IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 15.04.2021

CORAM:

THE HON'BLE MR. JUSTICE M.DURAISWAMY
AND
THE HON'BLE MRS.JUSTICE R.HEMALATHA

T.C.A.No.426 of 2016

Principal Commissioner of Income Tax - 4,
No. 121, Mahatma Gandhi Road,
Chennai - 600 034. ... Appellant

v.

M/s. Mizpah Publishing Services Pvt. Ltd.,
No.6A, VGP First Main Road,
East Coast Road, Injambakkam,
Chennai - 600 041.
PAN : AAC CM 6195 M ... Respondent

Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Chennai, "C" Bench, dated 31.12.2015 in I.T.A.No.2124/Mds/2015 for the Assessment Year 2006-2007.

For Appellant : Mr.S. Rajesh
Standing Counsel

For Respondent : Mr. M.P. Senthil Kumar

JUDGMENT

(Judgment was delivered by M. DURAISWAMY, J.)

Challenging the order passed in I.T.A.No.2124/Mds/2015 in respect of the Assessment Year 2006-2007 on the file of the Income Tax Appellate Tribunal, Chennai, "C" Bench (for brevity, the Tribunal), the Revenue has filed the above appeal.

2. The above appeal was admitted on the following substantial questions of law:

> *" Whether om the facts and circumstances of the case, the Appellate Tribunal was right in holding that the expenditure in foreign exchange is to be excluded from both export turnover and total turnover while computing eligible deduction under section 10A of the Income Tax Act?"*

3. When the appeal is taken up for hearing,Mr.S. Rajesh, learned Standing Counsel appearing for the appellant fairly submitted that the above question of law is covered by the decision of this Court dated 02.03.2021 made in **T.C.A. No.975 of 2010 [The Commissioner of Income Tax - III v. M/s. SRA Systems Ltd., Chennai],** wherein this Court held as follows:

> "...
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> 4.When the appeal is taken up for hearing, Mr.R.Sivaraman, learned counsel appearing for the respondent submitted that the ***Question of Law no.1*** is covered by the decision of the Hon'ble Supreme Court reported in ***[2018] 93 taxmann.com 33 (SC)*** [Commissioner of Income-tax, Central – III Vs. HCL Technologies Ltd.], an un-reported judgment of the Division Bench of this Court dated 10.01.2019 made in T.C.A.Nos.1257 & 1258 of 2009 [Commissioner of Income Tax, Chennai Vs. M/s.Sak Soft Ltd.] and the ***Question of Law no.2*** is covered by the decision of this Bench dated ***19.01.2021*** made in ***T.C.A.Nos.1470 to 1472 of 2010*** [Commissioner of Income Tax, Chennai Vs. M/s.S.R.A. Systems Ltd., No.100, Valluvar Kottam High Road, Nungambakkam, Chennai] and the ***Question of law no.3*** is covered by the decision of the

Division Bench of this Court dated ***18.03.2020*** made in ***T.C.A.No.228 of 2011*** [M/s.Comstar Automative Technologies Private Ltd., (formerly known as Visteon Powertrain Control Systems India Private Limited, Keelakaranai Village, Malrosapuram Post, Maraimalai Nagar, Chengalpattu District- 603 204 Vs. The Deputy Commissioner of Income Tax, Company Circle – I (3), 121, Nungambakkam High Road, Chennai – 600 034].

5.It would be appropriate to extract the relevant portions of the judgments relied upon by the learned counsel for the respondent.

(i)[2018] 93 taxmann.com 33 (SC) [Commissioner of Income-tax, Central – III Vs. HCL Technologies Ltd.]

"...

19.In the instant case, if the deductions on freight, telecommunication and insurance attributable to the delivery of computer software under Section 10A 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 the 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."

(ii)Following the ratio laid down by the Hon'ble Supreme Court, the Division Bench of this Court, by order dated ***10.01.2019*** in ***T.C.A.Nos.1257 & 1258 of 2009 [Commissioner of Income Tax, Chennai Vs. M/s.Sak Soft Ltd.]*** decided the Question of law against the Revenue and in favour of the assessee.

(iii)Un-reported judgment of this Bench dated ***19.01.2021*** dated ***T.C.A.Nos.1470 to 1472 of 2010 [Commissioner of Income Tax, Chennai Vs. M/s.S.R.A. Systems Ltd., No.100, Valluvar Kottam High Road, Nungambakkam, Chennai]***, this Bench held as follows:-

"...

5.As the issue of allowability of deduction under Section 10A is common to all the three Assessment Years, all the three Tax Appeals are taken up together and disposed of by this common judgment. For the Assessment Year 2000-01, the assessee had filed its return of income on 29.11.2000. The assessee claimed that it was eligible for deduction under Section 10B. The return was processed on 28.03.2002. Subsequently, the Assessing Officer had reason to believe that income chargeable to tax had escaped assessment on account of the assessee Company being ineligible for deduction under Section 10A. Subsequently, a notice dated 22.03.2007 was issued under Section 148 and after giving an opportunity of hearing, the scrutiny assessment order was passed on 17.12.2007, disallowing the entire claim of deduction under Section 10B. Further, the expenditure incurred for the renovation and repairs of the rented

premises of the assessee Company was disallowed by the Assessing Officer on the ground that such expenses were in the nature of capital expenditure. The Assessing Officer in his re-assessment order noted that in terms of Section 10B(ii) an undertaking in order to be eligible for deduction under Section 10B must not be formed by splitting up or reconstruction of a business already in existence. Further, the Assessing Officer held that deduction under Section 10B was not available to the assessee Company in view of the provisions of Section 10B(iii) which stipulate that eligible business is not formed by transfer to a new business of plant and machinery previously used for any purpose. The Assessing Officer found that the assessee had not complied with both these conditions, hence, it was not entitled to any deduction under Section 10B.

