IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2024

CORAM :
THE HONOURABLE MR.JUSTICE R. SURESH KUMAR
AND
THE HONOURABLE MR.JUSTICE C. SARAVANAN

T.C.A.No.1164 of 2015

Commissioner of Income Tax
Chennai. .. Appellant

Vs.

M/s. Cognizant Technology Solutions India Pvt. Ltd.
6th Floor, New No.165, Old No.110
Menon Eternity Building, St. Mary's Road
Chennai – 600 018. .. Respondent

Prayer: Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order of Income Tax Appellate Tribunal Madras “C” Bench, Chennai dated 21.06.2013 passed in MP.No.90/Mds/2013 in I.T.A.114/Mds/2011.

For the Appellant : Mr.Karthik Ranganathan
Senior Standing Counsel

For the Respondent : Mr.N.V.Balaji

JUDGMENT

(Order of the Court was made by R.SURESH KUMAR, J.)

This Tax Case Appeal arises out of the order passed in a miscellaneous petition in M.P.No.90/Mds/2013 dated 21.06.2013 by the Income Tax Appellate Tribunal, Chennai.

2. In fact, the respondent assessee filed Income Tax Appeals in I.T.A.Nos.114 & 2100(Mds)/2011 for the Assessment Years 2005-06 and 2007-08 respectively on various issues. These Income Tax Appeals were decided by the same Bench on 23.01.2013. Thereafter, M.P.No.90/Mds/2013 was filed by the respondent assessee under Section 254(2) of the Income Tax Act, 1961, [for brevity, hereinafter referred to as "the Act"] in order to rectify certain issues.

3. In M.P.No.90/Mds/2013, the issue that was raised before the Tribunal for rectification was that the ground raised by the assessee in the main ITA with regard to the denial of deduction under Section 10A on a portion of profits derived by Chennai STP-II Unit, alleging that such profits have been shifted from STP-I Unit to STP-II Unit is erroneous. Therefore, that should have been decided by the Tribunal, which according to the respondent assessee, had been raised in the main appeals itself. However, since the said issue had not been considered and decided by the Tribunal, it became necessitated, according to the assessee, to file the miscellaneous petition, that is M.P.No.90/Mds/2013, only confined to the said issue.

4. This issue has been considered and decided by the Tribunal

and orders have been passed vide order dated 21.06.2013, which is impugned herein. Assailing the same, the present Tax Case Appeal has been directed by the Revenue.

5. We have heard *Mr.Karthik Ranganathan*, learned Senior Standing Counsel for the appellant and Mr.N.V.Balaji, learned counsel for the respondent assessee.

6. With regard to the decision taken by the Assessing Authority as to the profits arising out of STP-I and STP-II, it is the apprehension and in fact, the definite case on the part of the Revenue that during the relevant year, that is Assessment Year 2005-06, considerable profit registered by STP-I has been shifted to STP-II in the books of accounts in order to claim exemption provided under Section 10A of the Act.

7. The reason being that SPT-I was established from 1994-95, therefore, there was ten years holiday period under the provisions of the Section 10A of the Act till the Assessment Year 2004-05. STP-II was established from the Assessment Year 2002-03 and therefore, as per the ten years holiday period provided under Section 10A of the Act for STP-II, it would be available up to 2012-

13.

8. Here, in the case in hand, the relevant Assessment Year is 2005-06. In respect of the Assessment Years upto 2004-05, there is absolutely no quarrel and as far as the Assessment Year 2005-06 is concerned, it is the claim of the assessee that 345 employees of STP-I have been shifted to STP-II. That apart, there were 2361 employees newly employed and pressed into service in STP-II. Resultantly, there was a sudden jump of turnover as well as the profits. According to the assessee, the turnover for the Assessment Year 2004-05 of STP-II was Rs.98,82,15,013/-, which has been increased to Rs.405,71,34,535/- for the Assessment Year 2005-06, which is Rs.310.55 crores higher than the turnover registered in the previous Assessment Year, that is 2004-05.

