In the High Court of Judicature at Madras

Dated : 18.12.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mr.Justice N.SATHISH KUMAR

Tax Case Appeal No.237 of 2011

Commissioner of Income Tax,
LTU, Chennai. ...Appellant

Vs

M/s. Areva T&D India Ltd
FSSC Building
19/1 GST Road
Pallavaram
Chennai-600 043 ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 22.12.2010 in ITA No.1426/Mds/2010 on the file of the Income Tax Appellate Tribunal Chennai 'D' Bench for the assessment year 2008-09, against the order of the Commissioner of Income Tax (Appeals)-IV, Chennai, No.121, Mahatma Gandhi Salai, Nungambakkam, Chennai - 34 in Appeal No.CIT(A)-IV/CHE/68/09-10 PAN/GI No.AAACG2115K Assessment year (s) 2008-09 and against the order of the Income Tax Officer (International Taxation)-II, VII Floor, Annexe Building, 121 Nungambakkam High Road, Chennai - 600034 No.Misc/Areva/07-08 dated 07/12/2007.

For Appellant : Ms. R. Hemalatha

For Respondent : Mr. M. P.Senthilkumar

Judgment was delivered by T.S.SIVAGNANAM,J

Heard the learned counsel for the appellant.

2. This appeal by the Revenue challenges the order passed by the Income Tax Appellate Tribunal, which decided the issue in favour of the assessee, by raising the following substantial questions of law :

"i. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the payment of Euros 1,78,591 to the foreign company as cost of repairs did not amount to fees for technical services ignoring the fact that the repair work involved highly technical skills and knowledge ?"

ii. Without prejudice to the preceding question, whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in not holding that even the decision taken for replacing the Steel Tanks involved technical knowledge and hence the element of technical service could not be ignored ?"

3. The Revenue seeks to withdraw the appeal on account of low tax effect in terms of Circular No.3 of 2018 dated 11.7.2018 issued by the Central Board of Direct Taxes.

4. In the light of the above, the appeal is dismissed as withdrawn and the substantial questions of law raised are left open. In the event the tax effect is above the threshold limit fixed in the said circular under exceptional clauses mentioned in the circular, liberty is granted to the Revenue to make a mention to this Court to restore the appeal to be heard and decided on merits.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1) The Income Tax Appellate Tribunal, Chennai 'D' Bench.

2) The Chief Commissioner of Income Tax-I, Chennai

3) The ITO (International Taxation)II, Chennai

4) The Commissioner of Income Tax-Judicial, Chennai

5) The Director of Income Tax,(International Taxation),Chennai

6) The Income Tax Officer (H.Qtrs) (Ward) O/o.CCIT,chennai.

+1 cc to Mr.T.Ravikumar, Advocate, S.R.No.88630

TCA.No.237 of 2011

AD(CO)
SSM(25/01/2019)