

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्रीएन.आर.एस. गणेशन, न्यायिकसदस्य एवं

श्री अब्राहमपी.जॉर्ज, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos. 643, 644 & 645/Mds/2016

निर्धारण वर्ष /Assessment Years : 2008-09, 2009-10 & 2010-11

Deputy Commissioner of Income
Tax, Corporate Circle -1(2),
Chennai – 600 034.

v. M/s.Bally Technologies Pvt.Ltd.,
Unit 1 & 4, 11th Floor, Crest
Building, Intl.Tech Park,
CSIR Road, Taramani,
Chennai – 600 113.

PAN : AACCB 6575A

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. Shiva Srinivas, JCIT

प्रत्यर्थीकीओरसे/Respondent by : Shri. Saroj Kumar Parida, Advocate

सुनवाईकीतारीख/Date of Hearing : 04.08.2016

घोषणाकीतारीख/Date of Pronouncement : 23.09.2016

आदेश /O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

All the three appeals of the department are directed against the respective order of CIT(A) -1 for the Assessment Years 2008-09, 2009-10 & 2010-11. Since common issue arises for consideration in all the

appeals, we heard the same together and disposing of the same by this common order.

2. The only issue arises for consideration is with regard to expenses incurred by the assessee towards internet charges/ foreign travel while computing the deduction under Section 10A of the Act. Shri Shiva Srinivas, the learned department representative submitted that the Assessing Officer included the internet charges and foreign travel expenses incurred in foreign currency in the export turnover. The Assessing Officer after considering the explanation to Section 10A found that the expenses incurred in foreign currency towards internet charges / foreign travel has to be included in the export turnover. However, the same cannot form part of the total turnover. The CIT(A) by placing his reliance on the decision of the Special Bench of this Tribunal in Income-tax Officer v M/s Sak Soft Ltd. (2009) 313 ITR 353 (Chennai Special Bench) found that the export turnover and the total turnover shall contain the same figure. Therefore, if the expenditure incurred by the assessee towards internet charges and foreign travel expenses was excluded from the total turnover, the same has also to be excluded from the export turnover also.

3. According to the learned representative for the department, the department has already filed an appeal against the decision of the Tribunal in Sak Soft Ltd. Case mentioned supra and the same is pending.

Therefore, the CIT is not justified in following the decision of this Special Bench of this Tribunal.

4. On the contrary, Shri Saroj Kumar Parida, the learned counsel for the assessee submitted that the expenditure incurred by the assessee towards internet charges and foreign travel expenses cannot be considered as turnover at all. It is an expenditure incurred by the assessee. Therefore, according to the learned counsel for the assessee, it cannot form part of either the export turnover or the total turnover. Furthermore, once the assessing officer excluded the internet charges and foreign travel expenses from the total turnover, the same has also to be excluded from the export turnover. According to the learned counsel, mere pendency of the appeal before the High Court against the order of this Tribunal in Sak Soft Ltd., cannot be a reason to take a different view.

5. We have considered the rival submissions on either side and also perused the material available on record. While computing the deduction under Section 10A, the total turnover and export turnover shall contain the same figure. If the internet charges / foreign travel incurred by the assessee in foreign currency has to be excluded from the total turnover, the same also needs to be excluded from the export turnover. Therefore, this Tribunal is of the considered opinion, that the CIT (A) has rightly directed the Assessing Officer to exclude the expenditure incurred by the

assessee towards internet charges / foreign travel in foreign currency both from the export turnover and total turnover. Therefore, this tribunal do not find any reason to interfere with the order of the CIT (A). Accordingly, the same is confirmed.

6. In the result, all the three appeals filed by the department are dismissed.

Order pronounced on 23rd September, 2016 at Chennai.

Sd/-

(अब्राहमपी.जॉर्ज)
(Abraham P. George)
लेखा सदस्य/Accountant Member

Sd/-

(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 23rd September, 2016.

sp.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT,
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.