IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 06.07.2021

CORAM:

THE HON'BLE MR. JUSTICE M.DURAISWAMY
AND
THE HON'BLE MRS.JUSTICE R.HEMALATHA

T.C.A.No.119 of 2015

The Commissioner of Income Tax,
Chennai. ... Appellant

Vs.

M/s.Allsec Technologies Ltd.,
7H, Century Plaza,
560-562, Anna Salai,
Chennai – 600 018. ... Respondent

Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras, "A" Bench, dated 07.07.2014 in I.T.A.No.1104/Mds/2014 for the Assessment Year 2007-08, against the order of the Commissioner of Income Tax (Appeals)-1, 121, Mahatma Gandhi Road, Nungambakkam, Chennai-34 dated 16/01/2014 I.T.A.NO.256 / 09-10/A-1, PAN No.AACCA5106G for the Assessment Year 2007-08 and against the order of the Deputy Commissioner of Income Tax Company Circle 1(1) Chennai dated 30/11/09 PA/G.I.R No.AACCA5106G/Ax3-681 ward/Circle Company Circle 1 (1) Chennai status Company, Method Accounting Mercantile for the Assessment Year 2007-2008.

For Appellant : Mr.T.Ravikumar,
Senior Standing Counsel

For Respondent : Mr.R.Venkatnarayanan,
for M/s.Subbaraya Aiyar

JUDGMENT

(Judgment was delivered by M.DURAISWAMY, J.)

Challenging the order passed in I.TA.No.1104/Mds/2014 in respect of the Assessment Year 2007-08 on the file of the Income Tax Appellate Tribunal, Chennai, "A" Bench, the Revenue has filed the above appeal.

2.The assessee is a “Limited” Company, engaged in the business of data and call center operations. On 31.10.2007, it had filed return, admitting “NIL” income, after claiming entire receipts of Rs.24,65,53,064/- as “exempt” under Section 10A. The return was summarily processed and on 30.11.2010, the Assessing Officer completed the regular assessment, computing total income of Rs.2,68,12,244/-. The Assessing Officer relied upon Section 10A(2)(iv) to observe that the communication expenditure of Rs.13,20,70,025/- incurred in foreign exchange as well as Indian Rupees had to be excluded in full sum in former and 50% of the latter instance. Similarly, he also made disallowance of Rs.19,45,688/- under Section 14A read with 8D qua dividend income of Rs.3,13,01,555/-. The Assessing Officer had also proceeded to set off the assessee's brought forward losses prior to allowing deduction under Section 10A instead of post facto computation. Challenging the order of assessment, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals) and the Appellate Authority partly allowed the appeal. Challenging the order of Commissioner of Income Tax (Appeals), the Revenue preferred an appeal before the Income Tax Appellate Tribunal and the Tribunal restored the impugned disallowance made by the Assessing Officer and directed the Assessing Officer to consider the assessee's case under Section 10A while passing his consequential order. Challenging the order of the Income Tax Appellate Tribunal, the Revenue has filed the above appeal.

3.The above Tax Case Appeal was admitted on the following substantial questions of law:

> “(i)Whether on the facts and circumstances of the case, the Tribunal was right in directing the Assessing Officer to recompute the income in the light of the decision of the Special Bench in the case of Sak Soft by excluding the freight and insurance expenses both from the export turnover and also from the total turnover while computing deduction under Section 10A of the Income Tax Act?
>
> (ii)Is not the finding of the Tribunal bad, especially when explanation 2(iv) to Section 10A defines the word “Export Turnover” whereby it had been clearly stated that it would not include freight, telecommunication charges attributable to the delivery of the articles or things or computer software outside India or expenses if any incurred in foreign exchange while computing deduction under Section 10A of the Income Tax Act?
>
> (iii)Whether on the facts and circumstances of the case, the Tribunal was right in allowing

set off of benefit of brought forward losses from the total income after allowing deduction under Section 10A when as per the amended provisions of the Act in Section 10A(1) deduction has to be allowed only after arriving at the total income after giving effect to brought forward depreciation and losses?"

