REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 8489-8490 OF 2013

Commissioner of Income Tax, Central-III .....Appellant(s)

Versus

HCL Technologies Ltd. .... Respondent(s)

WITH

CIVIL APPEAL NO. 8535 of 2013

CIVIL APPEAL NO. 8555-8556 of 2013
CIVIL APPEAL NO.7853 of 2012
CIVIL APPEAL NO.8789 of 2012
CIVIL APPEAL NO.8559 of 2013
CIVIL APPEAL NO.8558 of 2013
CIVIL APPEAL NOs.8529-8530 of 2013
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CIVIL APPEAL NO. 4392 OF 2018
(Arising out of Special Leave Petition (C) NO. 5345 OF 2014)

CIVIL APPEAL NO.8562 of 2013
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CIVIL APPEAL NO. 8929 of 2013
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CIVIL APPEAL NO. 4400 OF 2018
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CIVIL APPEAL NO. 4542 OF 2018
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CIVIL APPEAL NO. 4464 OF 2018
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J U D G M E N T

R.K. Agrawal, J.

1) Leave granted.

2) These appeals have been filed against the impugned judgment and order dated 15.12.2009 passed by the High Court of Delhi in ITA Nos. 1244 and 1250 of 2009 whereby the Division Bench of the High Court had dismissed the appeals filed by the Revenue – the appellant herein while upholding the order passed by the Income Tax Appellate Tribunal (in short 'the Tribunal') dated 30.03.2007. Since the moot question is same in all the appeals connected with the main matter, the same would stand disposed off vide this common judgment.

Civil Appeal Nos. 8489-8490 of 2013

3) **Brief facts:**

(a) The Respondent – HCL Technologies Ltd. is a company registered under the Companies Act, 1956 and engaged in the business of development and export of computer softwares and rendering technical services.

(b) The Respondent has shown gross income from business at Rs. 267,01,76,529/- while claiming deductions under Section 10A of the IT Act to the tune of Rs. 273,45,39,379/- showing a net loss of Rs. 6,43,62,850/-. The Respondent filed its return of income for the Assessment Year 2004-05 on 01.11.2004 declaring the undisclosed income at Rs. 91,25,68,114/-. Thereafter, on 31.03.2005, a revised return of income for Rs. 91,16,99,060/- was filed by the Respondent which was selected for scrutiny under Section 143 of the Income Tax Act, 1961 (in short 'the IT Act').

(c) The Assessing Officer, vide order dated 28.12.2006, held that the software development charges, as claimed by the Respondent, are nothing but in the nature of expenses incurred for technical services provided outside India. Further, in view of

the fact that it is not purely technical services and some element of software development is also involved in it and in the absence of such bifurcation, the Assessing Officer estimated such expense at the rate of 40% and remaining 60% for providing technical services by the Respondent in foreign exchange to its offshore clients and re-assessed the taxable income at Rs. 137,20,34,576/- and penalty to the tune of Rs. 21,81,90,239/-.

(d) Being aggrieved, the Respondent preferred an appeal being No. 331/06-07 before the Commissioner of Income Tax (Appeals). Learned CIT (Appeals), vide order dated 09.05.2007, partly allowed the appeal while estimating 10% as software development charge incurred for technical services provided outside India as against 60% estimated by the Assessing Officer.

(e) Being aggrieved, the Respondent as well as the Revenue, preferred cross appeals being ITAT Nos. 3199 and 3344/Del/2007 before the Tribunal. The Tribunal, vide order dated 23.01.2009, dismissed the appeal filed by the Revenue while allowing the appeal of the Respondent.

(f) Being aggrieved, the Revenue preferred an appeal before the High Court being No. ITA No. 1250 of 2009. The High Court, vide order dated 15.12.2009, dismissed the appeal of the Revenue.

(g) Hence, these appeals have been filed before this Court.

4) Heard learned senior counsel for the parties and perused the factual matrix of the instant case.

Point(s) for consideration:-

5) The only point for consideration before this Court is whether in the facts and circumstances of the case, the software development charges are to be excluded while working out the deduction admissible under Section 10A of the IT Act on the ground that such charges are relatable towards expenses incurred on providing technical services outside India?

