

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

I.T.T.A.NO.421 OF 2015

JUDGMENT: {Per the Hon'ble Sri Justice Ramesh Ranganathan}

This appeal, under Section 260A of the Income Tax Act, 1961 ("the Act" for brevity), is preferred against the order passed by the Income Tax Appellate Tribunal in M.A.No.136/Hyd/2014 arising out of I.T.A.No.1129/Hyd/2005 for the assessment year 2002-2003. The Income Tax Appellate Tribunal had earlier, in its order in I.T.A.No.1129/Hyd/2005 dated 15.07.2011, held that the rate chargeable by WIPRO could not be compared with the assessee's case; the assessing officer was required to bring on record a comparable case to determine the price; if the assessing officer was unable to bring on record a comparable case, he was at liberty to consider the rate adopted by the assessee in the immediate next year and he was, thereafter, required to discount the same after considering the inflationary rate. The Tribunal further observed that once the assessing authority had arrived at the discounted rate, there was no question of giving any further deduction towards any adjustment at 5%. The assessing officer was directed to follow the Comparable uncontrolled price method.

The respondent-assessee filed an application under Section 254(2) of the Act thereafter seeking rectification of the order dated 15.07.2011 on the ground that a portion of the direction issued by the Tribunal fell foul of Rule 10B(4) of the Income Tax Rules, 1962 ("the Rules" for brevity).

Rule 10B(4) of the Rules stipulates that the data to be used, in analysing the comparability of an uncontrolled transaction with an international transaction, should be the data relating to the financial year in which the international transaction has been entered into. The

proviso permits the data, relating to a period not more than two years prior to such financial year, also to be considered if such data revealed facts which could have an influence on the determination of the transfer price in relation to the transactions being compared.

The effect of Rule 10B(4) of the Rules and its proviso is that, while ordinarily the data to be used for comparison should relate to the very same financial year in which the international transaction was entered into, in certain circumstances the data for two years prior thereto can also be taken into consideration as the basis for comparison. Rule 10B(4) implicitly prohibits the data, of a subsequent year, being taken into consideration as the basis of comparison. The Tribunal has, therefore, rightly corrected its order, and had deleted the alternate direction given by it in its earlier order dated 15.07.2011 permitting the assessing officer to consider the rate adopted by the assessee in the immediate next year.

We find no merit in the submission of Sri B.Narasimha Sarma, the learned Senior Standing Counsel for Income Tax, that the effect of the order of rectification is to set at naught the earlier order of the Tribunal dated 15.07.2011 in its entirety. The effect of the impugned order passed by the Tribunal is only to delete the alternate direction given by it permitting the assessing officer to consider the rate adopted by the assessee in the immediate next year. The said order does not preclude the assessing officer from taking into consideration any other comparable transaction following the comparable uncontrolled price method, apart from WIPRO whose comparison has been specifically rejected by the Tribunal in the order dated 15.07.2011. We find no error in the order passed by the Tribunal in M.A.No.136/Hyd/2014 dated 09.01.2015. No substantial question of law arises in this appeal necessitating our interference under Section 260A of the Act.

The appeal fails and is, accordingly, dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(RAMESH RANGANATHAN, J)

(M.SATYANARAYANA MURTHY, J)

1st June 2016

RRB