4.When the appeal is taken up for hearing, Mr.T.Ravi Kumar, learned Senior Standing Counsel appearing for the appellant-Revenue fairly submitted the substantial questions of law that arose for consideration in the above appeal have already been decided against the Revenue and in favour of the assessee in the judgment dated 01.07.2021 made in T.C.A.No.559 of 2015 [The Commissioner of Income Tax Vs. M/s.Allsec Technologies Ltd., No.46-B, Velacherry Main Road, Velacherry, Chennai - 600 042], wherein this Bench held as follows:

"...

4.Challenging the order passed by the Income Tax Appellate Tribunal, the Revenue has filed the above appeal. 5.The above appeal was admitted on the following substantial questions of law :

"1.Whether on the facts and in the circumstances of the case, the Tribunal was right in directing the Assessing Officer to recompute the income in the light of the decision of the Special Bench in the case of Sak Soft by excluding the freight and insurance expenses both from the export turnover and also from the total turnover while computing deduction under Section 10-A of the Income Tax Act?

2.Is not the finding of the Tribunal bad, especially when Explanation II(iv) to Section 10A defines the word 'export turnover' whereby it had been clearly stated that it would not include freight, telecommunication charges attributable to the delivery of the articles or things or computer software outside India or expense if any incurred in foreign exchange while computing deduction under Section 10A of the Income Tax Act? and

3.Whether on the facts and circumstances of the case, the Tribunal was right in allowing set off of benefit of brought forward losses from the total income after allowing deduction under Section 10A when as per the amended provisions of the Act in Section 10A(1) deduction has to be allowed only after arriving at the total income after giving effect to brought forward depreciation and losses?"

6.When the Tax Case Appeal was taken up for hearing, Mr.T.Ravi Kumar, learned Senior Standing

Counsel appearing for the appellant/Revenue, fairly submitted that the questions of law 1 and 2 were already decided against the Revenue by the Hon'ble Supreme Court of India in the judgment reported in (2018) 404 ITR 0719 (SC) [Commissioner of Income Tax v. HCL Technologies Ltd.], wherein, the Hon'ble Supreme Court held as follows :

> "8.The whole controversy revolves around the claim of certain expenses attributable to the delivery of software outside India or in providing technical services from 'total turnover' by the Respondent under Section 10A of the IT Act. It is an undisputed fact that neither Section 10A nor Section 2 of the IT Act define the term 'total turnover'. However, the term 'total turnover' is given in clause (ba) of the Explanation to Section 80 HHC of the IT Act which defines the meaning of total turnover as follows:
>
> > "(ba) 'total turnover' shall not include freight or insurance attributable to the transport of the goods or merchandise beyond the customs stations as defined in the Customs Act, 1962 (52 of 1962).
> >
> > Provided that in relation to any assessment year commencing on or after the 1st day of April, 1991, the expression "total turnover" shall have effect as if it also included any sum referred to in clauses (iiia), (iiib), (iiic), (iiid) and (iiie) of section 28;"
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> 9.It is also pertinent to mention here the relevant terminologies which are as under:
>
> "Export Turnover:
>
> Explanation 2(iv) of Section 10A of the IT Act defines "export turnover" to mean the consideration that has been received for export of articles/things/computer software. Normally the consideration will include the freight/telecommunication charges/insurance which had been incurred to deliver the article/things/computer software outside India. However the Explanation 2(iv) specifically seeks to exclude these three categories of expenditure incurred for delivering the export of articles/things/computer software. It also seeks to exclude expenses for providing technical service, etc. outside India. Therefore, where an Indian technician goes abroad and receives fees for service, the foreign client will normally be required to reimburse the expenses as well. Therefore, out of the consideration received, the portion representing reimbursement of expenditure has to be excluded.

