IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2016

C O R A M

THE HON'BLE MR. JUSTICE HULUVADI G. RAMESH
AND
THE HON'BLE Dr. JUSTICE ANITA SUMANTH

Tax Case Appeal No.819 of 2016
and
C.M.P.No.18801 of 2016

M/s. Ansaldo Energia SPA.
C/o.S.R.Batliboi and Co.,
TPL House, 2nd Floor,
No.3, Cenotaph Road,
Chennai 600 018 ... Appellant

Vs

The Assistant Director of Income Tax,
International Taxation,
121, Nungambakkam High Road,
Chennai 600 034. ... Respondent

Prayer:- Appeal filed under Section 260A of the Income Tax, 1961, against the Order of the Income Tax Appellate Tribunal, Chennai 'A' Bench, dated 5.6.2009, in I.T.A.No.411/Mds/2006.

against the order of this commissioner of Income Tax (Appeals) XI Chennai, dt.16.12.2005 and made in RTA.No.9210/2004-05/CIT(A) XI

against the order of this Assistant Director of Income Tax (Inernational Taxation), Chennai dt.27.02.2004 and made in PAN/GIR-No.AACCA41511/3-A for the Assistant year 2000-01.

For Appellant : Mr.N.V.Balaji for Mr. R. Karthikeyan
For Respondent : Mr.Arun Kurian Joseph for Mr.T.Ravikumar, Standing Counsel

J U D G M E N T

(Judgment of the Court was delivered by Dr.Anita Sumanth, J.,)

This Tax Case Appeal arises against an order of the Income Tax Appellate Tribunal, Chennai ('Tribunal') dated 5.6.2009.

2. The issue lies within a narrow compass. The main

grievance of the appellant relates to the violation of the principles of natural justice.

3. The appellant had preferred an appeal before this court challenging an order of the Tribunal dated 11.5.2007. The appeal was rejected vide order dated 12.2.2009 on the question of law raised but remanded to the file of the Tribunal on the limited question of computation of a proper percentage of profit to be brought to tax in the following terms:-

> '41. As regards the second question it is purely a question of fact. The Tribunal held that only 25% of the profits of Contract No.I can be said to have arisen off-shore and outside the taxable territory. The Tribunal did not take note of and could not have taken note of the fact that 20% of the profits of Contract No.I has been offered to tax, since that is an event that took place subsequent to the order of the Tribunal. We find in paragraph No.51 in the order of the Tribunal, that the Tribunal had asked the assessee to give certain figures. But the assessee did not do so. The Tribunal then confirmed the conclusion of CIT(Appeals) that 75% of the profits of Contract I is taxable. No person has been given for fixing the percentage. So we are remitting the matter to the Tribunal to assess the percentage of taxable profit properly, bearing in mind the findings we have confirmed. Both the parties may be heard and documents received for the limited purpose of enabling the Tribunal to work out the percentage. The Tribunal after hearing the submissions shall fix the percentage and give reasons therefore and pass appropriate orders, on any date, within a period of 4 weeks from the date of receipt of a copy of this order.'

4. It appears that the matter was posted for hearing by the Tribunal on 25.3.2009 when it stood adjourned to 24.4.2009 as the original file had not been received back from the High Court. On 24.4.2009, an adjournment was sought for by the appellant mainly on the ground that it had sought an extension of time from this court for disposal of the matter by the Tribunal. The request was, however, rejected and the Tribunal proceeded to confirm its earlier estimation of profit.

5. We do not believe that the matter has been considered in the proper or correct perspective. The order of remand by this court has been specifically for the reason that the Tribunal had, on the earlier occasion, not adduced any rationale while confirming the estimate of profit arrived at by the Commissioner of Income Tax (Appeals). Seen in this light, there is no justification whatsoever for the Tribunal to have merely reiterated its earlier order. It would, thus, have been appropriate for the Tribunal to consider the request for

adjournment favourably and grant opportunity to the assessee to represent its case to give full effect to the directions of this court in its order dated 12.1.2009. The matter, thus, stands remanded once again to the Tribunal to carry out the directions of this court extracted above. The exercise shall be completed within a period of six weeks from the date of receipt of this order. The Tax Case (Appeal) is allowed in the above terms. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssk.

To
The Assistant Director of Income Tax,
International Taxation,
121, Nungambakkam High Road,
Chennai 600 034.

+1cc to Mr.R. Karthikeyan, Advocate, S.R.No.74823

sv(CO)
md(27/02/2017)

T.C.A.No.819 of 2016