

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2021

CORAM

THE HON'BLE MR. JUSTICE M. DURAISWAMY
AND
THE HON'BLE MRS. JUSTICE T.V. THAMILSELVI

Tax Case Appeal Nos.255 to 257 of 2011

Commissioner of Income Tax-I,
Chennai.

... Appellant
in all appeals

Vs.

M/s.Tata Consultancy Services Ltd.
(Erstwhile Aviation Software Development
Consultancy India Ltd.)
Unit-21/22 Elnet Software City, TS-140,
Block 2 & 9, CPT Road, Taramani,
Chennai - 600 113.

... Respondent
in all appeals

Tax Case Appeals in T.C.A.Nos.255 to 257 of 2011 filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai "D" Bench, dated 31.08.2010, passed in I.T.A.Nos.874/Mds/2010, 875/Mds/2020 and 876/Mds/2020 for the assessment year 2002-03, 2004-05 and 2005-2006 respectively; against preferred against the order dated 16.03.2020, 16.03.2020 and 15.03.2010 passed by the Commissioner of Income Tax(Appeals)-II, Chennai made in ITA.No.353/07-08/AIII, ITA.No.183/07-08/A.III and ITA.No.521/06-07/AIII respectively, against the order dated 07.11.2006, 28.09.2007 and 30.11.2007 made in PANo.AAACA5442P/AX3-420 by Additional Commissioner of Income Tax Company Circle 1(1), Chennai for the Assessment year 2002-03, 2005-06 and 2004-05.

For Appellant : Mr.V.Pushpa
Standing Counsel
in all appeals

For Respondent : No appearance
in all appeals

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

(Delivered by M. DURAISWAMY, J.)

The above appeals arise against the orders passed by the Income Tax Appellate Tribunal, Chennai Bench "D" in respect of the Assessment Years 2002-2003, 2004-2005 and 2005-2006. Challenging the order passed by the Tribunal, the Revenue has filed the above appeals.

2.The assessee company is engaged in the business of maintenance and development of software and claims deduction under Section 10A of the Income Tax Act, 1961 ("the Act"for brevity) and excluded telecommunication charges from total turnover as well as the expenses incurred in foreign currency while computing deduction under Section 10A. For the Assessment Year 2005-2006, software expenses have also been claimed as revenue expenditure. Hence, in all these three Assessment Years, almost identical issues were involved. Hence, all the three matters are taken up together and disposed of by this common judgment.

3.The Assessing Officer, while making the adjustments, relied on Explanation 2 (iv) of the Act, wherein, it was provided that export turnover would not include freight, telecommunication charges or insurance attributable to the delivery of the articles or things where computer software outside India or expenses, if any, incurred in foreign exchange in providing the technical services outside India. According to the Revenue, the "total turnover" had to be understood in the normal sense and commercial usage. Citing various judicial pronouncements, the Assessing Officer pointed out that the words in a taxing statute had to be construed in the same way in which they are understood in common parlance. The assessee contended that the meaning given to the term "total turnover" in Section 80HHE would be applicable to Section 10A also. The Assessing Officer rejected the contention of the assessee and computed the deduction under Section 10A making the adjustments.

4.Aggrieved over the order passed by the Assessing Officer, the assessee filed appeals before the Commissioner of Income Tax and the Commissioner of Income Tax allowed the appeals, against which, the Revenue preferred appeals before the Income Tax Appellate Tribunal, and the Tribunal, by order dated 31.08.2010, dismissed all the three appeals. Aggrieved over the same, the Revenue has filed the above appeals.

5.The above appeals were admitted on the following substantial question of law :

"Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that for the purpose of applying the formula under sub-section (4) of section 10A, the freight, telecom charges, or insurance attributable to delivery of articles or things or computer software outside India or expenses, if any, incurred in foreign exchange in providing the technical services outside India ought to be excluded both from the export turnover and from total turnover even though the statute has provided for such exclusion only from the export turnover?"

6.When the appeals were taken up for hearing, Mrs.V.Pushpa, learned Standing Counsel, appearing for the Department, fairly submitted that the issue involved in the present appeals is covered by the decision of the Hon'ble Supreme Court of India reported in 2020 (113) taxmann.com 74 (SC) [Commissioner of Income-Tax III v. Mphasis Ltd.], wherein, the Hon'ble Supreme Court of India held as follows :

"1.The instant petition is filed by the petitioner-Revenue assailing the judgment dated 01.08.2014 passed by the High Court of Karnataka at Bangalore in I.T.A. No. 1075 of 2008.

2.When the petition is taken up for consideration Mr. Vikramjit Banerjee, learned Additional Solicitor General appearing for the petitioner-Revenue and Mr. Parcy Pardiwala, learned senior counsel appearing for the respondent, are in agreement that SLP(C) No.2373/2015 preferred by the Revenue in respect of connected ITA NO.196 of 2009 which was disposed of by the very same common Order dated 01.08.2014, was dismissed by this Court on 28.01.2019 having taken note similar grounds raised in the special leave petition.