Export Turnover and Total turnover:
The "total turnover" has been defined in sections 80HHC and 80HHE only to exclude additional items given under section 28. But for this additional exclusion, there was no need to define "total turnover".
Export turnover is a component of total turnover. If the entire turnover represents export proceeds, then the export turnover and the total turnover are identical. It is clear that any exclusion in the export turnover in the numerator will automatically imply exclusion in the denominator as well because export turnover is always a component of total turnover.
Export Turnover/Total Turnover/Business:
Form 56F prescribes the report under Section 10A for and Annexure-A thereto refers to "export proceeds" and "sale proceeds". Both together form the total turnover of the undertaking."

10.The question arises here that when the particular term has not been defined in any particular Section, is it allowed to import the meaning of such term from the other provisions of the same Act? Section 10A of the IT Act is a special beneficial provision and the purpose of deduction under such Section is to encourage and boost the new business undertakings situated in the free trade zone of this Nation by providing suitable deductions to such business entities. Sometimes, while calculating the deduction, disputes arise regarding the methodology of deduction which ought to be followed. Undisputedly, it is a matter of record that the Respondent is engaged in the activity of trading of generic software and providing customized software development services for domestic as well as for foreign clients through its two units situated in Software Technology Park, Gurgaon (Now Gurugram) which falls under definition of the Section 10A of the IT Act. The contention of the Respondent is that it incurred expenditure in foreign exchange in sending professionals abroad as per the agreements with the foreign constituents.

11.On an analysis of the Respondent's activity taken from its website, Assessing Officer arrived at a conclusion that Respondent has been rendering technical services outside India and, therefore, expenses incurred on such activity are required to be excluded from the export turnover while working out the deduction admissible under Section 10A of the IT Act. The Assessing Officer estimated 60% of the software development charges required to be attributed towards expenses incurred for providing technical services outside India. On appeal, learned CIT (Appeals) again made a detailed analysis of the activity of the Respondent and arrived at a conclusion that the Assessing Officer failed to bring any evidence which can indicate that Respondent was providing technical services outside India and it has incurred expenses towards salary etc. rendering such services. Inspite that, learned CIT (Appeals), estimated 10% of software development charge as charges incurred for technical services provided outside India.

12.It is undisputed fact that the Respondent was engaged in the business of software development for its customers engaged in different activities at software development centres of the Respondent. However, in the process of such customized software development, certain activities were required to be carried out at the sight of customers on site, located outside India for which the employees of the branches of the Respondent located in the country of the customers are deployed. It is true that it is not defined that which activity will be termed as providing technical services outside India. Moreover, after delivery of such softwares as per requirement, in order to make it fully functional and hassle free functioning subsequent to the delivery of softwares in many cases, there can be requirement of technical personnel to visit the client on site. The Assessing Officer could not bring any evidence that the Respondent was engaged in providing simply technical services independent to software development for the client for which the expenditures were incurred outside India in foreign currency.

13.The Respondent company has claimed deduction under Section 10A as per certificates filed on Form No. 56F. The Respondent, while computing the deduction, has taken the same figure of export turnover as of total turnover. The Respondent cited various judicial cases but all these cases pertain to deduction under Section 80HHC. Further, the definition of total turnover has been defined in Section 80HHC and 80HHE of the IT Act. As discussed earlier, the definition of total turnover has not been defined under Section 10A of the IT Act.

14.In the above backdrop, we are of the opinion that the definition of total turnover given under Sections 80HHC and 80HHE cannot be adopted for the purpose of Section 10A as the technical meaning of total turnover, which does not envisage the reduction of any expenses from the total amount, is to be taken into consideration for computing the deduction under Section 10A. When the meaning is clear, there is no necessity of importing the meaning of total turnover from the other provisions. If a term is defined under Section 2 of the IT Act, then the definition would be applicable to all the provisions wherein the same term appears. As the term 'total turnover' has been defined in the Explanation to Section 80HHC and 80HHE, wherein it has been clearly stated that "for the purposes of this Section only", it would be applicable only for the purposes of that Sections and not for the purpose of Section 10A. If denominator includes certain amount of certain type which numerator does not include, the formula would render undesirable results.

