IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2021

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THE HON'BLE MR.JUSTICE M. DURAISWAMY
AND
THE HON'BLE MRS.JUSTICE T.V. THAMILSELVI

Tax Case Appeal Nos.802 & 803 of 2016

M/s.Foster Wheeler France S.A.,
C/o. SRBC & Associates LLP,
6th & 7th Floor, "A" Block, Tidel Park,
No.4, Rajiv Gandhi Salai,
Taramani, Chennai – 600 113. ... Appellant in both TCAs

Vs.

Commissioner of Income Tax,
(International Taxation), 1,
Chennai. ... Respondent in both TCAs

Appeals filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras "D" Bench, dated 05.02.2016 passed in I.T.A.No.774/Mds/2014 and I.T.A.No.641/Mds/2015, for the Assessment year 2008-09, 2009-10 against the order of the Deputy Commissioner of Income Tax international Taxation-1(1) Chennai, made in PAN.NO.AABCF3849C order date 08-01-2015, for the Assessment year 2009-10, and against the order of the Deputy Director of Income Tax International Taxation(1), Chennai made in PAN NO.AABCF3849C, date of order 10-03-2014 for the Assessment year 2009-10, made in F.No.DRP/Chennai/Sectt/80/2013-14, against order of the Deputy Director of Income Tax International Taxation-(1) made in PAN.NO.AABCF3849C order date 24-01-2014, , against the order of the Deputy Director of Income Tax, International Taxation-(1) made in PAN.NO.AABCF3849C date of order 26-07-2013 for the Assessment year 2008-09, against the order of the Deputy Commissioner of Income Tax, Chennai made in F.No.DCIT/TPO-IV/AY2008-09 dated 30-05-2013, for the Assessment year 2008-09 against the order of the Additional Commissioner of Income Tax, Transfer Pricing-1, Chennai made in F.No.F-109/TPO-1/AY 2009-10, dated 23-01-2013 for the Assessment year 23-01-2013.

For Appellant : Mr.N.V.Balaji
(in both TCAs)
For Respondent : Mr.Karthick Ranganathan,
(in both TCAs) Senior Standing Counsel

COMMON J U D G M E N T
(Delivered by M.DURAISWAMY, J.)

The appeals filed by the assessee under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity), are directed against the order dated 05.02.2016 passed by the Income Tax Appellate Tribunal, Madras "D" Bench, ('the Tribunal' for brevity) in I.T.A.No.774/Mds/ 2014 for the assessment year 2008-09 and I.T.A.No.641/Mds/2015 for the assessment year 2009-10 .

2.The above appeals were admitted on the following Substantial Questions of Law:

"1)Whether on the facts and the circumstances of the case and law, the Tribunal was right in holding that the payments made by the appellant to FW USA for support services will be covered within the scope of the terms "fee for included services" under Article 12 (4) of the India-US DTAA and accordingly the appellant is liable to deduct tax at source and that the said payment should be disallowed under Section 40(a)(i) of the Act?

2)Whether the finding of the Tribunal that the payments made by the appellant to FW USA for support services would fall within the ambit of fee for included services under Article 12(4) of the India-US DTAA not perverse?"

3.We have heard Mr.N.V.Balaji, learned counsel for the appellant/assessee and Mr.Karthick Ranganathan, learned Senior Standing Counsel for the respondent/Revenue.

4.It may not be necessary for this Court to decide the Substantial Questions of Law framed for consideration on account of certain subsequent developments. The Government of India enacted the Direct Tax Vivad Se Vishwas Act, 2020 (Act 3 of 2020) to provide for resolution of disputed tax and for matters connected therewith or incidental thereto. The Act of the Parliament received the assent of the President on 17th March 2020 and published in the Gazette of India on 17th March 2020.

5.We are informed by the learned counsel for the appellant/ assessee that the assessee had already been issued with Form – 3 on 19.01.2021 and the learned counsel for the appellant seeks permission of this Court to withdraw the appeals.

6.In view of the submission made by the learned counsel for the appellant, the Tax Case Appeals stand dismissed as withdrawn. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1.Income Tax Appellate Tribunal,
Madras "D" Bench

2.Commissioner of Income Tax,
(International Taxation), 1,
Chennai.

3.The Deputy Commissioner of Income-Tax,
International Taxation-1(1), Chennai.

4.The Deputy Director of Income Tax,
International Taxation-(1), Chennai.

5.The Additional Commissioner of Income Tax,
Transfer Pricing-1, Chennai.

+2cc to Mr.N.V.Balaji, Advocate, S.R.No.21542, 21543

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RLD(CO)
CB(27/04/2021)

M. DURAISWAMY, J.
and
T.V. THAMILSELVI, J.

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31.03.2021