3.Hence taking note of the fact that in respect of common judgment this Court has already dismissed SLP (C)No.2373 of 2015 relating to the Assessment Year 2004-2005 and in the present case except that issue relates to Assessment year 2003-2004 all other aspects are on the very same point, we are not inclined to entertain the instant petition.

4. Accordingly, the special leave petition shall stand dismissed. Pending applications, if any, shall also stand disposed of."

7. The issue involved in the present appeals was also decided by the Karnataka High Court in the judgment reported in 2016 (74) taxmann.com 274 (Karnataka) [Commissioner of Income-Tax, Bangalore v. Mphasis Ltd.], wherein, the Karnataka High Court has held as follows :

"4. Insofar as the second substantial question of law is concerned, the same was considered by this Court in the case of CIT v. Tata Elxsi Ltd. [2012] 17 taxmann.com 100/204 Taxman 321/349 ITR 98 (Kar). It has been held as under:

"17. From the aforesaid judgments, what emerges is that, there should be uniformity in the ingredients of both the numerator and the denominator of the formula, since otherwise it would produce anomalies or absurd results. Section 10A is a beneficial section. It is intended to provide incentives to promote exports. The incentive is to exempt profits relatable to exports. In the case of combined business of an assessee, having export business and domestic business, the legislature intended to have a formula to ascertain the profits from export business by apportioning the total profits of the business on the basis of turnovers. Apportionment of profits on the basis of turnover was accepted as a method of arriving at export profits. In the case of section 80HHC, the export profit is to be derived from the total business income of the assessee, whereas in Section 10A, the export profit is to be derived from the total business of the undertaking. Even in the case of business of an undertaking, it may include export business and domestic business, in other words, export turnover and domestic turnover. The export turnover would be a component or part of a denominator, the other component being the domestic turnover. In other words, to the extent of export turnover, there would be a commonality between the numerator and the denominator of the formula. In view of the commonality, the understanding should also be the same. In other

words, if the export turnover in the numerator is to be arrived at after excluding certain expenses, the same should also be excluded in computing the export turnover as a component of total turnover in the denominator. The reason being the total turnover includes export turnover. The components of the export turnover in the numerator and the denominator cannot be different. Therefore, though there is no definition of the term 'total turnover' in Section 10-A, there is nothing in the said Section to mandate that, what is excluded from the numerator that is export turnover would nevertheless form part of the denominator. Though when a particular word is not defined by the legislature and an ordinary meaning is to be attributed to the same, the said ordinary meaning to be attributed to such word is to be in conformity with the context in which it is used. When the statute prescribes a formula and in the said formula, 'export turnover' is defined, and when the 'total turnover' includes export turnover, the very same meaning given to the export turnover by the legislature is to be adopted while understanding the meaning of the total turnover, when the total turnover includes export turnover. If what is excluded in computing the export turnover is included while arriving at the total turnover, when the export turnover is a component of total turnover, such an interpretation would run counter to the legislative intent and impermissible. If that were the intention of the legislature, they would have expressly stated so. If they have not chosen to expressly define what the total turnover means, then, when the total turnover includes export turnover, the meaning assigned by the legislature to the export turnover is to be respected and given effect to, while interpreting the total turnover which is inclusive of the export turnover. Therefore the formula for computation of the deduction under section 10-A, would be as under:

$$\frac{\text{Profits of the business of the undertaking} \times \text{Export turn over}}{\text{[Export turnover + domestic turnover] Total turnover "}}$$

8. Similarly, in an unreported judgment of the Hon'ble Division Bench of this Court, dated 20.02.2020, made in Tax Case (Appeal) Nos.312 & 385 of 2011 [The Commissioner of Income Tax, Chennai v. M/s.Zylog Systems Limited], following the judgment of the Hon'ble Supreme Court of India reported in 2020 (113) taxmann.com 74 (SC) (cited supra), the Hon'ble Division Bench also decided the issue in favour of the assessee.

9. We do not find any contra judgment in support of the Revenue on the issue involved in the present appeals. Since the Hon'ble Supreme Court of India had already decided the issue in favour of the assessee, following the same, the question of law raised in the above appeals is decided in favour of the assessee and the appeals are dismissed. No costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/
Sub Asst. Registrar

mkn

To

- 1.The Income Tax Appellate Tribunal,
Chennai "D" Bench
- 2.The Commissioner of Income Tax-I,
Chennai.
- 3.The Commissioner of Income Tax (Appeals)-III
Chennai
- 4.The Additional Commissioner of Income Tax,
Company Circle 1(1), Chennai

Copy to
The Section Officer
VR Section,
High Court, Madras-104

+1 cc to M/s.M.Swaminathan Advocate sr10241

Tax Case Appeal Nos.255 to 257 of 2011

ssv(co)
aa12/03/2021