

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).9839/2012

(From the judgement and order dated 25/11/2011 in ITA No.1056/2011 of The HIGH COURT OF DELHI AT N. DELHI)

CONVERGYS INDIA SERVICES PVT.LTD.

Petitioner(s)

VERSUS

COMMISSIONER OF INCOME TAX

Respondent(s)

Date: 13/12/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.M. LODHA

HON'BLE MR. JUSTICE SHIVA KIRTI SINGH

For Petitioner(s) Mr. C.S. Agarwal, Sr. Adv.  
Mr. Bhargava V. Desai, Adv.  
Mr. Shreyas Mehrotra, Adv.For Respondent(s) Mr. Gourab Banerji, ASG  
Mr. Arijit Prasad, Adv.  
Ms. Tanushree Sinha, Adv. for  
Mrs Anil Katiyar, Adv.UPON hearing counsel the Court made the following  
O R D E R

In C.I.T.-II, Ahmedabad, Gujarat vs. M/s. Mastek Ltd., a three-Judge Bench of this Court in the order dated 4.3.2013 observed as follows:

"We find that appeal filed by the Revenue under Section 260A of the Income Tax Act, 1961 (for short, 'Act') has been admitted by the High Court and two substantial questions of law have been framed for consideration of the appeal.

The grievance of the Revenue is that by necessary implication, the other questions raised in the memo of appeal before the High Court have been rejected.

We are afraid that the Revenue is under some mis-conception. The proviso following the main provision of Section 260A(4) of the Act states that nothing stated in sub-section (4), i.e., 'The appeal shall be heard only on the question so formulated' shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

The High Court's power to frame substantial question(s) of law at the time of hearing of the appeal other than the questions on which appeal has been admitted remains under

Section 260A(4). This power is subject, however, to two conditions, (one) the Court must be satisfied that appeal involves such questions, and (two) the Court has to record reasons therefor."

2. Mr. C.S. Agarwal, learned senior counsel of the petitioner submits that appeal being I.T.A. No. 1056 of 2011 is pending before the High Court on one substantial question of law. He submits that the present special leave petition has been filed as two questions of law that arise from the order of the Income Tax Appellate Tribunal, have not been framed by the High Court. He submits that if those two questions of law, in light of the order dated 4.3.2013 of this Court in Mastek Ltd. (supra), are considered by the High court at the time of hearing of the income tax appeal, he does not have much to say.

3. The two questions, which are being pressed by the petitioner for consideration by the High Court in ITA No. 1056 of 2011, are as follows:

A. Whether the Income Tax Appellate Tribunal was justified in law, on the facts and in the circumstances of the case and on the true and correct interpretation of Section 10A(1) read with section 10A(4) of the Act, in holding that the petitioner is not entitled to deduction under Section 10A of the Income Tax Act, 1961 in respect of foreign exchange fluctuation gain amounting to Rs. 3,52,90,374/- arising on external commercial borrowings for meeting working capital requirements?

B. Whether the Income Tax Tribunal was justified in law, in not allowing deduction under Section 10A of the Income Tax Act, 1961, despite the fact that the petitioner did not have other source of earning an income except from the export activity which was covered under 10A of the Income Tax Act, 1961 and for which the entire income including foreign exchange fluctuation gain had been derived and consequently the foreign exchange fluctuation gain arising on external commercial borrowings for meeting working capital requirements is income from business and eligible for relief under Section 10A of the Act?

4. Mr. Gourab Banerji, learned Additional Solicitor General for the Revenue has no objection if the grievance of the petitioner is considered by the High Court in light of the observations made by this Court in the order dated 4.3.2013 in Mastek Ltd. (supra).

5. Having considered the above submissions, we observed that the High Court shall keep in view the order dated 4.3.2013 passed by this Court in Mastek Ltd. (supra) which has been quoted above while considering whether or not the above two questions of law which the petitioner intends to press for consideration by the High Court need to be framed at the time of hearing of the appeal.

6. In light of the above, obviously the observations made by the High Court in the impugned order do not survive.

7. Special leave petition is disposed of accordingly.

|(Pardeep Kumar)  
|AR-cum-PS

|(Sneh Lata Sharma)  
|Court Master

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