

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.02.2021

CORAM

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

Tax Case Appeal Nos.382 and 384 of 2011

Commissioner of Income Tax-I,
Chennai.

... Appellant in both TCAs

v.

M/s. Zylog Systems Ltd.,
No.155, Thiruvalluvar Salai,
Kumaran Nagar,
Chennai - 600 119.

... Respondent in both TCAs

Tax Case Appeals in T.C.A.Nos.382 and 384 of 2011 filed under Section 260A of the Income Tax Act, 1961 against the common order of the Income Tax Appellate Tribunal, Chennai "D" Bench, dated 28.02.2011, passed in I.T.A.Nos.2299/Mds/2008, and 284 /Mds/2009 for the Assessment Year 2004-05

against the order dated 31/10/2008 made in ITA No.672/07-08/A-III, ITA No.901/06-07/A-III on the file of the commissioner of Income Tax (Appeals)-III, Chennai 34 for the assessment year 2005-06,2004-05 and against the order dated 30.12.2007,27.12.2006 made in PAN GIR No.AAACZ1086G, on the file of the Income Tax Officer company ward III(1), Chennai, Assistant Commissioner of Income Tax Company CircleIII(3), Chennai -34 for the assessment year 2005-06,2004-05.

For Appellant : Mrs.V.Pushpa
in both TCAs Standing Counsel

For Respondent : Mr. Bavishetty Sridhar
in both TCAs Deputy Official Liquidator
High Court of Madras

COMMON JUDGMENT
(Judgment was delivered by M.DURAI SWAMY, J.)

These appeals, filed by the Revenue under Section 260A of the Income Tax Act, 1961 (for short, the Act) are directed against the common order dated 28.02.2011 made in I.T.A . Nos.2299/Mds/2008 and 284/ Mds/2009 on the file of the Income Tax Appellate Tribunal, Chennai "D" Bench, (for brevity, the Tribunal) for the Assessment Year 2004-05.

2. Since the issue involved in both the appeals are identical, both the appeals are disposed of by this Common Judgment.

3.1 The assessee company is engaged in the business of Software Analysis, Design and Development and claims deduction under Section 10B for the Assessment Year 2004-05. The assessee had total export turnover of Rs.22,89,02,985/-. Out of the same, the assessee had utilised the export profits to the tune of Rs.6,00,07,757/- in U.S.A. for the purpose of carrying on export activities. The Assessing Officer held that the said amount had not been received in convertible foreign exchange in India within the prescribed time under section 10B(3) and the said amount could not be treated as part of export turnover for the purpose of computation of deduction under section 10B. The assessee contended that as per Circular No.54, dated 26.06.2004 of the RBI, the Overseas Branch of the Software Exporter may repatriate to India 100% of the contract value of each off-site contract as also atleast 30% of the contract value of each onsite contract and may utilise the balance 70% of the contract value of onsite contract for contract related expenses including branch expenses abroad. The Assessing Officer held that the RBI's Guideline for remittance under the FEMA was not applicable in interpreting the term "export turnover" as defined in section 10B. The Assessing Officer also held that the total turnover of Rs.14,73,76,574/- to be considered including the expenses irrespective of whether such expenses were incurred in Indian currency or foreign currency.

3.2 . Regarding the disallowance of export proceeds to the extent of Rs.6,00,07,757/- on the ground of "unrealized onsite contract, the assessee relied on the RBI's Circular dated 26.06.2002. The assessee relied on certain decisions rendered in the context of section 80-O.

3.3 . The next dispute before the Commissioner of Income Tax (Appeals) was regarding the disallowance of foreign exchange loss to the tune of Rs.1,25,42,287/-. The Assessing Officer held that this was not an ascertained liability.

3.4 Regarding the issue relating to expenditure incurred in foreign exchange on onsite development of computer software, the Tribunal following the Special Bench's decision in the assessee's case for the assessment year 2003-04, decided the issue in favour of the assessee.

3.5 . Challenging the Common orders passed by the Income Tax Appellate Tribunal the Revenue has filed the above appeals.

4.The above appeals were admitted on the following substantial questions of law :

TCA No.382 of 2011

"(i) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the expenditure of Rs.2,15,18,654/- incurred in foreign exchange for providing technical services outside India should not be excluded from the export turnover for the purpose of computing deduction under section 10B without properly applying the provisions of Explanation 2 (iii) to section 10B?

(ii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that even if the expenditure referred to in the prescribed ground was to be excluded from the export turnover, the same should be excluded from the total turnover also?"

TCA No.382 of 2011

"(i) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that loss on foreign exchange fluctuation should be allowed as claimed by the assessee contrary to the decision of the Hon'ble Jurisdictional High Court in the case of Indian Overseas Bank (250ITR 146)?

(ii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in not dealing with the ground raised by the Revenue that unrealised onsite development revenue should be excluded from the export turnover?"

5. When the appeals were taken up for hearing, Mr. Bavishetty Sridhar, learned Deputy Official Liquidator,

appearing for the respondent 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."

6. The learned Deputy Official Liquidator submitted that the issue involved in the present appeals had already been decided by this Court in Tax Case Appeal Nos. 255 to 257 of 2011 [Commissioner of Income Tax-I, Chennai v. M/s.Tata Consultancy Services Ltd., Chennai] by Common Judgment dated 19.02.2021 wherein this Bench, following the Judgment reported in 2020 (113) Taxmann.com 74 (SC) [cited supra.] and the Judgment reported in 2016 (74) Taxmann.com 274 (Karnataka) [Commissioner of Income-Tax, Bangalore v. Mphasis Ltd.], decided the issue in favour of the assessee. The learned Deputy Official Liquidator further submitted that in view of the Judgments of the Hon'ble Supreme Court and this Court, the appeals are liable to be dismissed.

7.We do not find any contra Judgment in support of the Revenue on the issue involved in the present appeals. Following the Judgments of the Hon'ble Supreme Court and this Court, the questions of law raised in the above appeals are decided in favour of the assessee and the appeals are dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Rj

To

- 1.The Income Tax Appellate Tribunal,
Chennai "D" Bench, Chennai.
- 2.The Commissioner of Income Tax (Appeal)-III,
121, Mahatma Gandhi Road,
Chennai-34.
- 3.The Income Tax Officer
Company Ward III(1),
Chennai-34
- 4.The Assistant Commissioner of Income Tax ,
Company Circle III(3), Chennai -34.

+1 cc to M/s.M.Swaminathan, Advocate Sr.No. 11661

Tax Case Appeal Nos.382 and 384 of 2011

GMR (CO)
RMP (18/03/2021)

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