

SC settles dispute on exclusion of expense incurred on delivery of goods and services during exports from computation of tax holiday

Summary

The Income-tax Act, 1961 (Act) provides a tax holiday for export of goods and services¹. The tax holiday is granted on the profit of the eligible undertaking, computed in proportion of 'export turnover' to 'total turnover' of the undertaking. Further, certain expenses such as freight, telecommunication and insurance incurred on delivery of goods or services outside of India are specifically required to be excluded from the export turnover of the undertaking. This gave rise to a dispute as to whether these expenses are also required to be excluded from total turnover.

The Supreme Court (SC) in a recent decision² has cleared the position on this matter and held that expenses for providing technical services outside India which have been reduced from export turnover must also be excluded from total turnover for the purpose of claiming a tax holiday.

Facts of the case

- The taxpayer is a company engaged in the business of development and export of computer software and rendering technical services. It filed its return of income claiming a tax holiday and showing a net loss.
- The tax officer disallowed expenses incurred towards provision of technical services outside India. The disallowance was reversed by the Income Tax Appellate Tribunal (ITAT) and the High Court (HC). Aggrieved by the HC ruling, Revenue preferred an appeal before the SC.

¹ Under section 10A, 10AA, 10B of the Income-tax Act, 1961

² Commissioner of Income Tax vs. HCL Technologies Ltd. [TS-218-SC-2018]

Taxpayer's contention

- Export turnover is a part of total turnover and any amount excluded from export turnover should also be excluded from total turnover. Any other treatment to the computation mechanism would render undesirable results.
- The taxpayer relied on judicial precedents to contend that since the term 'total turnover' was not defined under the relevant provisions³, its meaning should be adopted from other provisions⁴ of the Act wherein certain exclusions are allowed from 'total turnover'.

Revenue's contention

- Since the term 'total turnover' is not defined under the relevant provisions of the Act, the ordinary meaning of the word is to be adopted. As it is a technical term, it does not envisage the reduction of any expense from the total amount, and this meaning is to be considered while computing the tax holiday.
- Therefore, the expenses incurred by the taxpayer for delivery of goods or services outside of India are not eligible to be excluded from total turnover of the undertaking.

SC ruling

- For the purpose of extracting the meaning of the term 'total turnover', reference could not be made to other relevant provisions of the Act, as those sections clarify that their scope is limited to those sections itself.
- The SC referred to Karnataka HC's ruling⁵ where HC had held that when a particular word is not defined by the legislature and an ordinary meaning is to be attributed to it, the said ordinary meaning is to be in conformity with the context in which it is used. Hence, what is excluded from export turnover must also be excluded from total turnover since one of the components of total turnover is export turnover. Any other interpretation would run counter to the legislative intent and would be impermissible.
- The SC held that exclusion of value of technical services from total turnover (for the purpose of claiming deduction on account of profit and gains from export sales) was not barred by the provisions of the Act and thus ought to be allowed.

³ Section 10A and Section 2 of Income-tax Act, 1961

⁴ Section 80HHE and Section 80HHC of the Income-tax Act, 1961.

⁵ CIT vs Tata Elxsi Ltd. (2012) 204 Taxman 321

⁶ Reference was made to the judgement of CIT vs. J H Gotla (1985) 23 Taxman 14J (SC)

Our comments

The decision provides relief to taxpayers, especially those engaged in the business of development and export of software, who have been subject to prolonged litigation on this issue. The SC has reiterated⁶ the cardinal principle of law that interpretation by courts shall be done in such a way that the legislature's intention prevails and no injustice occurs to the parties.



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