15.A Statute is the intention of the legislature who enacts it after having regard to various facts and circumstances. It is a cardinal principle of law that the interpretation by the Court shall be done in such a way that the intention of the legislature shall prevail and no injustice occurred with the parties. The rule of harmonious construction is the thumb rule to interpretation of any statute. An interpretation which makes the enactment a consistent whole, should be the aim of the Courts and a construction which avoids inconsistency or repugnancy between the various sections or parts of the statue should be adopted.

16.In Commissioner of Income Tax vs. J.H. Gotla, (1985) 23 Taxman 14J (SC) this Court has held as under:

> "46.Where the plain literal interpretation of a statutory provision produces a manifestly unjust result which could never have been intended by the Legislature, the Court might modify the language used by the Legislature so as to achieve the intention of the Legislature and produce a rational construction. The task of interpretation of statutory provision is an attempt to discover the intention of the Legislature from the language used....
>
> 47..If the purpose of a particular provision is easily discernible from the whole scheme of the Act which, in the present case, was to counteract, the effect of the transfer of assets so far as computation of income of the Respondent was concerned, then bearing that purpose in mind, the intention should be found out from the language

used by the Legislature and if strict literal, construction leads to an absurd result, i.e. result not intended to be subserved by the object of the legislation found out in the manner indicated above, then if other construction is possible apart from strict literal construction, then that construction should be preferred to the strict literal construction. Though equity an taxation are often strangers, attempt should be made that these do not remain so always so and if a construction results in equity rather than in injustice then such construction should be preferred to the literal construction. Furthermore, in the instant case, we are dealing with an artificial liability created for counteracting the effect only of attempts by the assessee to reduce tax liability by transfer.."

17.The similar nature of controversy, akin this case, arose before the Karnataka High Court in CIT vs. Tata Elxsi Ltd. (2012) 204 Taxman 321/17. The issue before the Karnataka High Court was whether the Tribunal was correct in holding that while computing relief under Section 10A of the IT Act, the amount of communication expenses should be excluded from the total turnover if the same are reduced from the export turnover? While giving the answer to the issue, the High Court, inter-alia, held that when a particular word is not defined by the legislature and an ordinary meaning is to be attributed to it, the said ordinary meaning is to be in conformity with the context in which it is used. Hence, what is excluded from 'export turnover' must also be excluded from 'total turnover, since one of the components of 'total turnover' is export turnover. Any other interpretation would run counter to the legislative intent and would be impermissible.

18.Accordingly, the formula for computation of the deduction under Section 10A of the Act would be as follows:

Export Profit = total Profit of the Business X Export turnover as defined in Explanation 2 (IV) of Section 10A of IT Act / Export turnover as defined in Explanation 2(IV) of Section 10A of the IT Act + domestic sale proceeds.

19.In the instant case, if the deductions on freight, telecommunication and insurance attributable to the delivery of computer software under Section 10A of the IT Act are allowed only in Export Turnover but not from the Total Turnover then, it would give rise to inadvertent, unlawful, meaningless and illogical result which would cause grave injustice to the Respondent which could have never been the intention of the legislature.

20.Even in common parlance, when the object of the formula is to arrive at the profit from export business, expenses excluded from export turnover have to be excluded from total turnover also. Otherwise, any other interpretation makes the formula unworkable and absurd. Hence, we are satisfied that such deduction shall be allowed from the total turnover in same proportion as well.

21.On the issue of expenses on technical services provided outside, we have to follow the same principle of interpretation as followed in the case of expenses of freight, telecommunication etc., otherwise the formula of calculation would be futile. Hence, in the same way, expenses incurred in foreign exchange for providing the technical services outside shall be allowed to exclude from the total turnover.

