IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2024

CORAM :

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
and
THE HONOURABLE **MR.JUSTICE G. ARUL MURUGAN**

T.C.(A)No.1113 of 2008

The Commissioner of Income Tax,
Tamil Nadu – III, Madras. .... Appellant

vs

M/s.Mascon Global Ltd.,
Padma Complex, 320 Anna Salai,
Chennai – 600 035. .... Respondent

Prayer : Appeal filed under Section 260A of the Income Tax Act, 1961 against order dated 30.03.2007 made in I.T.A.No.706/Mds/2004 on the file of the Income Tax Appellate Tribunal 'B' Bench in respect of assessment year 2001-02.

For Appellant	:	Mr.T.Ravikumar Senior Standing Counsel
For Respondent	:	No appearance

JUDGMENT
(Delivered by Dr. ANITA SUMANTH.,J)

We have heard Mr.T.Ravikumar, learned Senior Standing Counsel for the appellant/Commissioner of Income Tax. Notice has been issued to the respondent/assessee and the description is also printed in the cause list. However, there is no appearance by or on their behalf.

2. The substantial questions of law admitted for resolution are as follows:

> *'1. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that, exclusion of expenses incurred in foreign currencies from the total turnover for the purpose of Section 10A of the Income Tax Act is valid?*
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> *2. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the domestic sales being less than 25% of the total sales will form part of the export turnover in computing the income, even though third proviso to Section 10A(1) for the relevant assessment year along with the explanation 2(IV) of the section would indicate that to be applied for calculation of deduction under Section 10A of the Income Tax Act?'*

3. As regards the first question in relation to exclusion of expenditures incurred in foreign currency from the total turnover for the purpose of Section 10A of the Income Tax Act, 1961 (in short 'Act') the Supreme Court in *Commissioner of Income Tax V. HCL Technologies* (404 ITR 719) has dealt with the identical question holding that parity should be maintained between export and total turnover in the computation of exemption under Section 10A of the Act in relation to expenses incurred

in foreign currency. The relevant paragraphs of the judgment are as follows:

> *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 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.*
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> *15) A Statute is the intention of the legislature who enacts it after having regard to various facts and circumstances. It is a cardinal principle of law that the interpretation by the Court shall be done in such a way that the intention of the legislature shall prevail and no injustice occurred with the parties. The rule of harmonious construction is the thumb rule to interpretation of any statute. An interpretation which makes the enactment a consistent whole, should be the aim of the Courts and a construction which avoids inconsistency or repugnancy between the various sections or parts of the statue should be adopted.*
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> *16) In Commissioner of Income Tax vs. J.H. Gotla, (1985) 23 Taxman 14J (SC) this Court has held as under:*
>
> *"46. Where the plain literal interpretation of a statutory provision produces a manifestly unjust result which could never have been intended by the Legislature, the Court might modify*

the language used by the Legislature so as to achieve the intention of the Legislature and produce a rational construction. The task of interpretation of statutory provision is an attempt to discover the intention of the Legislature from the language used….

47 ….If the purpose of a particular provision is easily discernible from the whole scheme of the Act which, in the present case, was to counteract, the effect of the transfer of assets so far as computation of income of the Respondent was concerned, then bearing that purpose in mind, the intention should be found out from the language used by the Legislature and if strict literal, construction leads to an absurd result, i.e. result not intended to be subserved by the object of the legislation found out in the manner indicated above, then if other construction is possible apart from strict literal construction, then that construction should be preferred to the strict literal construction. Though equity an taxation are often strangers , attempt should be made that these do not remain so always so and if a construction results in equity rather than in injustice , then such construction should be preferred to the literal construction.

Furthermore, in the instant case, we are dealing with an artificial liability created for counteracting the effect only of attempts by the assessee to reduce tax liability by transfer….”

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 turnover as defined in Explanation 2 (IV) of Section 10A of IT Act

Export Profit = total Profit of the Business X

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.

4. The second question of law relates to the inclusion of profits from domestic sales that are less than 25% of the total sales, as part of export turnover. The Central Board of Direct Taxes has accepted such

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methodology of computation vide Circular No.794 dated 09.08.2000, wherein at paragraph 15.7 it is stated as follows:

> *"15.7. Proviso to sub-sec. (1) further provides that profits on domestic sales to the extent of 25% of total sales shall be deemed to be the profits and gains derived from export of articles or things or computer software. The profits on such domestic sales shall be separately worked out proportionately and further added to the amount of export profits for the purposes of deduction under these provisions."*

5. Hence, the Department acceded to the position that profits from domestic sales to the extent of 25% of total sales should be taken as profits derived from export of articles or things or computer software and should be added to the component of export profits for the purpose of deduction under Section 10A of the Act.

6. In light of the aforesaid, both questions of law are answered in favour of the assessee and against the Department and this Tax Case (Appeal) is dismissed. No costs.

[A.S.M., J] [G.A.M., J]
26.11.2024

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Index:Yes/No
Neutral Citation:Yes
Speaking order

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