

10. Accordingly, all the aforesaid questions are answered against the Revenue, as covered by aforesaid decisions of this Court and Supreme Court and in favour of the Assessee in terms of the aforesaid judgments. The Tax Case Appeals are accordingly disposed of.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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To

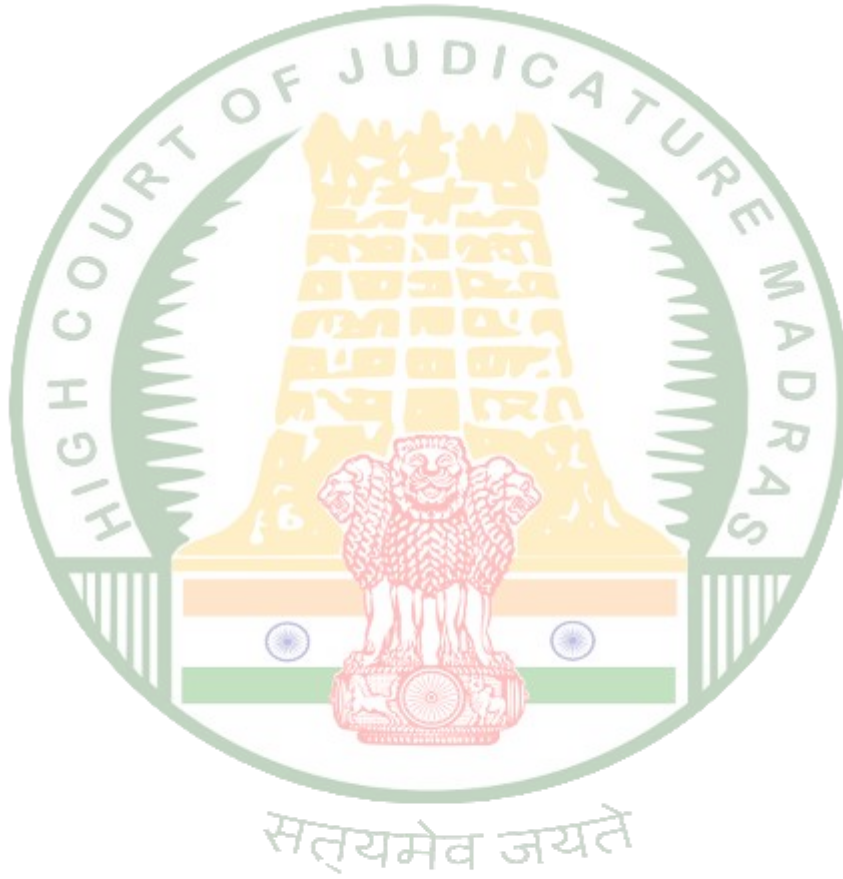
1. The Commissioner of Income Tax, Chennai.
2. The Income Tax Appellate Tribunal, Madras 'C' Bench, Chennai.
3. The Commissioner of Income Tax (Appeals)III, 121, Mahatma Gandhi Road, Nungambakkam, Chennai-34.
4. The Commissioner of Income Tax (Appeals)XII, 121, Mahatma Gandhi Road, Nungambakkam, Chennai-34.

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

+1cc to Mr.N.V.Balaji, Advocate, S.R.No.37575
+2cc to Mr.T.Ravikumar, Advocate, S.R.No.37480

TCA.Nos.83 to 86 of 2017

PVS (CO)
CS/20/01/2021



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