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 No.238 of 2018

Godrej & Boyce Mfg. Co.Ltd.
(formerly known as Mercury
Manufacturing Co. Ltd.)
Chennai-45
...Appellant

Vs

The Deputy Commissioner of
Income Tax, Corporate Circle 4(1),
Chennai-34 ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 11.7.2017 passed by the Income Tax Appellate Tribunal, 'A' Bench, Chennai made in I.T.A.No.249/Mds/2015 and against the order dated 14.11.2014 made in I.T.A.NO.1403/13-14/A-VI on the file of the Commissioner of Income Tax (Appeals)-VI, Chennai-34, against the assessment order dated 29.03.2013 made in PAN NO.AACCM4808M on the file of the Assistant Commissioner of Income Tax Company Circle -IV(2), Chennai for the assessment year 2010-11.

For Appellant : Mr.S.P.Chidhambaram

For Respondent: Mr.Karthik Ranganathan, SC

Judgment was delivered by T.S.SIVAGNANAM,J

This appeal has been filed by the assessee under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity) challenging the order dated 11.7.2017 made in I.T.A.No.249/Mds/2015 on the file of the Income Tax Appellate Tribunal, Chennai, 'A' Bench ('the Tribunal' for brevity) for the assessment year 2010-11.

2. The assessee filed this appeal by raising the following substantial questions of law:

"i. Whether, on the facts and circumstances of the case and in law, the

Tribunal was right in law in holding that amounts paid to non resident agents are to be disallowed under Section 40(a)(i) of the Act for failure to deduct tax at source in terms of the provisions of Chapter XVII-B of the Act ?

ii. Whether, on the facts and circumstances of the case and in law, the Tribunal was right in not appreciating that the predominant requirement in the marketing service agreement between Mr.Jamshed Unwalla and the appellant was for rendering marketing services by procuring orders in the overseas location, which cannot be considered as 'fees for technical services' as per Section 9(1)(vii) of the Act or as per Article 12 of the DTAA between India and Canada?

iii. Whether, on the facts and circumstances of the case and in law, the Tribunal was right in not appreciating that from the description in the invoice, it is explicitly clear that the services are rendered by the non resident to the customers outside India and not to the appellant and as such, the same cannot be considered as 'fees for technical services' as per Section 9(1)(vii) of the Act or as per Article 12 of the DTAA between India and Canada?

iv. Whether, on the facts and circumstances of the case and in law, the Tribunal was right in not appreciating that even if the services rendered by the non resident qualify as technical services, the same will fall within the purview of exemption spelt out in Section 9(1)(vii)(b) of the Act as the said services are rendered in connection with export i.e for the purpose of earning income from a source outside?

v. Whether, on the facts and circumstances of the case and in law, the Tribunal was right in not appreciating that even if the services rendered by the non resident qualify as technical services, the same is not 'made available' to the appellant and therefore, the same will not be taxable in India by virtue of the specific exclusion contemplated under

Article 12(4)(b) of the DTAA between India and Canada? And

vi. Whether, on the facts and circumstances of the case and in law, the Tribunal was right in not appreciating that from the details/materials already available on record, it is apparent that the non resident Mr.Jamshed Unwalla is a qualified engineer and a resident of Canada has rendered professional services in Canada, therefore the taxability of the income received by the non resident will be governed by Article 14 dealing with Independent Personal Services of the DTAA between India and Canada?"

3. We have heard Mr.S.P.Chidhambaram, learned counsel appearing for the appellant/assessee and Mr.Karthik Ranganathan, learned Standing Counsel appearing for the respondent/Revenue.

4. The learned counsel on behalf of the appellant/assessee submits that the appellant/assessee already filed the declaration/ undertaking under the Vivad Se Vishwas Scheme on 21.12.2020 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 application/declaration 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 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 appropriate Division Bench for orders.

6. The tax case appeal stands disposed of with the aforementioned liberty. Consequently, the substantial questions of law raised are left open. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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

2. The Commissioner of Income Tax(Appeals)-VI,
   Chennai-34.

3. The Assistant Commissioner of Income Tax,
   Company Circle-IV(2),
   Chennai.

Copy to:
The Assistant Registrar,
AE Main Section,
High Court, Madras.

TCA.No.238 of 2018

gmr(CO)
rv(09/02/2021)