IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2020

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
&
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

T.C.A.No.138 of 2010 &
M.P.No.1 of 2010

Commissioner of Income Tax,
Chennai ... Appellant

Vs

FI Smidth Minerals Pvt. Ltd.,
(Formerly FEE Minerals India Pvt.Ltd.,)
34, Egatoor, Kelambakkam,
Old Mahabalipuram Road,
Chennai 603 103.
PAN : AACF 1122 D ... Respondent

Prayer: Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench, dated 15.05.2009 in I.T.A.No.1593/08, against the Order passed by the Commissioner of Income Tax (Appeals)- XII, Chennai-600 034 in ITA No.137/2006-07 Order dated 31/03/2008 for the Assessment year 2003-04 against the Order passed by the Deputy Commissioner of Income Tax, Company Circle (II)(1), Chennai, in PAN/GIR No.AAACF1122D Order dated 10/03/2006 for the Assessment Year 2003-2004.

For Appellant : Mr.Karthik Ranganathan
Standing counsel

For Respondent : M/s.Srini Ranjani
Mr.S.N. Muthukumaran

O R D E R

(Delivered by Dr.Vineet Kothari, J.)

The Court was held by Video Conference, as per the Resolution of the Full Court dated 3 July 2020, by Judges at their respective residences and the counsel, staff of the Court appearing from their respective residences.

2. 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 "C' Bench by raising the following substantial questions of law:

"(a) The order of the Appellate Tribunal is erroneous in law and opposed to the facts and circumstances of the case.

(b) The Appellate Tribunal erred in confirming the order of the Commissioner of Income Tax (Appeals) in reducing the disallowance for provision for warranty from Rs.1,53,21,638/- to Rs.40 lakhs on the ground that the claim of Rs.1,13,21,638/- 'pertained to retention money, liquidated damages etc.,

(c) The Appellate Tribunal ought to have held that the entire provision of RS.1,53,21,638/- was claimed as provision for warranty which has not been made based on any systematic data maintained viz., on any scientific basis but had been made only on an ad hoc basis."

3. When the matter is taken up for hearing, learned Standing Counsel brought to our notice the Circular issued by the Central Board of Direct Taxes vide Circular No.17/2019 dated 8 August 2019, 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.1,00,00,000/- (Rupees One Crore).

4. 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 withdrawn, keeping open the substantial questions of law for determination in appropriate cases. No costs. Consequently, connected M.P.No.1 of 2010 is closed.

5. Registry is directed to send a copy of the judgment to the Respondent / Assessee in the address given in the Appeal.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

msr

To

1.The Commissioner of Income Tax,
Chennai.

2.The Commissioner of Income Tax(Appeals)-XII
Chennai-34

3.The Income Tax Appellate Tribunal,
Madras 'C' Bench.

4.The Deputy Commissioner of Income -Tax,
Company Circle -II(1), Chennai-34.

5.FI Smidth Minerals Pvt. Ltd.,
(Formerly FEE Minerals India Pvt.Ltd.,)
34, Egatoor, Kelambakkam,
Old Mahabalipuram Road,
Chennai 603 103.
PAN : AACF 1122 D

+1 cc to M/s.N.Muthukumar, Advocate Sr.No. 27279

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RJI(CO)
RMP(02/09/2020)