IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

Tax Case (Appeal) No.66 and 69 of 2016

The Commissioner of Income Tax-II
Chennai ... Appellant in both appeals

Vs.

M/s.East Coast Terminal Operations and Port Services Ltd., No.4, 6th Floor,
Buhari Towers,
Moores Road,
Chennai 600 006. ... Respondent in both appeals

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'C' Bench, Chennai dated 26.09.2013 in ITA No.563 and 566/Mds/2013 for the Assessment year 2006-07 and 2009-10 respectively,

against the Commissiioner of Income Tax Appeals III 121, Mahatma Gandhi Road, Chennai 600 034 and made in ITA No.656/08-09/A-111 and ITA No.157/2011-12/A-III for the Assessment Year 2006-07 and 2009-10 dated 11/12/2012 respectively against the Depurty Commissioner of Income Tax Company Circle II (1) Chennai and made in PAN No.AAACE4812D Assessment Year 2006-07 and 2009-10 respectively dated 31.12.2008, 17/11/2011.

For Appellant : Mr.Karthik Ranganathan
Senior Standing Counsel

For Respondent : Ms.S.Sriranjani
for M/s.G.Baskar

C O M M O N J U D G M E N T
(Judgment of the Court was delivered by DR.VINEET KOTHARI,J)

These Tax Case Appeals are been filed by the Revenue calling in question the correctness of the order passed by the

Income Tax Appellate Tribunal, 'C' Bench, Chennai, by raising the following substantial question of law:

T.C.A.No.66 of 2016

"1.Whether on the facts and circumstances of the case, the Tribunal was right in holding that the assessee ship enjoying the benefit of Tonnage tax scheme on the issue regarding the ownership especially when the major shareholders of the assessee company held 99.99% of the shareholding who were based in Dubai?

2.Whether on the facts and circumstances of the case, the Tribunal was right in holding that the tonnage tax scheme was to be granted to the assessee company eventhough the provisions of Sec.115VD and Sec.115VC were not satisfied by the assessee company?

3. Whether on the facts and circumstances of the case, the Tribunal was right in holding that the disallowance made u/s.14A Rule 8D could not be made in cases where the assessee is entitled to tonnage tax scheme?

4. Is not the finding of the Tribunal was bad especially when the A.O., made disallowance as per Section 14A read with Rule 8D(2)(iii) for disallowing the expenses earned on exempted income?"

T.C.A.No.69 of 2016

"1.Whether on the facts and circumstances of the case, the Tribunal was right in holding that the assessee ship enjoying the benefit of Tonnage tax scheme on the issue regarding the ownership especially when the major shareholders of the assessee company held 99.99% of the shareholding who were based in Dubai?

2.Whether on the facts and circumstances of the case, the Tribunal was right in holding that the tonnage tax scheme was to be granted to the assessee company eventhough the provisions of Sec.115VD and Sec.115VC were not satisfied by the assessee company?

3. Whether on the facts and circumstances of the case, the Tribunal was right in holding that the provision for restatement of assets as at the end of the year due to fluctuation in foreign currency amounting to Rs.9.93 Crores cannot be disallowed in view of the fact that the assessee was entitled

to the benefit of tonnage tax scheme without adjudicating the issue on merits?
4. Whether on the facts and circumstances of the case, the Tribunal was right in holding that the disallowance made u/s.14A r/w Rule 8D could not be made in cases where the assessee is entitled to tonnage tax scheme?
5. Whether the finding of theTribunal was proper in holding that once the assessee is eligible for tonnage tax scheme then further disallowance u/s.14A would not arise?"

2. When the matter was taken up for hearing, the learned Standing Counsel brought to our notice the Circular instruction issued by the Central Board of Direct Taxes vide Circular No.17/2019 dated 8th 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).

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

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

KST

To

1.The Income Tax Appellate Tribunal,
'C' Bench, Chennai.

2.The Commissioner of Income Tax II,
Chennai.

3.The Commissioner of Income Tax Appeals III,
121, Mahatma Gandhi Road, Chennai 600 034.

4.The Deputy Commissioner of Income Tax,
Company Circle II (V), Chennai.

T.C.(A) No.66 & 69 of 2016

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srg 16/07/2020