9. Such a sudden or huge increase in turnover, ultimately the profits, since has been registered in STP-II, the same was doubted by the Revenue and the reason morefully for such apprehension on the part of the Revenue is that upto the Assessment Year 2004-05, STP-I was enjoying the tax benefit under Section 10A of the Act and ten years tax holiday period was over by 2004-05. As STP-I cannot claim any benefit for the assessment year 2005-06, the

considerable income registered or arising out of STP-I has been shifted only in the records and books of account by the assessee to STP-II for the assessment year 2005-06. That is the reason why the exemption sought under Section 10A of the Act for STP-II of the Assessment Year 2005-06 was negated by the Assessing Authority.

10. In fact, this was the only issue which the assessee wanted to get a finding by way of rectification of mistakes, which also triggered the assessee to file M.P.No.90/Mds/2012. The Tribunal, in the order impugned, discussed the issue in paragraph Nos.5 and 6 of the impugned order, which, for more clarity, is extracted hereunder:-

> *"5. We heard both sides and considered this particular ground, which was not adjudicated. Chennai unit STP-I and Chennai Unit STP-II have maintained separate accounts without overlapping. The profits arising out of STP-I and STP-II can be worked out independently. The assessee has claimed deduction under Section 10A in respect of STP-II. The Assessing Officer has reduced the profits of STP-II on the ground that, that much profits have been shifted from STP-I to STP-II. In other words, it is the finding of the Assessing Officer that is the assessee-petitioner has overstated the profits of STP-II so*

as to claim a higher amount of deduction under Section 10A. The basis of the finding of the assessing authority is that reduction in average employee strength in Chennai STP-I has resulted in diversion of the employees to STP-II to show more profits in Chennai STP-II.

6. We find that there is no basis for arriving at such a conclusion as attempted by the Assessing Officer. The Assessing Officer has made a pick and choose exercise and pointed out the strength of employees between two units to make out a comparison and to estimate the profits that could be generated by the two units. The assessee, on the other hand, has maintained records of the employees in STP-I and STP-II separately and the deployment of that much man-power is proved and there is absolutely no reason to state that the assessee has boosted the profit of STP-II by diverting the man-power from STP-I. These are all presumptions of the Assessing Officer. Therefore, we delete the disallowance made by the Assessing Officer out of the profits of STP-II and grant the exemption under Section 10A on the entire profits of STP-II. The inter-unit profit adjustment made by the Assessing Officer is deleted."

11. Arguments have been advanced on behalf of the respondent assessee that substantial documents have been filed before the Tribunal, though having been satisfied with those documents only it has been stated in paragraph 6 of the impugned order that the assessee had proved with regard to the increase in man-power in STP-II during the relevant point of time, the Tribunal might not have given a detailed finding with regard to the documents filed to substantiate the contentions raised by the assessee, that would not *ipso facto* give rise to the Revenue to file this appeal doubting the judgment of the Tribunal, which is impugned herein.

12. However, on the contrary, *Mr.Karthik Ranganathan*, learned Senior Standing Counsel for the Revenue would submit that no such documents seems to have been filed either before the Revenue or before the Tribunal. Had it been any documents filed on behalf of the assessee to substantiate their contention that the Management of the assessee, since decided to increase production in STP-II had not only shifted 345 employees, but also employed 3261 new employees, for which necessary facilities are available in all respects and therefore, the turnover and profit since increased multi-fold in respect of STP-II, such kind of documents, unless are

filed to the satisfaction of the Assessing Authority, the plea raised by the assessee to accept the ground that STP-II is entitled to get the benefit of Section 10A of the Act cannot be accepted.

13. However, these factors have not been gone into by the Tribunal and absolutely, there has been no whisper, according to the learned Senior Standing Counsel for the Revenue, that these issues have been considered and discussed by the Tribunal in the order impugned, except the one line answer given in paragraph 6 of the impugned order.