Rival contentions:-

6) At the outset, learned senior counsel for the Revenue submitted that when the total turnover is not defined under Section 10A of the IT Act, the ordinary meaning of the words is to be adopted. As it was a technical term, the technical meaning of total turnover, which does not envisage the reduction of any

expense from the total amount, was to be taken into consideration for computing deduction under Section 10A of the IT Act. Hence, the fact that the Respondent has claimed expenses like freight, telecommunication and insurance attributable to the delivery of software outside India total turnover also, while calculating deduction under Section 10A of the IT Act, despite the fact that there is no such provision in Section 10A of the IT Act, is not sustainable in the eyes of law. Therefore, the impugned decision of the High Court is liable to be set aside.

7) On the other hand, learned senior counsel appearing for the Respondent submitted that the export turnover is the numerator whereas the total turnover is the denominator in the formula for computing profit from exports. The export turnover as defined in Section 10A of the IT Act would not include freight, telecommunication charges or insurance attributable to the delivery of goods outside India and the expenses incurred in foreign exchange for providing technical services outside India. The same cannot be included in the total turnover as if numerator included the aforesaid amount, which the

denominator doesn't include, the formula would render undesirable results. Therefore, the Respondent is legally entitled to exclude the above said expenses from the total turnover as well. Hence, these appeals deserve to be dismissed at the outset.

Discussion:-

8) The whole controversy revolves around the claim of certain expenses attributable to the delivery of software outside India or in providing technical services from 'total turnover' by the Respondent under Section 10A of the IT Act. It is an undisputed fact that neither Section 10A nor Section 2 of the IT Act define the term 'total turnover'. However, the term 'total turnover' is given in clause (ba) of the Explanation to Section 80 HHC of the IT Act which defines the meaning of total turnover as follows:

> "(ba) 'total turnover' shall not include freight or insurance attributable to the transport of the goods or merchandise beyond the customs stations as defined in the Customs Act, 1962 (52 of 1962).
>
> Provided that in relation to any assessment year commencing on or after the 1st day of April, 1991, the expression "total turnover" shall have effect as if it also included any sum referred to in clauses (iiia), (iiib), (iiic), (iiid) and (iiie) of section 28;"

9) It is also pertinent to mention here the relevant terminologies which are as under:

> **"Export Turnover:**
> Explanation 2(iv) of Section 10A of the IT Act defines "export turnover" to mean the consideration that has been received for export of articles/things/computer software. Normally the consideration will include the freight/telecommunication charges/insurance which had been incurred to deliver the article/things/computer software outside India. However the Explanation 2(iv) specifically seeks to exclude these three categories of expenditure incurred for delivering the export of articles/things/computer software. It also seeks to exclude expenses for providing technical service, etc. outside India. Therefore, where an Indian technician goes abroad and receives fees for service, the foreign client will normally be required to reimburse the expenses as well. Therefore, out of the consideration received, the portion representing reimbursement of expenditure has to be excluded.
>
> **Export Turnover and Total turnover:**
> The "total turnover" has been defined in sections 80HHC and 80HHE only to exclude additional items given under section 28. But for this additional exclusion, there was no need to define "total turnover".
>
> Export turnover is a component of total turnover. If the entire turnover represents export proceeds, then the export turnover and the total turnover are identical. It is clear that any exclusion in the export turnover in the numerator will automatically imply exclusion in the denominator as well because export turnover is always a component of total turnover.
>
> **Export Turnover/Total Turnover/Business:**
> Form 56F prescribes the report under Section 10A for and Annexure-A thereto refers to "export proceeds" and "sale proceeds". Both together form the total turnover of the undertaking."

10) The question arises here that when the particular term has not been defined in any particular Section, is it allowed to import the meaning of such term from the other provisions of the same Act? Section 10A of the IT Act is a special beneficial provision and the purpose of deduction under such Section is to encourage and boost the new business undertakings situated in the free trade zone of this Nation by providing suitable deductions to such business entities. Sometimes, while calculating the deduction, disputes arise regarding the methodology of deduction which ought to be followed. Undisputedly, it is a matter of record that the Respondent is engaged in the activity of trading of generic software and providing customized software development services for domestic as well as for foreign clients through its two units situated in Software Technology Park, Gurgaon (Now Gurugram) which falls under the definition of the Section 10A of the IT Act. The contention of the Respondent is that it incurred expenditure in foreign exchange in sending professionals abroad as per the agreements with the foreign constituents.

