IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2024

CORAM :

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

T.C.A.No.551 of 2015

The Commissioner of Income Tax
Chennai. .. Appellant

vs

M/s. Agnite Education Ltd.,
(formerly Teledata Informatics Ltd)
Teledata Towers, 37/1, Velacherry,
Tambaram Main Road, Velacherry,
Chennai – 600 042. .. Respondent

Prayer : Appeal filed under Section 260A of the Income-Tax Act 1961 against the order of the Income Tax Appellate Tribunal, Madras 'D' Bench, Chennai dated 31.05.2012 in I.T.A.No.2026/Mds/2011.

For Appellant	:	Mr.Avinash Krishnan Ravi Junior Standing Counsel for Mr.T.Ravikumar
For Respondent	:	Mr.A.S.Sriraman

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

Heard Mr.Avinash Krishnan Ravi, Junior Standing Counsel for Mr.T.Ravikumar for the appellant and Mr.A.S.Sriraman for the respondent.

2. The substantial questions of law that have been admitted on 03.08.2015 are as follows:-

(i) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was

right in deleting the additions made by the AO towards the loss on account of foreign exchange fluctuation while computing deductions under Section 10 A?
(ii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the telecommunication expenditure should be excluded both from the export turnover and the total turnover for the purpose of computing deduction u/s 10A?

3. Learned counsel would straight away submit that the issue arising in substantial question no.2 is covered by a judgment of the Supreme Court in the case of *Commissioner of Income-Tax, Central III v HCL Technologies Ltd.,* [404 ITR 719]. The operative portion is as follows:-

"18) Accordingly, the formula for computation of the deduction under Section 10A 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 x ---
of the Business 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 Section 10A 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. As far as the issue arising from question no.1 is concerned, we find that the same has been decided against the assessee by order of the Commissioner of Tax (Appeals) dated 15.09.2011. That order has attained finality since the assessee, who is aggrieved, has not chosen to challenge the same. Para 4.2.1 of that order is extracted below:-

"4.2.1 The appellant has filed the details of break-up of amounts debited under this head and claimed as expenditure, which is as below:

(1) restatement of sundry debtors : Loss Rs.10,51,97,700/-
(2) restatement of sundry creditors : Gain Rs. 2,68,78,061/-
(3) restatement of bank balances (EEFC): Gain Rs. 2,61,93,298/-
(4) restatement of bank balances (EEFC) : Loss Rs. 1,60,20,353/-
Loss Rs. 6,71,48,694/-

The AO has not assigned any reasons for the above disallowance and proceeded to make the above addition in the assessment order. I find that this issue has been decided in favour of the appellant by the Hon'ble Supreme Court in the case of Oil and Natural Gas Corporation Ltd (supra) following the case of Woodward Governor India Limited (supra) wherein it was held that any loss are arising out of exchange fluctuation as on the balance sheet date was allowable as a deduction u/w 37(1) of the Act, notwithstanding that the liability had not been discharged in the year in which the fluctuation in the

> *rate of foreign exchange occurred. Hence, the action of the AO in disallowing the foreign exchange loss is not correct. However, the Hon'ble Bombay High Court in the case of CIT v Shah Originals, 327 ITR 19(Bom) has held that gains of EEFC account arising out of exchange fluctuation are not profits derived from business of exports. Respectfully following this decision, the loss arising out of exchange fluctuation of balances held in EEFC account cannot be allowed as an expenditure for the purpose of determination of export profits. In the result, the addition to the extent of Rs.1,50,22,353/- arising on account of the total exchange fluctuation loss of Rs.6,71,48,694/- is confirmed. The remaining loss of Rs.5,21,26,341/- is allowed..."*

5. Strangely, the Income-Tax Department has raised a ground in this regard, despite the issue having been decided adverse to the assessee by the first appellate authority.

6. The Tribunal has affirmed the conclusions of the Commissioner of Income-Tax (Appeals) on a mistaken premise that the appeal has been filed by the asseessee.

7. In light of the aforesaid, substantial question of law no.1 is misconceived as that issue does not arise from the order of the Income Tax Appellate Tribunal, and is hence returned unanswered.

8. This tax case (appeal) is disposed as above. No costs.

[A.S.M., J] [G.A.M., J]
09.12.2024

Index:Yes/No
Neutral Citation:Yes
ssm

DR. ANITA SUMANTH.,J.
and
G. ARUL MURUGAN.,J.

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