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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 392/2022

PR. COMMISSIONER OF INCOME TAX BENGALURU-5, BENGALURU ..... Appellant

Through: Mr.Zoheb Hossain, Sr.Standing Counsel for the Revenue with Mr.Vipul Agrawal and Mr.Parth Semwal, Advocates.

versus

M/S NTT DATA GLOBAL DELIVERY SERVICES LTD.

..... Respondent

Through: None

Date of Decision: 12th October, 2022

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, J:

C.M.No.43994/2022

Keeping in view the averments in the application, the delay in re-filing the appeal is condoned.

Accordingly, the application stands disposed of.

ITA No.392/2022

1. Present Income Tax Appeal has been filed challenging the order dated 20th December, 2018 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.5196/Del./2014 for the Assessment Year 2009-10.

2. Learned counsel for the Appellant states that the ITAT has erred in holding that the incidental income of Rs.24,30,64,353/- of the assessee in the form of interest income is eligible for deduction under Section 10A of the Income Tax Act, 1961 ('the Act') without appreciating that as per the provisions of Section 10(A)(1) of the Act, only profits derived from the eligible undertaking will be entitled to deduction under Section 10A of the Act.

3. He submits that the ITAT has erred in following the decision of the Karnataka High Court in ***Commissioner of Income Tax vs Hewlett Packard Global Soft Ltd 299 CTR 118 (Karnataka) (FB)*** without considering that the Revenue has challenged the same before the Supreme Court and the said issue is pending adjudication in Civil Appeal No.9175 of 2018.

4. Having heard learned counsel for the Appellant, this Court finds that the issue raised in the present appeal is no longer *res integra*. In ***Principal Commissioner of Income Tax-1 vs. American Express India Pvt. Ltd., ITA No.749/2016***, a Division Bench of this Court has held as under:-

> *1. The following question of law arises for consideration:*
>
> *"Whether the ITAT erred in law in deleting the addition of ₹2.48 crores as Income from Other Sources and holding it eligible for the purpose of calculation of deduction under Sections 10A and 10B of the Income Tax Act, 1961?"*
>
> *2. The facts necessary for deciding the case are that the assessee had maintained, at the relevant time, i.e. AY 2005-06, a unit eligible for the benefit of Section 10A of the Income Tax Act, 1961 [hereafter "the 1961 Act"] and claimed `2.48 crores as income from other sources, i.e. interest earned out of fixed deposits. These fixed deposits were derived from export proceeds reported by the assessee to which it was eligible for benefit under Section 10A of the 1961 Act. The*

Assessing Officer (AO) ruled that the interest income so reported was not entitled to deduction under Section 10A of the 1961 Act. CIT(A) confirmed this view. The ITAT, however, reversed it. The question as to whether incomes such as the one set to be taxed, i.e. interest earned from the fixed deposits which in turn constituted the foreign export business income, are entitled to deduction under Section 10A was the subject of the judgment of this Court in Riviera Home Furnishing v. ACIT 2016 (65) taxmann.com 287 (Del).

3. The Court then had the occasion to consider the prevalent ruling of the Supreme Court on this issue in Liberty India v. CIT 2009 317 ITR 281.

4. <u>This Court – in Riviera (supra) held as follows</u>:

> *"15. In the considered view of the Court, the submissions made on behalf of the Revenue proceed on the basic misconception regarding the true purport of the provisions of Chapter VIA of the Act and on an incorrect understanding of Section 80A (4) of the Act. The opening words of Section 80A (4) read "Notwithstanding anything to the contrary contained in section 10A or section 10AA or section 10B or section 10BA or in any provisions of this Chapter.....". What is sought to be underscored, therefore, is that Section 80A, and the other provisions in Chapter VIA, are independent of Sections 10A and 10B of the Act. It appears that the object of Section 80A (4) was to ensure that a unit which has availed of the benefit under Section 10B will not be allowed to further claim relief under Section 80IA or 80IB read with Section 80A (4). The intention does not appear to be to deny relief under Section 10B (1) read with Section 10B (4) or to whittle down the ambit of those provisions as is sought to be suggested by Mr. Manchanda. Also, he is not right in contending that the decisions of the High Courts referred to above have not noticed the decision of the Supreme Court in Liberty India. The Karnataka High Court in CIT v. Motorola India Electronics Pvt. Ltd. (supra) makes a reference to the said decision. That decision of the Karnataka High Court has been cited with approval by this Court in Hritnik Exports (supra) and Universal Precision Screws (supra). <u>In Hritnik Exports (supra) the Court quoted with approval the observations of</u>*

> *the Special Bench of the ITAT in Maral Overseas Ltd. (supra) that "Section 10A/10B of the Act is a complete code providing the mechanism for computing the ,,profits of the business'' eligible for deduction u/s 10B of the Act. Once an income forms part of the business of the income of the eligible undertaking of the assessee, the same cannot be excluded from the eligible profits for the purpose of computing deduction u/s 10B of the Act."*

5. In view of the above, with which this Court concurs, the question of law has to be and is answered in favour of the assessee and against the Revenue. The appeal is accordingly dismissed."

(emphasis supplied)

5. In view of the aforesaid mandate of law, this Court is of the view that no substantial question of law arises for consideration in the present appeal. Accordingly, the same is dismissed.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

OCTOBER 12, 2022
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