

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'C' BENCH, CHENNAI

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

श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2397/Chny/2017

निर्धारण वर्ष / Assessment Year : 2010-11

M/s Verizon Data Services India
Private Limited,
8th floor, Citius Block, Plot No.1,
SIDCO Industrial Estate, Guindy,
Chennai - 600 032.

v. The Assistant Commissioner of
Income Tax,
Corporate Circle III(4),
Chennai.

PAN : AABCV 1758 N

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.2403/Chny/2017

निर्धारण वर्ष / Assessment Year : 2010-11

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

v. M/s Verizon Data Services
India Pvt. Ltd.,
Olympia Technology Park,
Altius Block, 9th floor, No.1,
SIDCO Industrial Estate,
Guindy, Chennai - 600 032.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Assessee by : Shri Sriram Seshadri, CA

राजस्व की ओर से /Revenue by : Shri Sailendra Mamidi, Pr.CIT

सुनवाई की तारीख/Date of Hearing : 26.06.2018

घोषणा की तारीख/Date of Pronouncement : 24.07.2018

आदेश / O R D E R

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

Both assessee and Revenue have filed the present appeals against the very same order of the Commissioner of Income Tax (Appeals) -11, Chennai, dated 29.06.2017 pertaining to assessment year 2010-11. Therefore, we heard both the appeals together and disposing of the same by this common order.

2. Let's first take Revenue's appeal in I.T.A. No. 2403/Chny/2017.

3. The only issue arises for consideration is computation of deduction under Section 10A of the Income-tax Act, 1961 (in short 'the Act').

4. We heard the Ld. Departmental Representative and the Ld. representative for the assessee. The Assessing Officer included help desk service and travel expenditure in the export turnover, however, excluded the same from total turnover for the purpose of computation of deduction under Section 10A of the Act. The CIT(Appeals) by placing reliance on the order of Special Bench of this Tribunal in Sak Soft Ltd. (30 SOT 55), found that the export

turnover and total turnover shall be of the same factor. Once, the help desk service and travel expenditure were excluded from total turnover, the same shall also be excluded from export turnover. Since the CIT(Appeals) has followed the order of Special Bench of this Tribunal, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

5. Now coming to the assessee's appeal in I.T.A. No.2397/Chny/2017, the first issue arises for consideration is with regard to voluntary disallowance made under Section 40(a)(ia) of the Act.

6. Both the Ld. representative for the assessee and the Ld. Departmental Representative fairly agreed that this issue was considered by the co-ordinate Bench of this Tribunal in the assessee's own case for assessment year 2011-12 and this Tribunal by placing reliance on the judgment of Bombay High Court in Gem Plus Jewellery India Ltd. (194 Taxman 192) found that in respect of voluntary disallowance, the assessee is eligible for deduction under Section 10A of the Act. In view of the above, we

are unable to uphold the orders of the lower authorities. Accordingly, orders of both the authorities below are set aside and the Assessing Officer is directed to consider the disallowance made under Section 40(a)(ia) and 43B of the Act for the purpose of deduction under Section 10A of the Act.

7. The next issue arises for consideration is expenditure incurred by the assessee on purchase of Random Access Memory cards for computer equipments.

8. We heard the Ld. representative for the assessee and the Ld. D.R. This issue was also considered by the co-ordinate Bench of this Tribunal for assessment year 2011-12. This Tribunal found that the expenditure incurred on Random Access Memory cards for computers is revenue expenditure. Since the co-ordinate Bench of this Tribunal found that the expenditure incurred by the assessee for purchasing Random Access Memory cards is revenue expenditure, the CIT(Appeals) is not justified in confirming the order of the Assessing Officer. Accordingly, orders of both the authorities below are set aside and the Assessing Officer is directed to allow the cost of Random Access Memory cards as revenue expenditure.

9. The next issue arises for consideration is with regard to interest paid on belated remittance of service tax.

10. This issue was also considered by the co-ordinate Bench of this Tribunal for assessment year 2011-12. This Tribunal found that the interest paid on the delayed payment of service tax is only compensatory in nature, therefore, the same has to be allowed. In view of the decision of co-ordinate Bench of this Tribunal in the assessee's own case, the orders of both the authorities below are set aside and the Assessing Officer is directed to treat the interest paid on the delayed payment of service tax as revenue expenditure.

11. In the result, the appeal filed by the Revenue in I.T.A. No.2403/Chny/2017 is dismissed. However, the assessee's appeal in I.T.A. No.2397/Chny/2017 is allowed.

Order pronounced on 24th July, 2018 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 24th July, 2018.

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. निर्धारिती /Assessee
2. Assessing Officer
3. आयकर आयुक्त (अपील)/CIT(A)-11, Chennai-34
4. Principal CIT-3, Chennai.
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.