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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 25.06.2021

CORAM:

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

T.C.A.No.146 of 2015

Commissioner of Income Tax,
Company Circle III,
Chennai.

... Appellant

Vs

M/s. TNQ Books & Journals Private Limited,
No.4/600, 4/197, Phase II,
VSI Estate, Kottivakkam,
Chennai - 600 041.
PAN : AABCT3050B

... Respondent

Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Chennai, "C" Bench, dated 24.10.2014 in I.T.A.No.758/Mds/2014 for the Assessment Year 2009-2010.

Filed Against the order of The Commissioner of income Tax (Appeals) - III in ITA No.1418/2013-2014, Dated:28/11/2013, PAN.No.AABCT3050B for in Assessment Year 2009-2010 Against Order of The Assistant Commissioner of Income Tax Company Circle - III(2), Chennai - 600 034. PAN.No.AABCT3050B in Assessment Year 2009 to 2010.

For Appellant : Mr. M. Swaminathan
Senior Standing Counsel

For Respondent : Mr. Rahul Unnikrishnan

JUDGMENT

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

Challenging the order passed in I.T.A.No.758/Mds/2014 in respect of the Assessment Year 2009-2010 on the file of the Income Tax Appellate Tribunal, Chennai, "C" Bench (for brevity,



the Tribunal), the Revenue has filed the above appeal.

2.1 The assessee is a resident company engaged in the business of export of software and IT enabled service. For the Assessment Year 2009-2010, the assessee claimed deduction under section 10B in his return of income for an amount of Rs.12,55,03,000/-. During the assessment proceedings, the assessee has presented before the Assessing Officer that if at all the claim under section 10B is not allowed, the same may be considered under section 10A. The Assessing Officer completed the assessment under section 143(3) on 26.12.2011 and disallowed the claim of the assessee for deduction under section 10B for the amount of Rs.12,55,03,000/- for want of rectification accorded by the Board of Approval appointed for this purpose by the Government of India. The Assessing Officer rejected the alternative claim of the assessee for deduction under section 10A.

2.2 Aggrieved over the order passed by the Assessing Officer, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals) and the Commissioner of Income Tax partly allowed the appeal. Challenging the same, the assessee preferred an appeal before the Income Tax Appellate Tribunal, and the Tribunal, allowed the appeal by directing the Assessing Officer to verify the condition as per section 10A and allowed the claim of the assessee. Aggrieved over the order passed by the Tribunal, the Revenue has filed the above appeal.

3. The above appeal was admitted on the following substantial questions of law:

" (I) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in allowing the appeal of the assessee, who claimed exemption under section 10B but changed its claim to section 10A when it could not produce the Board's approval in support of its claim?

And

(ii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in relying on the decision of the Special Bench in the case of ITO Vs.Sak Soft when the said decision has not reached the finality and the same is pending before this Court? "



4. When the appeal is taken up for hearing, Mr. M. Swaminathan, learned Senior Standing Counsel appearing for the appellant fairly submitted that the 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."

5. The issue involved in the present appeal 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 :



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"..... 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



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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:

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

6. 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.

7. Mr. Rahul Unnikrishnan, learned counsel appearing for the respondent-assessee submitted that in view of the Judgment of the Hon'ble Supreme Court of India reported in 2020 (113)



taxmann.com 74 (SC) [cited supra], the appeal may be dismissed.

8. Having regard to the submissions made by the learned counsel on either side, following the ratio laid down by the Hon'ble Supreme Court of India in the Judgment reported in 2020 (113) taxmann.com 74 (SC) [cited supra], 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

Rj

To

1. The Income Tax Appellate Tribunal,
Chennai,"C" Bench.
2. The Commissioner of Income Tax Appeals - III,
No.121, Mahatma Gandhi Road,
Chennai - 600 034.
3. The Assistant Commissioner of Income Tax,
Company Circle - III(2),
Chennai - 600 034.

T.C.A.No. 146 of 2015

VSN-II(CO)
HS(15/07/2021)