IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2022

CORAM :

THE HON'BLE MR.JUSTICE R.MAHADEVAN
AND
THE HON'BLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

T.C.A.NO.383 OF 2011

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

Versus

M/s.Zylog Systems Ltd.,
No.155, Thiruvalluvar Salai,
Kumaran Nagar,
Chennai - 600 119. ... Respondent

PRAYER:-

Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Chennai, “D” Bench, dated 28.02.2011 in I.TA.No.2300/Mds/2008 for the Assessment Year 2005-2006.

Against the order of the Commissioner of Income Tax (Appeals)-III, Chennai – 600 034 dated 31/10/2008 and made in I.T.A.No.672/07-08/A-III for the Assessment Year 2005-2006.

Against the order of the Assistant Commissioner of Income Tax, Company Circle-III(3), Chennai – 600 034 dated 30/12/2007 and made in G.I.R.No./PAN No.AAACZ1086G for the Assessment Year 2005-2006.

For Appellant : Mrs.V.Pushpa
Junior Standing Counsel

For Respondent : Mr.S.Gopalakrishnan
For OL

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 28.02.2011 passed by the Income Tax Appellate Tribunal, Bench 'D', Chennai, in I.T.A.No.2300/Mds/2008, relating to the assessment year 2005-06, by raising the following substantial questions of law:-

> "(i) Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the expenditure of Rs.8,46,55,916/- incurred in foreign exchange for providing technical services outside India by way of onsite development of computer software should not be excluded from the export turnover for the purpose of computing deduction u/s.10B without properly applying the provisions of Explanation 2 (iii) to Section 10B?
>
> (ii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that even if the expenditure referred to in the preceding question was to be excluded from the export turnover, then the same should be excluded from the total turnover also?

2. Today, when the matter was taken up for consideration, the learned counsel for the appellant/Revenue fairly submitted that the issue involved herein has already been decided in favour of the assessee, in view of the decision rendered in the case of Commissioner of Income Tax v. Mphasis Ltd [(2020) 113 taxmann.com 74], wherein, the Hon'ble Supreme Court has affirmed the view taken by the Division Bench of the Karnataka High Court and held that 'the expenditure incurred by the Assessee in foreign currency will be includible in the definition of 'export turnover' for the purpose of computing deduction under Section 10B of the Act'.

3. For better appreciation, the relevant portion of the judgment of the Division Bench of the Karnataka High Court in CIT v. Mphasis Ltd. [(2016) 74 taxmann.com 274 (Karnataka) is extracted below:

> "2. The first substantial question of law arose for consideration before this Court in ITA No.776/2007 disposed of on 13.06.2014, wherein this

Court has held at paras 18 and 19 as under :-

> 18. From the aforesaid provision it is clear that the consideration in respect of computer software received in or brought into India by the assessee in convertible foreign exchange is deducted from the profits of the said business. In other words the assessee is not liable to pay any income tax on such consideration received from export of computer software. However the said export turnover does not include freight, telecommunication charges or insurance attributable to the delivery of computer software outside India or expenses if any incurred in foreign exchange in providing technical service outside India. In other words out of the said export turnover the following amounts have to be deducted;
>
> a. freight b. telecommunication charges c. insurance attributable to the delivery of computer software outside India; d. expenses, if any, incurred in foreign exchange in providing technical services outside India;
>
> 19. If the assessee is engaged in the business of providing technical services outside India in connection with the development or production of computer software then expenses if any incurred in foreign exchange in providing technical services outside India is liable to be deducted out of export turnover. The said provision has no application in the case of export out of India of computer software or its transmission from India to a place outside India by any means. The law makes a distinction between technical services rendered in connection with export of computer software and export of technical services for the purpose of development or production of computer software outside India. If the technical services rendered by the assessee's Engineers is in connection with the export of computer software for the purpose of testing, installation and monitoring of software such a turnover do not fall within clause (ii) of subsection (1) of section 80HHE of the Act. Such a turnover

falls within sub-clause (i) of subsection (1) of Section 80HHE of the Act, that is export out of India of computer software or its transmission from India to a place outside India by any means. The expenditure incurred in the form of foreign exchange for such services cannot be excluded in computing the export turnover as it forms part of the export turnover. In the instant case as is clear from the order of the Assessing Authority, he proceeds on the assumption that the assessee is a company engaged in rendering technical services outside India in connection with production of said software. Therefore the expenditure incurred in foreign exchange in providing such technical services outside India of Rs.62.7 lakhs was excluded in computing the export turnover and total turnover for arriving at deduction under Section 80HHE of the Act. The assesee is engaged in the business of export out of India of computer software and its transmission to places from India outside India. Before a computer software is exported, the Software Engineers of the assessee would have initial discussion with regard to the requirements, specifications etc. Thereafter computer software is manufactured and then it is transmitted from India to a place outside India. The software Engineers deputed abroad who among other things have to do testing, installation and monitoring of software supplied to the client. Though the said services are technical in nature it does not fall within clause (ii) of subsection (1) of section 80HHE of the Act of providing technical services outside India in connection with the development or production of computer software. It falls under sub-clause (1) of sub-section (1) of Section 80 HHE of the Act. Therefore, the said expenditure cannot be excluded in computing export turn over. In that view of the matter we do not see any merit in this appeal. Accordingly, the said question of law is answered in favour of the assessee and against the revenue. Ordered accordingly.

3. In view of the said judgment, the substantial question of law is answered in favour of the assessee and against the Revenue.

4. Insofar as the second substantial question of law is concerned, the same was considered by this Court in the case of Commissioner of Income Tax And Another Vs. Tata Elxsi Ltd., reported in (2012) 349 ITR 98 (Karn) . 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 10-A 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 10-A, 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 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:

Profits of the business Export turn over x of the undertaking [Export turnover + domestic turn over) Total turn over”

5. Accordingly, the said substantial question of law is answered in favour of the assessee and against the Revenue.”

4. The aforesaid judgment of the Karnataka High Court was affirmed by the Hon'ble Supreme Court in CIT v. Mphasis Ltd (supra), the relevant portion of which, is quoted below for ready reference.

> “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 2004-05 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. In the light of the aforesaid decision, we are of the view that the substantial questions of law raised in this appeal deserves to be allowed in favour of the assessee. Accordingly, the present tax case appeal filed by the Revenue, stands dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kas/gba

To

1. The Commissioner of Income Tax – I,
   Chennai.

2. The Income Tax Appellate Tribunal,
   Chennai, "D" Bench.

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

4. The Assistant Commissioner of Income Tax,
   Company Circle – III(3),
   Chennai – 34.

+1cc to Mr.M.Swaminathan, Advocate, S.R.No.9483

T.C.A.NO.383 OF 2011

SV(CO)
PBS/08/03/2022