

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL  
'D' 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.33/Chny/2018

निर्धारण वर्ष / Assessment Year : 2013-14

M/s Symantec Software and Services  
India Pvt. Ltd.,  
1/124, Shivaji Gardens, DLF Info City  
Block No.1C, 5<sup>th</sup> floor, Monlight Stop,  
Nandambakkam Post, Ramapuram,  
Mount-Poonamalee Road,  
Chennai - 600 089.

v. The Deputy Commissioner of  
Income Tax,  
Corporate Circle – 6(2),  
Chennai - 600 034.

PAN : AAKCS 5422 K

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri Nikhil Mutha

प्रत्यर्थी की ओर से/Respondent by : Dr. M. Srinivasa Rao, CIT

सुनवाई की तारीख/Date of Hearing : 24.09.2018

घोषणा की तारीख/Date of Pronouncement : 05.10.2018

### **आदेश / O R D E R**

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

This appeal of the assessee is directed against the order of the Assessing Officer, dated 30.10.2017, subsequent to the direction of the Dispute Resolution Panel dated 14.09.2017 and pertaining to assessment year 2013-14.

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

3. When the appeal was taken up for hearing, the Ld. representative for the assessee submitted that he is not pressing this issue. In view of the above, the first ground of appeal, which relates to deduction under Section 10AA of the Act, is dismissed as not pressed.

4. The next issue arises for consideration is reduction of insurance and telecommunication expenditure incurred by the assessee in foreign currency from the total turnover also.

5. Shri Nikhil Mutha, the Ld. representative for the assessee, submitted that the Assessing Officer reduced the expenditure incurred by the assessee towards insurance and telecommunication from the export turnover. However, the same was not reduced from total turnover. Placing reliance on the judgment of Apex Court in CIT v. M/s HCL Technologies Ltd. in CA No.8489-8490 of 2013 dated 24.04.2018, the Ld. representative submitted that the Apex Court found that the expenditure incurred by the assessee also

needs to be reduced from the total turnover. Referring to circular issued by the CBDT in Circular No.4/2018 dated 14<sup>th</sup> August, 2018, the Ld. representative submitted that the CBDT instructed its officers that telecommunication charges and insurance expenses are to be excluded both from export turnover and total turnover. In view of this circular, according to the Ld. representative, the DRP is not justified in directing the Assessing Officer not to exclude the expenditure incurred by the assessee in foreign currency from the total turnover.

6. We heard Dr. M. Srinivasa Rao, the Ld. Departmental Representative also. The denominator and numerator shall be of same factor for the purpose of deduction under Section 10AA of the Act. The expenditure incurred by the assessee in foreign currency towards insurance and telecommunication charges was excluded by the Assessing Officer from the export turnover. Therefore, this Tribunal is of the considered opinion that such an expenditure shall also be excluded from the total turnover. Moreover, the CBDT in Circular No.4/2018 dated 14<sup>th</sup> August, 2018 instructed its officers to exclude the expenditure incurred by the assessee both from export turnover and total turnover. The CBDT further instructed its officers

not to file appeal before this Tribunal and also instructed to withdraw the appeals already filed. In view of the above, this Tribunal is of the considered opinion that the Assessing Officer has to exclude the expenditure incurred by the assessee in foreign currency from total turnover also. In view of the above, orders of all the lower authorities are set aside and the Assessing Officer is directed to exclude the expenditure incurred by the assessee not only from export turnover but also from total turnover.

7. The next issue arises for consideration is expenditure said to be incurred by the assessee in respect of employee severance payments under Section 40(a)(ia) of the Act.

8. Shri Nikhil Mutha, the Ld. representative for the assessee submitted that the assessee has made provision in respect of certain employees who are terminated from service. The payment was made in the subsequent year. Referring to Section 192 of the Act, the Ld. representative submitted that the payment of compensation for employees whose services were terminated, is nothing but salary. Therefore, according to the Ld. D.R., the assessee is not liable to deduct tax, hence, the disallowance made by the Assessing Officer is not justified.

9. We heard Dr. M. Srinivasa Rao, the Ld. Departmental Representative also. The assessee, in fact, has not incurred any expenditure and the assessee admittedly made a provision. This Tribunal is of the considered opinion that only actual expenditure incurred by the assessee has to be allowed. Mere provision made in the accounts to meet the expenditure in future cannot be allowed as expenditure while computing the taxable income. It is open to the assessee to claim the actual amount spent. Therefore, this assessment year is concerned, it cannot be disallowed.

10. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the court on 5<sup>th</sup> October, 2018 at Chennai.

sd/-  
(ए. मोहन अलंकामणी)  
(A. Mohan Alankamony)  
लेखा सदस्य/Accountant Member

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

चेन्नई/Chennai,  
दिनांक/Dated, the 5<sup>th</sup> October, 2018.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. ITO (OSD), DRP-2, Bengaluru
4. Principal CIT-6, Chennai
5. CIT(TP), Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.