WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2021

CORAM :

THE HON'BLE MR. JUSTICE R. MAHADEVAN
AND
THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ

T.C.A.No.936 of 2010

The Commissioner of Income Tax (TDS)
Chennai. ... Appellant

Versus

M/s. Neyveli Lignite Corporation Ltd.,
Neyveli - 607 801.
(PAN No.AAACN 1121C) ... Respondent

Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, “C” Bench Chennai, dated 30.10.2009 in I.TA.No.2257/Mds/2005.

Against the order of the Commissioner of the Income Tax (Appeals)VIII, Chennai in ITA.No.497/04-05 CIT(A) VIII dated 22.07.2005, made against the proceedings of the Income Tax Officer, TDS Ward I, Cuddalore dated 24.12.2004 vide TAN CHEN 02609D.

For Appellant : Mr.Karthik Ranganathan
For Respondent : Mr.Subbaraya Aiyar

J U D G M E N T
(Judgment was delivered by R.MAHADEVAN, J.)

This tax case appeal has been filed by the appellant / Revenue, challenging the order dated 30.10.2009 passed by the Income Tax Appellate Tribunal, 'C' Bench Chennai, in I.T.A.No.2257/Mds/2005, relating to the assessment year 2004-05.

2.By order dated 07.12.2010, this court admitted the aforesaid tax case appeal on the following substantial questions of law:

“1. Whether on the facts and in the

WEB COPY

circumstances of the case the Income - tax Appellate Tribunal was right in law in holding that, as per Article 13 of the Double Taxation Agreement Between India and Italy, the net amount paid after adjusting the liquidated damages only is taxable?

2. Whether Royalties or fees for Technical Services paid to a Resident of the other contracting states mentioned in Article 13 of the Double Taxation Agreement does not mean gross amount payable to Non-Resident or the amount that can be deemed to have been constructively paid?

3. Whether on the facts and in the circumstances of the case the Income - tax Appellate Tribunal was right in law in holding that, as per Article 2 of the Double Taxation Agreement, 'Indian Tax' deductible is inclusive of surcharge also and whether surcharge is not chargeable separately on the Tax Rate of 20% on fees for professional or Technical services mentioned in Article 13 of the Double Taxation Agreement?"

3.When the matter was taken up for consideration, the learned counsel for the appellant / Revenue brought to the notice of this court the Circular No.17/2019 dated 08.08.2019 issued by the Central Board Direct Taxes, wherein, it is stipulated that appeal 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). It is also submitted that the tax effect in this appeal is less than the threshold limit.

4.In the light of the aforesaid submissions made by the learned counsel for the appellant / Revenue, the present appeal, wherein, the tax effect is said to be less than the monetary limit imposed, is dismissed as withdrawn, keeping open the substantial questions of law for determination in an appropriate case. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

av

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

To

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

2. The Commissioner of Income Tax (TDS)
Chennai.

3. The Commissioner of Income Tax (Appeals),
VIII, Chennai.

4. Income Tax Officer,
TDS, WARD I, Cuddalore.

+1cc to Mr.Subbaraya Aiyar, Advocate SR.No.68873

T.C.A.No.936 of 2010

KSM(CO)
GN(11/01/2022)

https://hcservices.ecourts.gov.in/hcservices/