



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2021

CORAM:

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

T.C.A.No.455 of 2016

The Commissioner of Income Tax,
Chennai.

...Appellant/Appellant

vs.

M/s.Data Software Research Company P Ltd.,
Kasturi Towers, No.6, Smith Road,
Chennai - 600 002.

PAN : AAACD1271H

...Respondent/Respondent

Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Chennai, "B" Bench, dated 17.07.2015 in I.T.A.No.1837/Mds/2014 for the Assessment Year 2006-2007.

Appeal against the order of the Commissioner of Income Tax (Appeals)-1, 121 M.G. Road, Chennai-34 made in I.T.A.No.761/11-12/A-1 order dated 17.03.2014 PAN No. AAACD1271H, Assessment year 2006-2007.

Appeal against the order of the Assistant Commissioner of Income Tax, Company Circle-1(4) Chennai made in PAN No. AAACD1271H order dated 30.12.2011 Assessment year 2006-2007.

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

For Respondent : Mr.R.Venkatnarayanan,
for Subbaraya Aiyar Padmanaban

JUDGMENT

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

Challenging the order passed in I.T.A.No.1837/Mds/2014 in respect of the Assessment Year 2006-2007 on the file of the Income Tax Appellate Tribunal, Chennai, "B" Bench, the Revenue has filed the above appeal.



2. The assessee made a claim under section 10B of the Income Tax Act in the return of income. The assessee contended that in an identical circumstances, the Delhi High Court in Commissioner of Income Tax v. Valiant Communications Ltd., in I.T.A.No.438 of 2012, dated 04.01.2013, held that alternative claim of the assessee under section 10A of the Act should be allowed. However, the Assessing Officer disallowed the same, hence, the assessee made an alternative claim under section 10A before the Commissioner of Income Tax (Appeals). The appellate authority by following the Judgment of this Court reported in [2013] 359 ITR 1 [Commissioner of Income Tax v. Heartland KG Information Ltd.] partly allowed the claim of the assessee. Challenging the order passed by the Commissioner of Income Tax (Appeals), the Revenue filed an appeal before the Income Tax Appellate Tribunal and the appellate Tribunal partly allowed the appeal filed by the Revenue. Aggrieved over the order passed by 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 in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the brought forward losses of the domestic division need not be set off against the profit of the EOU (DTPI Unit) while computing deduction under section 10B of the Income Tax Act in order to arrive at the net business loss?

(ii) Whether the finding of the Tribunal is proper by holding that any expenditure deducted from the export turnover should also be deducted from the total turnover while arriving at the eligible deduction made under section 10A which is contrary to the wording in the statute?

(iii) Is not the finding of the Tribunal bad especially when as per Explanation (2) (iii) to Section 10B has defined the word Export Turnover by which freight telecommunication charges which freight telecommunication charges etc., are to be specifically excluded while computing deduction?

(iv) Whether on the facts in the circumstances of the case, the Income Tax Appellate Tribunal was right in directing the AO to disallow only 2% of the dividend income



instead of 10% made by the AO without any rational basis?"

4. When the Tax Case Appeal is taken up for hearing, Mr.T.Ravi Kumar, learned Senior Standing Counsel appearing for the appellant-Revenue fairly submitted that the substantial questions of law that arise for consideration in this appeal have already been decided against the Revenue and in favour of the Assessee in the Judgment dated 06.07.2021 made in T.C.A.No.119 of 2015 [Commissioner of Income Tax, Chennai v. M/s.Allsec Technologies Ltd., Chennai] wherein this Bench held as follows:-

"

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



WEB COPY

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



WEB COPY

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;"

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



WEB COPY

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. In spite that, learned CIT (Appeals),



WEB COPY

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 statute 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 and taxation are often strangers, attempt should be made that these



WEB COPY

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



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.

7. Further, the learned Senior Standing Counsel submitted that the 3rd 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 :

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

4. The issue raised in this appeal is covered by the decision of this Court in the case of M/s.Comstar Automotive 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,



WEB COPY

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 3rd 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."

5. Mr. R. Venkatnarayanan, learned counsel appearing for the respondent submitted that in view of the ratio laid down by the Division Bench of this Court in T.C.A.No.109 of 2015 [cited supra], 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 06.07.2021 made in T.C.A.No.109 of 2015 [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.

WEB COPY

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

Rj
To

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

2. The Commissioner of Income Tax
Appeals I, Chennai

3. The Assistant Commissioner of Income Tax
Company circle 1(4) Chennai

+1 Cc to Mr.T. Ravi Kumar, Advocate sr 35172.

T.C.A.No. 455 of 2016

SR II (CO)
SP(18/08/2021)