11) On an analysis of the Respondent's activity taken from its website, Assessing Officer arrived at a conclusion that Respondent has been rendering technical services outside India and, therefore, expenses incurred on such activity are required to be excluded from the export turnover while working out the deduction admissible under Section 10A of the IT Act. The Assessing Officer estimated 60% of the software development charges required to be attributed towards expenses incurred for providing technical services outside India. On appeal, learned CIT (Appeals) again made a detailed analysis of the activity of the Respondent and arrived at a conclusion that the Assessing Officer failed to bring any evidence which can indicate that Respondent was providing technical services outside India and it has incurred expenses towards salary etc. on rendering such services. Inspite that, learned CIT (Appeals), estimated 10% of software development charge as charges incurred for technical services provided outside India.

12) It is undisputed fact that the Respondent was engaged in the business of software development for its customers engaged in different activities at software development centres of the

Respondent. However, in the process of such customized software development, certain activities were required to be carried out at the sight of customers on site, located outside India for which the employees of the branches of the Respondent located in the country of the customers are deployed. It is true that it is not defined that which activity will be termed as providing technical services outside India. Moreover, after delivery of such softwares as per requirement, in order to make it fully functional and hassle free functioning subsequent to the delivery of softwares in many cases, there can be requirement of technical personnel to visit the client on site. The Assessing Officer could not bring any evidence that the Respondent was engaged in providing simply technical services independent to software development for the client for which the expenditures were incurred outside India in foreign currency.

13) The Respondent company has claimed deduction under Section 10A as per certificates filed on Form No. 56F. The Respondent, while computing the deduction, has taken the same figure of export turnover as of total turnover. The

Respondent cited various judicial cases but all these cases pertain to deduction under Section 80HHC. Further, the definition of total turnover has been defined in Section 80HHC and 80HHE of the IT Act. As discussed earlier, the definition of total turnover has not been defined under Section 10A of the IT Act.

14) In the above backdrop, we are of the opinion that the definition of total turnover given under Sections 80HHC and 80HHE cannot be adopted for the purpose of Section 10A as the technical meaning of total turnover, which does not envisage the reduction of any expenses from the total amount, is to be taken into consideration for computing the deduction under Section 10A. When the meaning is clear, there is no necessity of importing the meaning of total turnover from the other provisions. If a term is defined under Section 2 of the IT Act, then the definition would be applicable to all the provisions wherein the same term appears. As the term 'total turnover' has been defined in the Explanation to Section 80HHC and 80HHE, wherein it has been clearly stated that "for the purposes of this Section only", it would be applicable only for the purposes of

that Sections and not for the purpose of Section 10A. If denominator includes certain amount of certain type which numerator does not include, the formula would render undesirable results.

15) A Statute is the intention of the legislature who enacts it after having regard to various facts and circumstances. It is a cardinal principle of law that the interpretation by the Court shall be done in such a way that the intention of the legislature shall prevail and no injustice occurred with the parties. The rule of harmonious construction is the thumb rule to interpretation of any statute. An interpretation which makes the enactment a consistent whole, should be the aim of the Courts and a construction which avoids inconsistency or repugnancy between the various sections or parts of the statue should be adopted.

16) In ***Commissioner of Income Tax*** vs. ***J.H. Gotla,*** (1985) 23 Taxman 14J (SC) this Court has held as under:

> "46. Where the plain literal interpretation of a statutory provision produces a manifestly unjust result which could never have been intended by the Legislature, the Court might modify the language used by the Legislature so as to achieve the intention of the Legislature and produce a rational construction. The task of interpretation of statutory

> provision is an attempt to discover the intention of the Legislature from the language used....
> 47 ....If the purpose of a particular provision is easily discernible from the whole scheme of the Act which, in the present case, was to counteract, the effect of the transfer of assets so far as computation of income of the Respondent was concerned, then bearing that purpose in mind, the intention should be found out from the language used by the Legislature and if strict literal, construction leads to an absurd result, i.e. result not intended to be subserved by the object of the legislation found out in the manner indicated above, then if other construction is possible apart from strict literal construction, then that construction should be preferred to the strict literal construction. Though equity an taxation are often strangers , attempt should be made that these do not remain so always so and if a construction results in equity rather than in injustice , then such construction should be preferred to the literal construction. Furthermore, in the instant case, we are dealing with an artificial liability created for counteracting the effect only of attempts by the assessee to reduce tax liability by transfer...."

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:

$$\text{Export Profit} = \text{total Profit of the Business} \times \frac{\text{Export turnover as defined in Explanation 2 (IV) of Section 10A of IT Act}}{\text{Export turnover as defined in Explanation 2(IV) of Section 10A of the IT Act + domestic sale proceeds}}$$

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

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.

.....J.
(R.K. AGRAWAL)

.....J.
(R. BANUMATHI)

NEW DELHI;
APRIL 24, 2018.