IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2022

CORAM :

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

T.C.A.No.545 of 2017

Commissioner of Income Tax
Chennai. ... Appellant/Appellant

Versus

M/s. Sanmar Speciality Chemicals Ltd.,
9, Cathedral Road,
Chennai 600 086
PAN:AABCS0201P ... Respondent/Respondent

Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Chennai, "A" Bench, dated 18.12.2015 in I.TA.No.1523/Mds/2015. against the order of The Commissioner of Income Tax (Appeals) - 15, Chennai-34 vide I.TA.No.326/CIT(A)15/13-14 dated 30/03/2015 GIR.No/PAN AABCS0201P for the Assessment year 2009/2010, against the Assessment order passed by The Assistant Commissioner of Income Tax, Company Circle VI - 1, Chennai - 600 034, dated 23/12/2011 vide PAN AABCS0201P for the Assessment year 2009-10.

For Appellant	:	Mr.J.Narayanasamy
For Respondent	:	Mr.R.Venkatanarayanan for Mr.Subbaraya Aiyar

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 18.12.2015 passed by the Income Tax Appellate Tribunal, 'A' Bench, Chennai, in I.T.A.No.1523/Mds/2015, relating to the assessment year 2009-10.

2. By order dated 05.12.2017, this court admitted the aforesaid tax case appeal on the following substantial questions of law:

"(i) Whether freight and clearing expenses incurred in foreign exchange is to be included while computing deduction under Section 10B of the Income Tax Act, 1961?

(ii) Whether the learned Tribunal erred in law in including freight and clearing expenses incurred in foreign exchange for the purpose of computing deduction under Section 10B of the Income Tax Act, 1961?

(iii) Whether the decision of the Special Bench of the Income Tax Appellate Tribunal in the case of ITO vs. Sak Soft Ltd., reported in (2009) 313 ITR 353, is correct in law?

(iv) Whether Section 14A of the Income Tax Act read with Rule 8D of the Income Tax Rules applies even when the assessee has not received any dividend income?

3. Today, when the appeal was taken up for consideration, the learned counsel appearing for the appellant fairly submitted that the substantial questions of law raised herein have been decided in favour of the assessee, in the decision of the Hon'ble Supreme Court in Commissioner of Income Tax vs. HCL Technologies Ltd., [(2018) 404 ITR 719 (SC)], the relevant passage of which, is usefully extracted hereunder:

> " 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 Section10A 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 Section10A 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 Section10A 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 hold the field, the substantial questions of law raised in the tax case appeal

will have to be answered in favour of the Assessee and are accordingly, answered. Ultimately, the Appeal filed by the Revenue stands dismissed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

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

2. The Deputy Commissioner of Income Tax
Corporate Circle 6(1),
Aayakar Bhavan, New Block,
Chennai - 600 034.

3. The Commissioner of Income Tax (Appeals) - 15,
Chennai.

4. The Assistant Commissioner of Income Tax,
Company Circle VI - 1,
Chennai - 600 034.

COPY TO
The Section Officer,
V.R. Section,
High Court, Madras-104.

T.C.A.No.545 of 2017

AK-I(CO)
CT/26/07/2022