6.For the Assessment Year 2002-03, in the case of the assessee Company itself, the Income Tax Appellate Tribunal "C" Bench, Chennai had dealt with the applicability of Clauses (ii) and (iii) of Section 10A(2) in its order dated 16.05.2008 in I.T.A.No.2255/Mds/06. The Tribunal, after taking into consideration the decision of Apex Court reported in ***107 ITR 195 [Textile Machinery***

Corporation Limited Vs. CIT] held as follows:

"... this is not a case of setting up of a new business, but only transfer of business place of existing business to a new place located in STPI area and thereafter, getting the approval from the authorities, the assessee become entitled to deduction under Section 10A. Merely because by shifting the business from one place to another and keeping some of the plant and machinery as those are bearing charge of financial institution, does not violate Clause (ii) and (iii) of Sub Clause (2) to Section 10A of the Income Tax Act."

7.The order passed by the Income Tax Appellate Tribunal was challenged by the Department in T.C.A.No.1916 of 2008 and the Hon'ble Division Bench of this Court by its judgment dated 26.10.2018 confirmed the order of the Income Tax Appellate Tribunal dated 16.05.2008 made in I.T.A.No.2255/Mds/06 for the Assessment Year 2002-03 and dismissed the appeal. In view of the judgment of the Hon'ble Division Bench of this Court, it is clear that the applicability of Clauses (ii) and (iii) of Sub Clause (2) to Section 10B of the Act, the impugned order passed by the Income Tax Appellate Tribunal is proper. In view of the order passed by the

Income Tax Appellate Tribunal dated 16.05.2008 in I.T.A.No.2255/Mds/06 and the judgment passed by the Hon'ble Division Bench of this Court on 26.10.2018 in Tax Case Appeal No.1916 of 2008, the assessee Company would be entitled to deduction under Section 10A and disallowance made by the Assessing Officer was not correct. Since the order passed under Section 263 itself has been set aside, the cause of action for re-assessment does not survive."

(iv)Un-reported judgment of a Division Bench of this Court dated ***18.03.2020*** made in ***T.C.A.No.228 of 2011 [M/s.Comstar Automative Technologies Private Ltd., (formerly known as Visteon Powertrain Control Systems India Private Limited, Keelakaranai Village, Malrosapuram Post, Maraimalai Nagar, Chengalpattu District- 603 204 Vs. The Deputy Commissioner of Income Tax, Company Circle – I (3), 121, Nungambakkam High Road, Chennai – 600 034]***, the Division Bench held as follows:

"...

27.Therefore the law has been settled by the said decision of the Hon'ble Apex Court, where in clear terms, it has been held that, the deductions either under Section

10A or 10B would be made while computing the gross total income of the eligible undertaking (like the Assessee) under Chapter IV of the Act and not at the stage of computation of the total income under Chapter VI of the Act.

28.Here is the case in hand, the total income was first arrived at by the Revenue through the Assessing Officer in the Assessment order by computing the total income by way of brought forward or carry forward the depreciation allowance of the earlier Assessment years and set off the unabsorbed depreciation first and making the return Nil, thereby leaving the Assessee in a position where it could not claim an deduction under Section 10B as there was no income after set off of carry forward depreciation and unabsorbed depreciation from earlier years.

29.This method of computing the income in the present case made by the Revenue is totally against the said law as has been declared by te Hon'ble Apex Court in the aforesaid decision in Commissioner of Income-tax v. Yokogawa India Ltd., (cited supra).

30.Therefore we have no hesitation to hold that, the decision of the ITAT, which is impugned herein, would not stand in the legal scrutiny, in view of the law having been declared by the Hon'ble Apex Court. Therefore, we are of the view that, the Substantial Question of Law raised in this Appeal is covered by the said decision, therefore, it can be answered accordingly."

6. Mr.Karthik Ranganathan learned Senior Standing Counsel appearing for the appellant fairly submitted that the issues involved in the present appeal are covered by the decision relied upon by the learned counsel for the respondent.

7.In view of the submissions made by the learned counsel on either side, we are convinced that the Questions of Law involved in the present appeal are covered by the decisions relied upon by the learned counsel for the respondent, cited supra. Following the decisions of the Hon'ble Supreme Court and the decisions of this Court, the Questions of Law are decided against the Revenue and in favour of the assessee. The appeal is liable to be dismissed. Accordingly, the Tax Case Appeal is dismissed. No costs."

4. Mr. M.P. Senthil Kumar, learned counsel appearing for the respondent-assessee submitted that following the judgments referred above, the question of law may be decided in favour of the assessee and the appeal may be dismissed.

5. In view of the submissions made by the learned counsel on either side, following the decision of this court dated 02.03.2021 made in T.C.A.No.975 of 2010 [cited supra], the Question of Law is decided against the Revenue and in favour of the assessee. The appeal is liable to be dismissed. Accordingly, the Tax Case Appeal is dismissed. No costs.

[M.D., J.] [R.H., J.]
15.04.2021

Index : Yes/No
Internet : Yes
Rj

To

The Income Tax Appellate Tribunal,
Chennai,"C" Bench.

M. DURAISWAMY, J.
and
R.HEMALATHA, J.

Rj

T.C.A.No. 426 of 2016

15.04.2021