

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'C' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री चंद्र पूजारी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2238/Mds/2015

&

C.O. No.14/Mds/2016

निर्धारण वर्ष / Assessment Year : 2009-10

The Assistant Commissioner of
Income Tax,
Corporate Circle – 3(2),
Chennai - 600 034.

v. M/s WABCO India Limited,
Plant No.1, Plot No.3(SP),
3rd Main Road,
Ambattur Indl. Estate,
Chennai - 600 058.

(अपीलार्थी/Appellant)

PAN : AAFCA 6421 P

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri A.V. Sreekanth, JCIT

प्रत्यर्थी की ओर से/Respondent by : Shri M. Balasubramaniam, FCA

सुनवाई की तारीख/Date of Hearing : 27.01.2016

घोषणा की तारीख/Date of Pronouncement : 19.02.2016

आदेश /O R D E R

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

The Revenue has filed the present appeal against the order of the Commissioner of Income Tax (Appeals)-11, Chennai, dated 16.09.2015 for the assessment year 2009-10. The assessee has filed the cross-objection against the very same order.

2. There was a delay of 3 days in filing this appeal by the Revenue. The Revenue has filed a petition for condonation of delay. We have heard the Ld. representative and the Ld. D.R. We find that there was sufficient cause for not filing the appeal before the stipulated time. Therefore, we condone the delay and admit the appeal.

3. We heard Shri A.V. Sreekanth, the Ld. Departmental Representative and Shri M. Balasubramaniam, the Ld. representative for the assessee. The only issue arises for consideration is with regard to reimbursement expenditure, which was not excluded in the export turnover, whether it should form part of total turnover. The CIT(Appeals) by following the decision of Special Bench of this Tribunal in CIT v. Saksoft Ltd. [313 ITR (AT) 353] found that reimbursement expenditure which does not form part of export turnover shall not form part of total turnover also. The only contention of the Ld. D.R. is that an appeal was filed before the Madras High Court against the decision of Special Bench of this Tribunal in Saksoft Limited (supra). This Tribunal is of the considered opinion that mere pendency of appeal before Madras High Court cannot be a ground to take a different view by this

Tribunal. It is not the case of the Revenue that the Madras High Court stayed the operation of the decision of the Special Bench in Saksoft Limited. Furthermore, the denominator and the numerator should be of the same figure. When the numerator does not form part of the reimbursement expenditure, the same cannot form part of denominator also. Therefore, this Tribunal is of the considered opinion that the CIT(Appeals) has rightly allowed the claim of the assessee. Hence, no interference is called for.

3. The assessee has filed the cross-objection only to support the order of the CIT(Appeals). Hence, the cross-objection becomes infructuous.

4. In the result, the appeal of the Revenue and the cross-objection of the assessee are dismissed.

Order pronounced on 19th February, 2016 at Chennai.

sd/-
(चंद्र पूजारी)
(Chandra Poojari)
लेखा सदस्य/Accountant Member

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

चेन्नई/Chennai,
दिनांक/Dated, the 19th February, 2016.
Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-11, Chennai-34
4. Principal CIT-3, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.