IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:25.03.2021

CORAM

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

Tax Case Appeal No.1159 of 2015

M/s.Redington (India) Ltd.,
SPL Guindy House,
95, Mount Road, Guindy,
Chennai - 600 032. ... Appellant/Appellant

Vs.

The Assistant Commissioner of Income Tax,
Company Range - V,
Chennai - 600 034. ... Respondent/Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras "B" Bench, dated 02.05.2013 passed in I.T.A.No.2164/Mds/2010.

Against the order of the Additional Commissioner of Income Tax, Company Range V(i.c), Chennai made in PANNo.AABCR0347P dated 28/10/2010 against the order of the Joint Commissioner of Income Tax, Transfer Pricing officer-II, Chennai made in F.No.R-202/TPO-II/A.Y.2006-07 dated 12.10.2009 for the Assessment Year 2006-07.

For Appellant : Mr.R.Venkatanarayanan
For Respondent : Mr.T.Ravi Kumar,
Senior Standing Counsel

J U D G M E N T
(Delivered by M. DURAISWAMY, J)

This appeal filed by the assessee under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity), is directed against the order dated 02.05.2013 passed by the Income Tax Appellate Tribunal, Madras “B” Bench, Chennai ('the Tribunal' for brevity) in I.T.A.No. 2164/Mds/ 2010 for the Assessment Year 2006-07. The above appeal was admitted on 09.12.2015 on the following Substantial Questions of Law for consideration:

“1)Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the expenditure incurred towards temporary structure is capital in nature and not allowable as revenue expenditure?

2)Whether on the facts of the case, the Tribunal was right in law in holding that the tax is deductible on the gross royalty payments made to Microsoft Corporation and not on the net amount payable after considering the sales return?

3)Whether tax is deductible in respect of price of software returned to Microsoft even before the due date for payment of the price in view of CBDT Circular No.790 dated 20.04.2000?

4)Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that tax is deductible on the sale of copyrighted article (software) without appreciating that the sale consideration constitutes business profits of the foreign company not taxable in India?"

2. We have heard Mr.R.Venkatanarayanan, learned counsel for the appellant/assessee and Mr.T.Ravi Kumar, learned Senior Standing Counsel for the respondent/ Revenue.

3. 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.

4. We are informed by the learned counsel for the appellant/ assessee that the assessee has already filed the requisite Forms - 1 & 2 on 31.12.2020 under Section 4 of the Act.

5. In the light of the fact that the assessee has already availed the benefit under the Act, no useful purpose would be served in keeping this appeal pending. At the same time, safeguarding the interest of the assessee in the event the order to be passed by the Department under the Act is not in favour of the assessee. Accordingly, the Tax Case Appeal stands disposed of on the ground that the assessee has already filed the requisite Forms - 1 & 2 and the Department shall process the application at the earliest in accordance with the said Act and communicate the decision to the assessee at the earliest. As observed, the assessee is given liberty to restore the appeal in the event the ultimate decision to be taken on the Forms 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.

6. With this observation, the Tax Case Appeal stands disposed of with the aforementioned liberty and consequently, the Substantial Question of Law is left open. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

va

To

1. Income Tax Appellate Tribunal, Madras "B" Bench

2.The Assistant Commissioner of Income Tax,
Company Range - V,
Chennai - 600 034.

3. The Additional Commissioner of Income tAx,
Transfer Pricing Officer-II, Chennai.

4. The Joint Commissioner of Income Tax,
Transfer pricing officer-ii, Chennai.

+1 cc to M/s.Subbaraya Aiyar,Advocate Sr.No. 19732
+1 cc to M/s.T.Ravikumar, Advocate Sr.No. 19757

Tax Case Appeal No.1159 of 2015

NMI(CO)
RMP(19/04/2021)