IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.1.2021

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MS.JUSTICE R.N.MANJULA

Tax Case Appeal Nos.155 to 157 of 2018

M/s.Technip India Ltd.,
Chennai-32 ...Appellant

Vs

The Assistant Commissioner of
Income Tax, Corporate Circle 3(2),
Chennai-34 ...Respondent

APPEALS under Section 260A of the Income Tax Act, 1961 against the common order dated 22.7.2016 passed by the Income Tax Appellate Tribunal, 'C' Bench, Chennai made in I.T.A.Nos.1330, 1331 and 1333/Mds/2015 respectively for the assessment years 2003-04, 2004-05 and 2005-06.

AGAINST the order of the Commissioner of the Income Tax (Appeals)-11, Chennai - 34, in ITA No. 405/CIT - A-11/2013-14, ITA No. 404/CIT-A-11/2013-14, ITA No. 403/CIT-A-11/2013-14 dated 12.02.2015 in PAN No.AAACT9034A for the Assessment Year 2003-2004, 2004-2005, 2005-2006 respectively, against the Assessment Order of the Assistant Commissioner of Income Tax Company Circle III (2), Chennai - 34, Joint Commissioner of Income Tax, Company Range - III, Chennai - 34, and Assistant Commissioner of Income Tax, Company Circle - III (2), Chennai - 34 dated 29.12.2010, 26.12.2006 and 24.12.2008.

For Appellant: Mr.R.Vijayaraghavan for
M/s.Subbaraya Aiyer Padmanabhan

For Respondent : Mrs.V.Pushpa, JSC

COMMON JUDGMENT
(Judgment was delivered by T.S.SIVAGNANAM,J)

These appeals have been filed by the assessee under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity) challenging the common order dated 22.7.2016 made in

I.T.A.Nos.1330, 1331 and 1333/Mds/2015 on the file of the Income Tax Appellate Tribunal, Chennai, 'C' Bench ('the Tribunal' for brevity) respectively for the assessment years 2003-04, 2004-05 and 2005-06.

2. The appeals were admitted on 17.4.2018 on the following substantial questions of law:

> "1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that reassessment proceedings had rightly been initiated as production of books at the time of scrutiny would not amount to disclosure of all facts necessary for assessment ?
>
> 2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that reassessment proceedings had rightly been initiated when it was beyond a period of four years from the end of the relevant assessment year and no failure was ascribed to the assessee in disclosing fully and truly all material facts necessary for his assessment?
>
> 3. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that payment for bandwidth connectivity charges to the Non resident was not reimbursement of expenses and constituted income received in India for the Non resident and hence, deduction under Section 195 of the Act is applicable ?
>
> 4. Whether the Tribunal erred in relying on the decision of the Hon'ble Jurisdictional High Court in the case of M/s.Verizon Communications Singapore PTE Ltd vs. ITO, 361 ITR 575, which was rendered in the context of tax liability of non-resident and not on the withholding tax provisions ?
>
> 5. Whether on the facts and circumstances of the case, the Tribunal was right in law in confirming the disallowance under Section 40(a)(i) of the Act, on the basis of retrospective amendments without appreciating that the Assessee at the time of remittance could not have anticipated such subsequent amendments and hence, the impossibility of performance at the time of making such payments ?
>
> 6. Whether on the facts and circumstances of the case, the Tribunal was right in not considering the applicability

of Article 26(4) of the India-France DTAA which provides for non-discrimination between nonn residents and residents in allowance of expenditure in the nature of interest, royalties and other disbursement, which are deductible for the purpose of determining the taxable profits? and

7. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that tax is required to be deducted at source from the payment for fees for technical services when the services were rendered by Appellant outside India and consumed outside India ?"

3. We have heard Mr.R.Vijayaraghavan, learned counsel appearing on behalf of the appellant/assessee and Mrs.V.Pushpa, learned Junior Standing Counsel appearing for the respondent/ Revenue.

4. The learned counsel on behalf of the appellant/assessee submits that the assessee already filed the declaration/undertaking under the Vivad Se Vishwas Scheme on 24.12.2020 and is awaiting orders to be passed in Form No.3.

5. In the light of the subsequent event, the Competent Authority shall process the applications/declarations in accordance with the Direct Tax Vivad Se Vishwas Act, 2020 (Act 3 of 2020) and pass appropriate orders as expeditiously as possible. The assessee is given liberty to restore these appeals in the event the ultimate decision to be taken on the declarations 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 applications to be filed for condonation of delay in restoration of the appeals and on such request made by the assessee by filing miscellaneous petitions for restoration, the Registry shall place such petitions before the appropriate Division Bench for orders.

6. The tax case appeals stand disposed of with the aforementioned liberty. Consequently, the substantial questions of law framed are left open. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

RS

To

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

2.The Assistant Commissioner of Income Tax,
Corporate Circle 3(2),
Chennai-34.

3. The Joint Commissioner of Income Tax,
Company Range III (2),
Chennai 34.

4.The Commissioner of Income Tax (Appeals),
II Chennai – 34.

+1cc to Mr.Subbaraya Aiyar, Advocate, S.R.No. 1420

TCA.Nos.155 to 157 of 2018

PPA(CO)
GN(08/02/2021)