IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2021

CORAM

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

Tax Case Appeal Nos.548, 550 & 553 of 2021
and
C.M.P. Nos. 19970 & 19972 of 2021

The Principal Commissioner of Income Tax
Company Circle – IV (3)
Chennai-600 034. ... Appellant in all Cases

Versus

M/s. Mincore Resources (P) Ltd
5 Second Floor, Kushkumar Road
Nungambakkam
Chennai – 600 034
PAN: AAACM7737R ...Respondent in all Cases

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the common order dated 25.03.2019 passed by the Income Tax Appellate Tribunal, Madras "D" Bench, in I.T.A.Nos. 987/CHNY/2011, 1454/CHNY/2013 & 2044/CHNY/2010 for the Assessment Years 2005-06, 2008-09 and 2006-07, against the order dated 29/03/2011 passed by the Commissioner of Income Tax (Appeals)-V in I.T.A.No.529/08-09 for the Assessment Year 2005-2006, against the order dated 28/03/2013 passed by the Commissioner of Income Tax (Appeals)-V in ITA No.473/2011-12 for the Assessment Year 2008-2009; against the order dated 20/10/2010 passed by the Assistant Commissioner of Income Tax Company Circle -IV(3) (I/C) Chennai (in 143(3)of the Income Tax Act 1961) for the Assessment Year 2006-07, against the order dated 19/02/2013 passed by the Assistant Commissioner of Income Tax Company Circle-IV(3) Chennai (in 143(3) r.w.s 147 of the Income Tax Act 1961) for the Assessment Year 2005-2006, against the order dated 10/02/2012 passed by the Assistant Commissioner of Income Tax Company Circle-IV(3) (I/c) Chennai for the Assessment Year 2008-2009.

For Appellant:Mr.Rajesh
Junior Standing Counsel (in all cases)
for Mr. Karthik Ranganathan

For Respondent:Mr. Nithyaesh Nataraj (in all cases)

COMMON JUDGMENT

(Judgment of the court was delivered by R. MAHADEVAN, J.)

These tax case appeals have been filed by the appellant / Revenue, challenging the order dated 25.03.2019 passed by the Income Tax Appellate Tribunal, 'D' Bench, Chennai, in I.T.A.Nos. 987/CHNY/2011, 1454/CHNY/2013 & 2044/CHNY/2010, relating to the respective assessment years 2005-06, 2008-09 and 2006-07, by raising the following substantial questions of law:

T.C.A.No.548 of 2021

> "(i) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was right in upholding the decision of the Ld. CIT(A) in holding that the variations are within in the range of 5% of the value mentioned in the FMB report/data obtained without appreciating the fact that the Comparable Sulphur Import Data obtained from Chennai Port trust by the Transfer Pricing Officer is not an average price but a single price, to which the proviso to Section 92C(2) is not applicable?
>
> (ii) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was right in not appreciating the fact that the Comparable Iron Ore Import Data obtained from Manglore Port Trust is a Single Price and not a range of price to which the proviso to Section 92C(2) is not applicable?
>
> (iii) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was right in not following the decision of the Delhi Tribunal in the case of ACIT vs UE Trade Corporation (India) (P) Ltd [2011] 45 SOT 197 (Delhi) wherein it was held that exception provided in both the provisos to Section 92C(2) is applicable only when more than one price is determined?

T.C.A.No.550 of 2021

> "Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was right in not giving its conclusion on the issues raised in the grounds of appeal after discussing the facts of the case?"

T.C.A.No.553 of 2021

> "Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was right in holding that the variation between the price at which the assessee transacted and the Comparable Sulphur Import price obtained from Chennai Port is within (+)/(-)5% contrary to the facts available on record?"

2. When the matters were 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 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). It is also submitted that the tax effect in these appeals is less than the threshold limit.

3. In the light of the aforesaid submissions made by the learned counsel for the appellant / Revenue, the present appeals, wherein, the tax effect is said to be less than the monetary limit imposed, are dismissed as withdrawn, keeping open the substantial questions of law for determination in appropriate cases. No costs. Consequently, connected miscellaneous petitions are closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

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To

1. The Income Tax Appellate Tribunal,
   Chennai "D" Bench.

2. The Principal Commissioner of Income Tax
Company Circle – IV (3)
Chennai - 600 034.

3. The Commissioner of Income Tax (Appeals)-V,
121, Mahatma Gandhi Road,
Chennai-34.

4. The Assistant Commissioner of Income Tax Company,
Circle IV (3), Chennai.

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& 553 of 2021

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