(2006) 11 MAD CK 0146

In the Madras High Court

Case No : T.C. (A) . No. 2592 of 2006

Commissioner of Income Tax	APPELLANT
Vs	
Savvy Systems (India) Ltd.	RESPONDENT

Date of Decision : 15-11-2006

Acts Referred:
Income Tax Act, 1961 — Section 10B, 10B(1), 154, 263

Citation : (2007) 291 ITR 105

Hon'ble Judges : P.P.S. Janarthana Raja, J;P.D. Dinakaran, J

Bench : Division Bench

Advocate : Pushya Sitaraman, for the Appellant;

Final Decision : Dismissed

Judgement

P.D. Dinakaran, J.—The above tax case appeal is directed against the order of the Income Tax Appellate Tribunal in I.T.A. No. 1377/Mds/2004 dated December 22, 2004.

2. The Revenue is the appellant. The assessment year involved is 2000-01. The assessee is in the business of export of computer software. The Assessing Officer accepted the return filed by the assessee and while computing the deduction u/s 10B, the Assessing Officer proceeded as if the domestic turnover would form part of export turnover and the domestic profit forms part of the export profit on the ground that the domestic turnover is less than 25 per cent, of the sales. Finding that the assessment order was erroneous and prejudicial to the interest, of the Revenue, the Commissioner revised the order u/s 263, pursuant to which, an order u/s 154 of the Act came to be passed reducing the benefit of deduction u/s 10B of the Act. Aggrieved by the revision order of the Commissioner, the assessee preferred an appeal before the Income Tax Appellate Tribunal and the Tribunal held that where the assessee''s domestic sale had not exceeded 25 per cent, of the total sales, then for the purpose of the deduction u/s 10B, the domestic turnover forms part of the export turnover and the domestic profit forms part of the export profit and accordingly, held the issue in favour of the

assessee.

3. Aggrieved by the same, the Revenue has preferred this appeal raising the following substantial questions of law:

1. Whether, on the facts and circumstances of the case, the Tribunal was right in holding that for the purpose of the deduction u/s 10B the domestic turnover forms part of the export turnover as per Clause (iv) of Explanation 2 to Section 10B ?

2. Whether, on the facts and circumstances of the case, the Tribunal was right in relying on the second proviso to section 10B(1) for the purpose of deciding the issue relating to the export turnover ?

4. In the operative portion of the order of the Tribunal, we find that the domestic turnover of the sales does not exceed 25 per cent, of the total sales and it is not in dispute that the domestic turnover was less than 25 per cent, of the total sales, thus, fully satisfying the requirements as provided in the second proviso to Sub-section (1) of Section 10B at the relevant period of time, which reads as under:

Provided further that the profits and gains derived from such domestic sales of articles or things or computer software as do not exceed twenty-five per cent, of the total sales shall be deemed to be the profits and gains derived from the export of articles or things or computer software.

5. In view of the above, we find no question of law much less substantial question of law that arises for our consideration. Accordingly, the appeal is dismissed.