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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE R. MAHADEVAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

TAX CASE (APPEAL) NOS.160 AND 161 OF 2010

The Commissioner of Income-Tax-I
Chennai

...Appellant
in both T.C.(Appeals)

Vs

M/s.Poaris Software Lab Limited
No.713, Anna Salai
Chennai-600 002

...Respondent
in both T.C.(Appeals)

Prayer : Tax Case Appeals filed against the order of the Income-tax Appellate Tribunal "B" Bench Chennai dated 03.07.2009 passed in I.T.A.Nos.2156/Mds/2007 and 2146/Mds/2007 for the assessment year 2003-04.

Tax Case Appeal No.160 of 2010 : Preferred against the order passed by the Commissioner of Income Tax (Appeals)-V, Chennai-34 dated 31.05.2007 made in ITA No.192/2006-2007 against the order passed by the Income Tax Officer (OSD) Company Circle-V(2), Chennai dated 03.07.2009 for the Assessment year 2003-2004.

Tax Case Appeal No.161 of 2010 : Preferred against the order passed by the Commissioner of Income Tax (Appeals)-V, Chennai-34 dated 31.05.2007 made in ITA No.192/2006-2007 against the order passed by the Income Tax Officer (OSD) Company Circle-V(2), Chennai dated 03.07.2009 for the Assessment year 2003-2004.

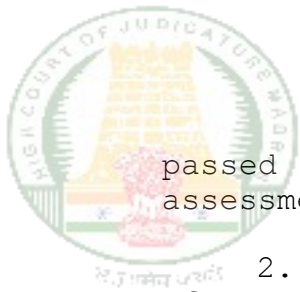
For Appellant : Mrs.R.Hemalatha,
Senior Panel Counsel

For Respondent : Mr.N.V.Balaji

COMMON JUDGMENT

[Judgment of the Court was delivered by R. MAHADEVAN, J.]

The above tax case appeals have been filed by the appellant / Revenue, challenging the order dated 03.07.2009



passed in I.T.A.Nos.2156/Mds/2007 and 2146/Mds/2007 for the assessment year 2003-04.

2. By order dated 22.02.2010, this court admitted the aforesaid tax case appeals on the following substantial questions of law:

T.C.(A).No.160 of 2010 :-

"Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the interest under Section 234D was not leviable in the assessee's case for the Assessment Year 2003-04 on the ground that the section had no retrospective operation and was not applicable for the Assessment Year 2003-04 ignoring the Explanation to the Section ?"

T.C.(A).No.161 of 2010:-

"Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the expenditure incurred in foreign exchange which have been specifically excluded from export turnover by explanation 2(iv) to section 10A would also not form part of the total turnover for the purpose of section 10A of the Act ?"

3. The learned counsel appearing for the appellant/Revenue as well as the respondent/assessee jointly submitted that the substantial question of law raised in TC(A).No.160 of 2010 is covered by the decision of the Hon'ble Supreme Court in Commissioner of Income-tax Vs. Reliance Energy Ltd. [358 ITR 371 (SC)] and hence, the same has to be answered in favour of the Revenue and against the assessee. They further submitted that the substantial question of law raised in T.C.A.No.161 of 2010 is covered in favour of the assessee and against the Revenue as per the unreported decision of a Division Bench of this court in T.C.A.Nos.1193 and 1194 of 2008 dated 12.10.2018.

4.1 The Honourable Supreme Court in Reliance Energy Limited (supra), while dealing with the question of retrospectivity of Section 234D, held as follows:-

"3. Learned counsel for the assessee places reliance on Expln.2 inserted in S.234SD of the Act by the Finance Act, 2012 w.e.f. 1st June, 2003.

4. Explanation 2 which has been inserted in S.234D of the Act reads as under:

"Explanation 2. - For the removal of doubts, it is hereby declared that the provisions of this section shall also apply to an assessment year commencing before the 1st day of June, 2003 if the proceedings in respect of such assessment year is completed after the said date".



6. Having regard to the legal position which has been clarified by the Parliament by insertion of Explan.2 in s.234D of the Act, in the present case, retrospectively of S.234D does not arise."

5.1 As regards the substantial question of law framed in T.C.A.No.161 of 2010, the Division Bench of this court, in T.C.A.Nos.1193 and 1194 of 2008 by order dated 12.10.2018, after following the decision of the Hon'ble Supreme court in CIT, Central III Vs. HCL Technologies Limited [(2018) 404 ITR 719], dealt with the same question and answered the same in favour of the assessee, the relevant passage of which, is usefully extracted hereunder:-

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

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



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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."

4. Following the above, these tax case appeals are dismissed and the substantial questions of law framed for consideration are answered in favour of the assessee and against the Revenue. No costs."

5.2 In the light of the aforesaid judgment, we answer the substantial question of law involved in T.C.A.No.161 of 2010 in favour of the assessee and against the Revenue.

6. In fine, TCA.No.160 of 2010 is allowed. TCA.No.161 of 2010 is dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

// True Copy //

Sub Assistant Registrar

nvsri

To

1.The Commissioner of Income-Tax-I
Chennai.

2.The Income-tax Appellate Tribunal
"B" Bench Chennai.



3.The Income Tax Officer (OSD),
Company Circle V(2),
Aayakarbhavan,
121, MG Road, Chennai.

4.The Commissioner of Income-Tax (Appeals)-V,
121, Mahatma Gandhi Road,
Chennai-600 034.

+1cc to M/s.N.V.Balaji, Advocate Sr.No.5380

TC(A).No.160 and 161 of 2010

KSM(CO)
RVM(28/02/2022)