IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2024

CORAM :

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

**Tax Case (Appeal) Nos.2430 to 2432 of 2008**

M/s/Newgen Digital Works Pvt. Limited
2/579, Singaravelan Street,
Chinna Neelankarai,
Chennai – 600 041.
India.
(cause title accepted vide order dt.26.7.22
in CMP Nos.13717, 13718
and 13719 of 2017)
.. Appellant in the above T.C.(A)s

Vs

The Assistant Commissioner of Income Tax
Central Circle IV (4), Chennai – 600 034.
.. Respondent in the above T.C.(A)s.

**COMMON PRAYER :**APPEALS filed under Section 260A of the Income Tax Act, 1961 against order dated 08.02.2008 in ITA Nos.570, 1955 and 1956/Mds/2007 for assessment years 2003-04, 2001-02 and 2004-05 on the file of the Income Tax Appellate Tribunal, Chennai Bench 'B".

In all T.C.(A)s

For Appellant : Mr.A.S.Sriraman

For Respondents : Mrs.V.Pushpa
Senior Standing Counsel

**COMMON JUDGMENT**

*(Judgment of the Court was delivered by Dr.ANITA SUMANTH.,J)*

We have heard Mr.A.S.Sriraman, learned counsel for the appellant and Ms.V.Pushpa, learned Senior Standing Counsel for the respondent.

2. Though the appeal has been admitted on two questions of law, the arguments that are advanced touch on the first substantial question of law alone, reading thus:

> *1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in reducing the claim of exemption under Section 10B of the Income Tax Act, 1961?*

3. Learned counsel for the appellant makes an endorsement, on instructions, that the following substantial question of law is not pressed by the assessee/appellant.

> *'Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in reducing the exemption under Section 10B of the Act, when, in fact, there is no specific finding in the assessment order and the order of the Tribunal that the appellant provides technical service?'*

4. The appeals relate to the assessment years 2001-02, 2003-04 and 2004-05. In the returns of income, the appellant had made claims for exemption under Section 10B of the Income Tax Act, 1961 (in short 'Act') in regard to the expenditures incurred in foreign currency which, according to the petitioner, are liable to be included in the ambit of 'export turnover' in the computation of such exemption.

5. The assessing authority did not accept the submission and in the first appeal the appellant had raised an alternate contention that if at all the expenditure was to be excluded from the component of 'export turnover', the same should be excluded from total turnover also.

6. The above submission found favour with the first appellate authority, who accepted the same. At the instance of the revenue, the matter was carried to the Income Tax Appellate Tribunal, which reversed the order of the first appellate authority, assailing which, the present appeals have been filed.

7. Both learned counsel would concur on the position that the issue in question is covered by a judgment of the Supreme Court in *Commissioner of Income Tax Central-III V. HCL Technologies Ltd.* (404 ITR 719), the operative portion of which reads as follows:

*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 proceed*

*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..*

8. In light of the aforesaid, these Tax Case (Appeals) are allowed.

No costs.

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

**07.11.2024**

sl
Index:Yes/No
Speaking order
Neutral Citation:Yes

To

The Assistant Commissioner of Income Tax
Central Circle IV (4), Chennai – 600 034.

**Dr.ANITA SUMANTH,J.**
**AND**
**G.ARUL MURUGAN,J.**

sl

**Tax Case (Appeal) Nos.2430 to 2432 of 2008**

**07.11.2024**