(2014) 03 BOM CK 0253

In the Bombay High Court

Case No : ITA No. 2352 of 2011

CIT APPELLANT

Vs

I-Flex Solutions Ltd. RESPONDENT

Date of Decision : 24-03-2014

Acts Referred:
Income Tax Act, 1961 — Section 10A 92CA(4)

Citation : (2014) 03 BOM CK 0253

Hon'ble Judges : S.C. Dharmadhikari, J;G.S. Kulkarni, J

Bench : Division Bench

Advocate : Suresh Kumar, Advocate for the Appellant; F.V. Irani and A.K. Jasani, Advocate for the Respondent;

Judgement

1. Heard Mr. Suresh Kumar, learned counsel appearing for the appellant. Perused the concurrent orders of the Commissioner (Appeals) and the Tribunal dt. 31st Aug., 2010. The assessment year in question is 2002-03.

2. Mr. Suresh Kumar submits that all three questions which are framed at page Nos. 5 and 6 of the memo of appeal are substantial questions of law. He submits that the Tribunal as also the Commissioner (Appeals) could not have proceeded on the footing that in all these cases, every software is part of the computer and thus is eligible for depreciation at 60 per cent instead of 25 per cent as allowed by the assessing officer. Secondly, it is submitted that the income of Rs. 21,76,680 arising out of training activity cannot be said to be intricately related with the export of software and could not have been therefore, included in export turnover as well as in the total turnover to compute allowable deduction under section 10A of the Income Tax Act.

3. Finally, in the facts and circumstances of the case, the Tribunal was not correct and justified in upholding the deletion of an addition of Rs. 53.50,739 in terms of section 92CA(4) of the Income Tax Act, 1961.

4. With the assistance of Shri Suresh Kumar, we have perused the findings of

both the Commissioner (Appeals) and Tribunal. As far as first point is concerned, it is conceded that from the asst. yr. 2003-04 by way of amendment to the Rules, i.e., IT Rules computer software was clubbed with computers as the depreciable asset enjoying rate of depreciation at 60 per cent.

5. The question is therefore for a prior year was the position as understood otherwise. In the facts and circumstances of the assessees case, both the Commissioner (Appeals) and the Tribunal found that the software cannot be seen in isolation and delinked from the computer. The reasons that are assigned is that what has been always understood as obvious is now apparent by the amendment. The Commissioner (Appeals) found that in the case of the present assessee, the software cannot be worked in isolation. It has to be loaded on the computer. Therefore, in the present case, it is an integral part of the computer. In these circumstances, the finding of fact does not require any interference in our appellate jurisdiction as the same does not raise any substantial question of law.

6. As far as second aspect is concerned, it has been found that the same is linked with the first issue/question.

7. The Officers have to be trained after the software is delivered to the customer. There is a finding of fact that the training activity is incidental to the sale made by the assessee company in respect of the products manufactured. Unless the users are trained, further sales are going to be affected. This receipt is therefore closely related to the manufacturing activity carried out by the assessee. In these circumstances and when the findings of fact have been confirmed by the Tribunal, but for some different reasons that we are of the opinion, that this appeal does not give rise to any substantial question of law. Therefore, we are of the opinion that the income generated from training given to the customer for the use of the software in this case was eligible for exemption under section 10A of the Income Tax Act.

8. As far as the last question is concerned, what has been found by the Commissioner (Appeals) as also the Tribunal is that the computation of ALP along with the price in relation to international transactions entered into by the assessee with its subsidiaries is concerned, commission has been paid on customisation fees which was computed at Rs. 5,35,03,798 as against Rs. 4,81,53,418 which resulted into upward adjustment to the income of the assessee. The argument was that the assessee has subsidiaries which act as a sale and marketing office of the assessee. The nature of the transaction is essentially of resale. The ultimate sale prices are negotiated by the subsidiaries directly with the end customers and assessees offers are negotiated. Therefore, when there are subsidiaries, but local independent distribution agents to whom a commission has been given then, the ultimate margin offered and paid to the subsidiaries is only 10 per cent. In other words, there has not been found to be a variation of such nature as would enable the assessing officer to question the payment. In such circumstances, the finding of fact which has been rendered

cannot be said to be vitiated, by any perversity or any error of law apparent on the face of record.

9. The reasons assigned by the Tribunal in para No. 18 of the order are based essentially on the nature of the dealings. Once the subsidiaries are found to be collecting the customization work and which work was not being done by independent distributors, then, the justification has been rightly accepted.

10. We are of the opinion that even the question No. 3 as framed cannot be said to be a substantial question of law. The appeal is thus devoid of any merit and fails. It is dismissed.

