IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2021

CORAM :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Ms.Justice R.N.MANJULA

Tax Case Appeal No.259 of 2018

M/s.Ahlers India Pvt. Ltd.,
The Trapezum 2nd Floor,
No.39, Nelson Manickam Road,
Aminjikarai,
Chennai - 600 029. ... Appellant/Appellant

Vs

The Deputy Commissioner of
Income Tax,
Company Circle 1(1),
Chennai - 600 034. ...Respondent/Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 03.03.2017 made in ITA.No.1071/Mds/2016 on the file of the Income Tax Appellate Tribunal, 'D' Bench, Chennai for the assessment year 2011-12.

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

For Respondent : Mr.T.Ravi Kumar
Senior Standing Counsel

JUDGMENT
(Delivered by T.S.Sivagnanam,J)

This appeal, filed by the assessee, is directed against the order dated 03.03.2017 made in ITA.No.1071/Mds/2016 on the file of the Income Tax Appellate Tribunal, 'D' Bench, Chennai ('the Tribunal' for brevity) for the assessment year 2011-12.

2. The appeal was admitted on 25.06.2019 on the following substantial questions of law for consideration:

"1. Whether on the facts and circumstances of the case, the Tribunal erred in upholding the rejection of Gordon Woodroffe Logistics Ltd as a comparable company on the only ground that is incurred consecutive loss for two years and which is against the provisions of S.92C of the IT Act read with Rule 10B(3) of the IT Rules?

2. Whether the Tribunal erred in the inclusion of comparable companies, namely N.R.International Ltd and Natura Hue Chem Ltd, though they were functionally different and ought to be rejected as per provisions of S.92C read with Rule 10B(3) of the IT Rules?"

3. We have heard Mr.R.Vijayaraghavan, learned counsel for the appellant-assessee and Mr.T.Ravi Kumar, learned Senior Standing Counsel appearing for the respondent-Revenue.

4. It is submitted by the learned counsel for the appellant-assessee that the assessee has filed an application under the Vivad Se Vishwas Scheme and Form No.3 has been issued by the Department dated 28.12.2020. However, on account of inadvertent mistake committed by the assessee in Form No.3, the appeal number is given as T.C.A.No.32 of 2018, which in fact is an appeal filed by the Revenue.

5. In this regard, the assessee is said to have filed an application for rectification of Form No.3 by substituting the appeal reference number as T.C.A.No.259 of 2018 instead of T.C.A.No.32 of 2018. This application is said to be pending before the PCIT, Chennai-1

6. The assessee has also filed a memo dated 04.01.2020 seeking withdrawal of the appeal to enable them to comply with the requirements of the Vivad Se Vishwas Scheme. The said memo is placed on record.

7. 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.

8. The tax case appeal stands disposed of with the aforementioned liberty. Consequently, a direction is issued to the concerned authority to consider the assessee's rectification petition to rectify and correct the appeal reference number in Form No.3 by substituting the number as T.C.A.No.259 of 2018 instead of T.C.A.No.32 of 2018. The substantial questions of law framed are left open. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

hvk Sub Assistant Registrar

To

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

2. The Deputy Commissioner of
Income Tax,
Corporate Circle 1(1),
Chennai - 600 034.

+1cc to Mr.T.Ravikumar, Advocate, S.R.No.10827.
+1cc to Mr.S.R.No.Subbaraya Aiyar Padmanabhan,
Advocate, SR.No.11091.

AAB(CO)
CSR 18.03.2021