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.235 of 2024

The Commissioner of Income Tax,
International Taxation - 1(2),
Chennai. ... Appellant

-Vs-

M/s.Laserwords US Inc.,
C/o.SPI Technologies India Pvt. Ltd.,
"Gothi Industrial Estate",
R.S.Nos.415 & 416,
Vazhudavur,
Kurumbapet Revenue Village,
Puducherry - 605 009.
PAN:AABCL 8781F ... Respondent

PRAYER : Tax Case Appeal filed under Section 260 A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal 'D' Bench, Chennai dated 10.05.2024 in I.T(TP)A.No.45/Chny/2021 for the assessment year 2017-18.

For Appellant : Mr.R.Karthik
Senior Standing Counsel

J U D G M E N T

(Judgment of the Court was delivered by **R.SURESH KUMAR, J.**)

This tax case appeal has been filed against the order passed by the Income Tax Appellate Tribunal 'D' Bench, Chennai for the assessment year 2017-18 in I.T(TP)A.No.45/Chny/2021 dated 10.05.2024.

2. The following substantial questions of law had been framed by the appellant:

> *"1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in concluding that the fees paid as sales is not in nature in fee for included services?*
>
> *2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal had erred in not appreciating that there was make available of technical inputs by the assessee and so, the amounts received as sales commission is in nature of Fee for included services?*
>
> *3. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal had erred in not considering the provisions of Clause 8 of the Article 12 of India - US DTAA which are applicable in the assessee case?"*

3. It is brought to our notice that, at least two decisions one by the Hon'ble Supreme Court of India and another by the Division Bench of this Court have been rendered already on the same issue.

4. It is fairly submitted by the learned Senior Standing Counsel appearing for the appellant / Revenue that, the issue is covered by a decision of the Hon'ble Supreme Court in the case of ***Commissioner of Income Tax Vs. Toshoku Ltd.,*** reported in ***[1980] 125 ITR 525 (SC)*** as well as the Division Bench of this Court in the case of ***Evolv Clothing Co.(P). Ltd., Vs. The Assistant Commissioner of Income Tax, Company Circle-II(1), Chennai*** reported in ***[2018] 94 taxmann.com 449 (Madras).***

5. The Hon'ble Supreme Court in ***Toshoku Ltd., case*** cited *supra* has held as follows:

> *"The second aspect of the same question is whether the commission amounts credited in the books of the statutory agent can be treated as incomes accrued, arisen, or deemed to have accrued or arisen in India to the non-resident assessees during the relevant year. This takes us to S.9 of the Act. It is urged that the commission amounts should be treated as incomes deemed to have accrued or*

arisen in India as they, according to the Department, had either accrued or arisen through and from the business connection in India that existed between the non-resident assessees and the statutory agent. This contention overlooks the effect of Cl. (a) of the Explanation to Cl. (i) of sub-s. (1) of S. 9 of the Act which provides that in the case of a business of which all the operations are not carried out in India, the income of the business deemed under that clause to accrue or arise in India shall be only such part of the income as is reasonably attributable to the operations carried out in India. If all such operations are carried out in India, the entire income accruing therefrom shall be deemed to have accrued in India. If, however, all the operations are not carried out in the taxable territories, the profits and gains of business deemed to accrue in India through and from business connection in India shall be only such profits and gains as are reasonably attributable to that part of the operations carried out in the taxable territories. If no operations of business are carried out in the taxable territories, it follows that the income accruing or arising abroad through or from any business connection in India cannot be deemed to accrue or arise in India. (See CIT v. R.D.Aggarwal and Co. [1965] 56 ITR 20 (SC) and Carborundum Co. v. CIT [1977] 108 ITR 335 (SC) which *are decided on the basis of s.42 of the Indian I.T. Act, 1922, which corresponds to s. 9(1)(i) of the Act."*

6. In view of the law having been settled, we are of the view that, the substantial questions of law raised by the appellant Revenue in this appeal are to be answered in favour of the assessee and against the Revenue by following the said decision. Hence, this tax case appeal is decided with the aforesaid substantial questions of law in favour of the assessee and against the Revenue and accordingly, this Tax Case Appeal is dismissed. However, there shall be no order as to costs.

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

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No
vji

To

The Income Tax Appellate Tribunal 'D' Bench,
Chennai.

R.SURESH KUMAR, J.
and
C.SARAVANAN, J.

vji

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