22.In view of above discussion, we are of the considered view that these instant appeals are devoid of merits and deserve to be dismissed. Accordingly, all the connected matters and interlocutory applications, if any, are disposed of with no order as to costs.”

7.Further, the learned Senior Standing Counsel submitted that the 3 rd question of law was decided against the Revenue by the Division Bench of this Court in T.C.A.No.375 of 2018 [Commissioner of Income Tax, Chennai v. M/s.Allsec Technologies Ltd., Chennai] dated 02.09.2020, wherein, the Division Bench held as follows :

“2.This appeal, filed by the Revenue under Section 260A of the Income Tax Act, 1961 (for brevity, the Act), is directed against the the order dated 29.3.2017 made in ITA.No.2229/Mds/2016 the file of the Income Tax Appellate Tribunal, Chennai 'C' Bench (for short, the Tribunal) for the assessment year 2005-06.

3.The appeal was admitted on 10.7.2018 on the following substantial question of law :

“?Whether deduction under Section 10A of the Income Tax Act, 1961 may be allowed without reducing the brought forward losses pertaining to the year subsequent to the assessment year and setting the same off against gains of business in the current year ??”

4.The issue raised in this appeal is covered by the decision of this Court in the case of M/s.Comstar Automative Technologies Private Ltd., Vs. DCIT [TCA.No.228 of 2011 dated 18.3.2020] in favour of the assessee. Further in the decision of this Court in the case of CIT Vs. M/s.Comstar Automotive Technologies Pvt. Ltd. [TCA.No.301 of 2019 dated 06.7.2020], to which, one of us (TSSJ) was a party, the above mentioned substantial question of law was decided against the Revenue following the said decision in TCA. No.228 of 2011 dated 18.3.2020, which judgment answered the only substantial question of law against the Revenue.

5.Following the above decisions, the above tax case appeal is dismissed and the substantial question of law is answered against the Revenue. No costs."

8.The learned Senior Standing Counsel submitted that, in view of the ratio laid down by the Hon'ble Supreme Court of India and Division Bench of this Court, the questions of law may be decided against the Revenue and in favour of the assessee.

9.Mr.R.Venkata Narayanan for M/s.Subbaraya Aiyar Padmanabhan, learned counsel for the respondent/assessee, submitted that, in view of the judgment of the Hon'ble Supreme Court and the Division Bench of this Court cited supra, the appeal may be dismissed.

10.Having regard to the submissions made by the learned counsel on either side and following the ratio laid down by the Hon'ble Supreme Court of India, the questions of law 1 and 2 are decided against the appellant/Revenue. Similarly, following the ratio laid down by the Division Bench of this Court in T.C.A.No.375 of 2018 dated 02.09.2020, the 3 rd question of law is also decided against the appellant/Revenue and in favour in the assessee.

Accordingly, this Tax Case Appeal is dismissed. No costs."

5.Mr.R.Venkatnarayanan, learned counsel appearing for the respondent-assessee submitted that in view of the ratio laid down by this Hon'ble Bench in the judgment dated 01.07.2021 made in T.C.A.No.559 of 2015, the appeal may be dismissed.

6.Having regard to the submissions made by the learned counsel on either side, following the ratio laid down in the judgment dated 01.07.2021 made in T.C.A.No.559 of 2015 [The Commissioner of Income Tax Vs. M/s.Allsec Technologies Ltd., No.46-B, Velacherry Main Road, Velacherry, Chennai - 600 042], the questions of law are decided against the Revenue and in favour of the assessee. Accordingly, the Tax Case Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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To

1.The Income Tax Appellate Tribunal,
Chennai, "A" Bench.

2.The Commissioner of Income Tax (Appeals)-1,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai-34.

3.The Deputy Commissioner of Income Tax,
Company Circle 1(1), Chennai.

+1cc to Mr.T.Ravi Kumar, Advocate Sr.31293

T.C.A.No.119 of 2015

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srg 23/07/2021