IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

Tax Case Appeal No. 390 of 2016

Principal Commissioner of Income Tax 4
No.108, Mahatma Gandhi Road,
Chennai 600 034 ... Appellant/ Respondent

Vs.

M/s.Kubota Agricultural Machinery
India Private Ltd,
No.15, Medavakkam road,
Sholinganallur, Chennai-600119
... Respondent/ Appellant

Prayer:Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'D' Bench, Chennai, dated 11.12.2015 made in I.T.A No.441/Mds./2015 and against the order of the Deputy Commisioner of Income Tax, Chennai. 34. dated 28.01.2015 made in ITNS-65 and against the order of the Secretary to the Dispute resolution panel, Chennai. Dated 19.11.2014 made in F.NO.DIT/IT/CHE/DRP/22/2014-15 for the assessment year 2010-2011 and against the order of the order of the Transfer Pricing officer's order made in CR.NO.K.507/7PS-V/AY2010-11 dated 21.01.2014 for the Assessment year 2010-11.

For Appellant : Mr.Karthik Renganathan
for Mr.S.Rajesh

For Respondent : Mr. Sandeep Bagmar

J U D G M E N T

(Delivered by DR.VINEET KOTHARI,J)

This Tax Case Appeal has been filed by the Revenue calling in question the correctness of the order passed by the Income Tax Appellate Tribunal, Madras 'D' Bench, Chennai, dated 11.12.2015, made in I.T.A.No.441/Mds/2015 by raising the following substantial questionS of law:

> "1.Whether on the facts and circumstances of the case, the ITAT was correct in law in holding that the adjustments pertaining to the fluctuation in the foreign exchange be allowed to the assessee in determining the ALP of the international transaction?
>
> 2. Whether on the facts and circumstances of the case, the ITAT was correct in law in allowing the contention of the assessee that the foreign exchange variations affect the purchase price, even though the purchase price was agreed upon at the time of agreement?
>
> 3. Whether on the facts and circumstances of the case, the ITAT was correct in law in not following the safe Harbour rules notified by Central Board of Direct Taxes in September 2013 in TP regulations, wherein it is provided that income or loss arising out of foreign exchange fluctuations be treated as non-operating expense/revenue while computing the profit margins?"

2. When the matter is taken up for admission, the learned Standing Counsel brought to our notice the Circular instruction issued by the Central Board of Direct Taxes vide Circular No.3/2018 dated 11.7.2018 wherein it is stipulated that appeals shall not be filed/pursued by the Department before the High Court in cases where the tax effect does not exceed Rs.50 lakhs.

3. In the instant case, the tax effect is said to be less than the monetary limit imposed and therefore, the appeal filed by the Revenue is dismissed as not pressed, keeping open the substantial questions of law for determination in an appropriate case.

Sd/- Sd/-

Assistant Registrar(CS iv)

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Sub Assistant Registrar

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To

Income Tax Appellate Tribunal,
Madras 'D' Bench, Chennai.

2.The Deputy Commisioner of Income Tax, Chennai.

3. The Secretary to the Dispute resolution panel, Chennai.34.

4. The Transfer Pricing officer -V, Chennai.

TCA No.390 of 2016

A.SK(05/04/2019)