IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 51 OF 2018

Pr. Commissioner of Income Tax – 16 ….Appellant

V/s.

Majumdar And Co. …Respondent

Mr. Suresh Kumar for Appellant.
None for Respondent.

CORAM : K.R. SHRIRAM &
M.M. SATHAYE, JJ.
DATED : 7th JUNE 2023

P.C. :

1. The appeal is impugning an order dated 15th February 2017 passed by the Income Tax Appellate Tribunal (ITAT) rejecting the appeal filed by the Revenue. The Revenue had impugned an order passed by the Commissioner of Income Tax (Appeals) [CIT(A)] relevant to the Assessment Year 2010-11.

2. The following substantial questions of law are proposed :

SUBSTANTIAL QUESTION OF LAW

A. Whether on the facts and circumstance of the case and in law the conversion of exiting physical database into an electronic database would amount to manufacture or production of computer software as contemplated u/s 10B of the Act; particularly in view of the fact that the assessee has itself confirmed that the partner are the creators of the database which has been compiled over the years ?

B. The assessee being a firm of advocates and solicitors was already engaged in the activity of providing legal services to its foreign clients over the last many years. The assessee has segregated the activity of computer software by diverting it to an EOU merely to make the said unit eligible for claiming exemption u/s 10B of the

Act. Whether such an act of the assessee would tantamount to splitting up of the business already in existence and hence would render it ineligible to claim exemption u/s 10B of the Act ?

3. The assessee had filed its return of income on 1st December 2011 declaring total income of Rs.3,57,00,536/-. The return of income was processed under Section 143(1) of the Income Tax Act, 1961 (the Act). Thereafter, the case was selected for scrutiny and notices under Section 143(2) and 142(1) of the Act were issued.

4. The assessee's source of income consisted of income from business and profession. The assessee had claimed exemption under Section 10B of the Act of Rs.6,55,85,021/-. The Assessing Officer was of the view that the exemption has been wrongly claimed and therefore declined the claim under Section 10B of the Act. The income of the assessee was assessed at Rs.10,12,85,557/-. This was challenged by the assessee before CIT(A) who allowed the appeal.

5. The CIT(A) in his order dated 15th January 2016, while allowing the appeal of respondent held that the Assessing Officer has not considered the following facts properly in this case, that the prescribed authority, i.e., Development Commissioner SEEPZ has already granted the assessee firm registration as 100% EOU under the provisions of EXIM Policy 2002-07 for the item Legal Services. Further, the CBDT Notification No.

S.O. 890 (E) dated 26th September 2000 has permitted both products and services of legal database as eligible information technology enabled products or services for grant of deduction under Section 10B of the Act. The services provided by appellant firm are "customized electronic data transmission" and are user/client specific. Further, the legal service provided by the assessee firm were rendered by use of legal database created by appellant firm over a period of more than 60 years of its professional experience. The legal services were rendered by the assessee to its foreign clients by use of electronic mode of communications, i.e., by exchange of legal information and documents via emails and internet services. In addition, the assessee has complied with the other conditions in form 56G, realization of service charges within the permitted time, exporting legal services to its clients outside India and receiving the services charges for the same in the foreign currency in India. Therefore, the claim of the assessee is fully justified. Any transmission of "customized electronic data" falls within the expression of "computer software" as per explanation 2(i)(b) to the Section 10B of the Act. Therefore, the assessee is entitled to claim deduction under Section 10B of the Act in respect of its 100% EOU unit.

6. Therefore, the entire issue in this case is fact based. A similar issue had been raised for the Assessment Years 2004-05 to 2008-09. The Assessing Officer has rejected the claim of the assessee for exemption under Section 10B of the Act and the CIT(A) had set aside the order of the

Assessing Officer. The Department had impugned the order of the CIT(A) and those appeals were also dismissed by the Tribunal. Mr. Suresh Kumar states that the appeal filed by the Revenue have also been dismissed by the High Court, Bombay though not on merits but under Rule 986 of the High Court, Bombay (Original Side) Rules.

7. While dismissing the appeal of the Department, the ITAT has relied upon the decision of the ITAT in the assessee's own case for the Assessment Years 2004-05 to 2008-09. The ITAT has also observed that there are no distinguishable facts or contrary facts placed on record. We also find in the grounds of appeal this finding of the ITAT has also not been challenged.

8. The entire issue being fact based and the Tribunal having come to the factual conclusion on the basis of materials on record while upholding the order of the CIT(A) no question of law arises.

9. Appeal dismissed.

(M.M. SATHAYE, J.) **(K.R. SHRIRAM, J.)**