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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2022

CORAM :

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

Tax Case Appeal No.634 of 2010
and
MP.No.1 of 2010

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

Versus

M/s Pentamedia Graphics Ltd.,
25, I Main Road United India Colony,
Kodambakkam,
Chennai 600 024.

... Respondent/Respondent

Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras "B" Bench, dated 24.03.2008 in I.TA.No.2701/Mds/2005, against the order of the Commissioner of Income Tax (Appeals)-V, Chennai-600 034, dated 26.08.2005 made in ITA No.06/2005-2006 against the order of the Deputy Commissioner of Income Tax, Company Circle-V (2), Chennai dated 28.02.2005 made in PAN/GIR No.AAACP1847B for the Assessment year 2002-03.

For Appellant : Mr.T.Ravikumar
Senior Standing Counsel

For Respondent : Mr.N.Muthukumar

J U D G M E N T

(Judgment of the Court was delivered by R.MAHADEVAN, J.)

This tax case appeal has been filed by the appellant/Revenue, challenging the order dated 24.03.2008 passed by the Income Tax Appellate Tribunal, Madras 'B' Bench, in I.T.A.No.2701/Mds/2005, relating to the assessment year 2002-03.

2. By order dated 20.07.2010, this court admitted the aforesaid tax case appeal on the following substantial question of law:



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"Whether in the facts and circumstances of the case, the Tribunal erred in holding that deduction of expenditure in foreign exchange is allowable from the total turnover while computing deduction under Section 10A?"

3. Today, when the appeal is taken up for consideration, the learned counsel for the appellant/Revenue as well as respondent/assessee jointly submitted that the substantial question of law raised in this appeal has already been considered and decided by the Supreme Court in favour of the Assessee in Commissioner of Income Tax v. HCL Technologies Ltd., (2018) 404 ITR 719 (SC), the relevant passage of which, is usefully extracted hereunder:

"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 the 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



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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. on rendering such services. In spite 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



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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.

...

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:

$$\text{Export Profit} = \frac{\text{total Profit of the Business} \times \text{Export turnover as defined in Explanation 2 (IV) of Section 10A of IT Act}}{\text{Export turnover as defined in Explanation 2 (IV) of Section 10A of the IT Act} + \text{domestic sale proceeds}}$$

19) In the instant case, if the deductions on freight, telecommunication and insurance



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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."

4. Following the aforesaid judgment, which squarely applies to the facts of the present case, the substantial question of law is answered in favour of the Assessee and against the Revenue. Accordingly, the Tax Case Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar



To

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

2.The Commissioner of Income - Tax,
Chennai.

3.The Commissioner of Income Tax (Appeals)-V,
Chennai-34.

4.The Deputy Commissioner of Income Tax,
Company Circle-V (2), Chennai.

+1cc to Mr.T.Ravikumar, Advocate SR. No.2618

+1cc to Mr.G.Baskar, Advocate SR. No.2424

T.C.A.No.634 of 2010

NMI (CO)

PR (18/02/2022)