14. We have considered the rival submissions made by learned counsel appearing for both sides and have perused the materials placed before this Court.

15. As the issue raised in this Tax Case Appeal is confined only to shifting the employees and also employing more employees in STP-II in the Assessment Year 2005-06 (the relevant Financial Year 2004-05) resulting in such a huge jump in the turnover, whether it is justified based on the documents which are available with the assessee is the question to be answered, for which, as has been rightly pointed out by learned Senior Standing Counsel for the

Revenue, the Tribunal has not given any discussion.

16. If we look at paragraph Nos.5 and 6, which alone have been devoted for coming to such a conclusion by the Tribunal, it is only stated that "t*he assessee, on the other hand, has maintained records of the employees in STP-I and STP-II separately and the deployment of that much man-power is proved and there is absolutely no reason to state that the assessee has boosted the profit of STP-II by diverting the man-power from STP-I. These are all presumptions of the Assessing Officer. Therefore, we delete the disallowance made by the Assessing Officer out of the profits of STP-II and grant the exemption under Section 10A on the entire profits of STP-II".*

17. In order to come to such a conclusion, especially to state that the assessee has proved that much man-power, which have been employed in STP-II for the Assessment Year 2005-06 to the extent of 2361 fresh employees apart from the 345 employees shifted from STP-I to STP-II, what documents have been filed by the assessee had not been stated by the Tribunal.

18. Even though an attempt has been made by *Mr.N.V.Balaji*, learned counsel for the assessee/respondent that those documents could be produced before this Court, we are not impressed with the same for the reason that even before the Tribunal, being the last fact finding authority, such documents if at all had been filed, could have been taken into consideration by the Tribunal and specific findings would have been made by the Tribunal. But, in the absence of any such findings by the Tribunal, we do not want to make such an exercise at this juncture.

19. Therefore, we are of the considered view that the factual matrix as claimed by the assessee, that the sudden increase in the turnover in STP-II in the Assessment Year 2005-06 is because of the decision taken by the Management to increase the manpower, that is employees' strength, in order to increase turnover, for which, documents are available to substantiate their contention, is a matter to be gone into by the Assessing Authority. Therefore, we are of the view that the impugned order passed by the Tribunal is liable to be interfered with and consequentially, the matter is to be remitted back to the Assessing Authority.

20. Resultantly, the following orders are passed in the present Tax Case Appeal:-

(i) The order impugned is set aside and the matter is remitted back to the Assessing Authority for reconsideration, where, during the reassessment process, it is open to the respondent assessee to file all relevant documents to substantiate the contention of the assessee to consider that during the Assessment Year 2005-06, corresponding to Financial Year 2004-05, the Management decided to increase the turnover multi-fold, therefore, huge number of employees have been newly employed to the extent of 2361, apart from the shifting of 345 employees from STP-I to STP-II, resultantly, such an increased turnover was registered and it had been made possible and that much of the increased employees could be accommodated in STP-II, for which all infrastructural facilities were made available during the relevant point of time also should be satisfied before the Assessing Authority by filing necessary documents.

(ii) If these documents are filed, it is for the Assessing Authority to go into these documents and after giving the opportunity of being heard to the assessee, fresh decision could be taken within a period of six months from the date of receipt of a copy of this order.

(iii) It is made clear that the number of employees shifted from STP-I to STP-II, that is 345, as observed in the impugned order, and also the number of new employees, that is 2361, also, as has been noted in the Assessment Order, may not be the exact figures and in this regard, whatever the figure to be furnished by the assessee will be taken into account by the Assessing Authority.

(iv) It is also made clear that the Assessment Order, except this issue, in all other respects, shall remain the same.

21. With these directions and observations, this Tax Case Appeal stands ordered. However, there shall be no order as to costs.

(R.S.K., J.) (C.S.N, J)
22.10.2024

Neutral Citation:Yes/No

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<u>R. SURESH KUMAR, J.</u>
<u>AND</u>
<u>C. SARAVANAN, J.</u>

(drm)

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