IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2020

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

T.C.A.No.544 of 2019

M/s.Andritz Separation and Pump
Technologies India Pvt. Ltd.,
S.No.389, 400/2A, 400/2C,
Padur Road,
Kuttampakkam Village,
Poonamallee Taluk,
Tiruvalluvar District,
Chennai – 600 124
PAN:AAACN1940M ..Appellant

Versus

The Deputy Commissioner of Income Tax,
Corporate Circle 1(1),
Chennai. ..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, 'D' (TP) Bench, Chennai, made in I.T.A.No.2012/CHNY/2017 dated 06.06.2019 relating to the Assessment Year 2013-14 Appeal filed against the order of the Deputy Commissioner of Income Tax Corporate Circle 1(1), Chennai dated 21.06.2017 made in PAN No.AAACM1940M against the order of the Assistant Commissioner of Income Tax OSD Corporate Range 1, Room No.603 6th floor Wanaparthy block, 121, Aayakar Bhavan, Mahatma Gandhi Road, Chennai 36 for the Assessment year 2013-14 dated 26.12.16 against the assessment order dated 20.10.16 made in CRMA-103/TPO-1(1) AY 2013-14.

For Appellant : Mr.Sandeep Bagmar
For Respondent : Mr.T.Ravikumar
Senior Standing counsel

JUDGMENT

[Order of the Court was made by T.S.SIVAGNANAM, J.]

This appeal filed by the assessee under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity), is directed against the order dated 06.06.2019 passed by the Income Tax

Appellate Tribunal, 'D' (TP) Bench, Chennai ('the Tribunal' for brevity) in I.T.A.No.2012/Chny/2017 for the Assessment Year 2013-14. The assessee has raised the following Substantial Questions of Law for consideration:

> "1. Whether the TPO was right in determining the arm's length price of international transaction as NIL, when the TPO inappropriately applied CUP method by not providing any comparable uncontrolled transaction, thereby the entire exercise being contrary to Rules 10B and 10C of the Income-tax Rules, 1962?
>
> 2. Whether the TPO was right in rejecting the aggregated approach adopted by the Appellant under TNMM Method, when the net operating profit margin after deducting management charges of the Appellant based on TNMM Method as required under section 92D of the Act read with Rule 10D of the Income-Tax Rules, 1962, was higher than the arithmetic mean of comparable companies, thereby confirming the arm's length nature of international transactions?
>
> 3. Whether the TPO can usurp the powers of the AO conferred under Section 37 of the Act, when the AO has referred the international transaction to TPO to compute the arm's length price under Chapter X of the Act and rules provided therein?
>
> 4. Whether the TPO can question the need benefit test and the genuineness of the international transaction when the same was referred to the TPO under Section 92CA of the Act to determine only the Arms Length Price of the international transaction in accordance with the methods prescribed under Chapter X of the Act and rules provided therein?
>
> 5. Whether on facts and circumstances of the case, the order of the Tribunal declaring the transaction of management services is sham is perverse as the Tribunal failed to consider the material available on record which prove the rendition / receipt of service from its Associate Enterprises?"

2. We have heard Mr.Sandeep Bagmar, learned counsel for the appellant/assessee and Mr.T.Ravikumar, learned Senior Standing counsel for the respondent/Revenue.

3. It may not be necessary for this Court to decide the Substantial Questions of Law framed for consideration on account of certain subsequent developments. The Government of India enacted the Direct Tax Vivad Se Vishwas Act, 2020 (Act 3 of 2020) to provide for resolution of disputed tax and for matters connected therewith or incidental thereto. The Act of the Parliament received the assent of the President on 17th March 2020 and published in the Gazette of India on 17th March 2020.

4. In terms of the said Act, the assessee has been given an option to put an end to the tax disputes, which may be pending at different levels either before the First Appellate Authority or before the Tribunal or before the High Court or before the Hon'ble Supreme Court of India. Under Section 2(j) "disputed tax" has been defined. In terms of Section 3, where a declarant means a person, who files a declaration under Section 4 on or before the last date files a declaration to the designated authority in accordance with the provisions of Section 4 in respect of tax arrears, then, notwithstanding anything contained in the Income Tax Act or any other law for the time being in force, the amount payable by the declarant shall be determined in terms of Section 3(a-c) thereunder.

5. The First Proviso to Section 3 states that in case, where an Appeal or Writ Petition or Special Leave Petition is filed by the Income Tax authority on any issue before the Appellate Forum, the amount payable shall be one-half of the amount in the table stipulated in Section 3 calculated on such issue, in such a manner as may be prescribed. The second proviso deals with the cases, where the matter is before the Commissioner (Appeals) or before the Dispute Resolution Panel. The third proviso deals with cases, where the issue is pending before the Income Tax Appellate Tribunal. The filing of the declaration is as per Section 4 of the Act and the particulars to be furnished are also mentioned in the Sub Sections of Section 4. Section 5 of the Act deals with the time and manner of the payment and Section 6 deals with Immunity from initiation of proceedings in respect of offence and imposition of penalty in certain cases. Section 9 of the Act deals with cases, where the Act 3 of 2020 will not be applicable.

6. We are informed by the learned counsel for the appellant/assessee that the assessee has already filed the declaration under Section 4 of the Act on 30.06.2020.

7. In the light of the fact that the assessee has already availed the benefit under the Act, no useful purpose would be served in keeping this appeal pending. At the same time, safeguarding the interest of the assessee in the event the order to be passed by the Department under the Act is not in favour of

the assessee. Accordingly, the Tax Case Appeal stands disposed of on the ground that the assessee has already filed a declaration and the Department shall process the application at the earliest in accordance with the said Act and communicate the decision to the assessee at the earliest. As observed, the assessee is given liberty to restore this appeal in the event the ultimate decision to be taken on the declaration filed by the assessee under Section 4 of the said Act is not in favour of the assessee. If such a prayer is made, the Registry shall entertain the prayer without insisting upon any application to be filed for condonation of delay in restoration of the appeal and on such request made by the assessee by filing a Miscellaneous Petition for Restoration, the Registry shall place such petition before the Division Bench for orders.

8. With this observation, the Tax Case Appeal stands disposed of with the aforementioned liberty and Consequently, the Substantial Questions of Law are left open. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

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

2.The Deputy Commissioner of Income Tax,
Transfer Pricing Officer-1(1),
Room 504, 5th floor, BSNL Building, Tower 1,
No.16, Greams Road,
Chennai-6.

+1cc to Mr.T.Ravikumar, Advocate, SR.No.40015

T.C.A.No.544 of 2019

SPD(CO)
KKV06/01/2021