IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2021

CORAM :

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

TAX CASE APPEAL NO.530 OF 2018

M/s.Inchcape Shipping Services SSC
Private Limited,
Block No.3, A3 and A4 Basement to 10,
North Phase Olympia National Tower,
Guindy Industrial Estate,
Chennai - 600 032.
(amended suo motu by us vide
order dated 25.01.2021) ...Appellant

Vs

The Dy. Commissioner of Income Tax,
Corporate Circle - 6(1),
Chennai - 600 034. ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 28.04.2017 made in ITA.No.3404/Mds/2016 on the file of the Income Tax Appellate Tribunal, 'D' Bench, Chennai for the assessment year 2012-13.

Against the Order of the Deputy Commissioner of Income Tax Corporate Circle 6(1), Chennai-34, dated 25.10.2016 and made in PAN AALCS8600A for the Assessment year 2012-13.

For Appellant: Mr.R.Venkata Narayanan
for Mr.Subbaraya Aiyar Padmanabhan

For Respondent: Mr.J.Narayanaswamy
Senior Standing Counsel

JUDGMENT
(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 28.04.2017 made in ITA.No.3404/Mds/2016 on the file of the Income Tax Appellate

Tribunal, 'D' Bench, Chennai ('the Tribunal' for brevity) for the assessment year 2012-13.

2. The appeal was admitted on 15.11.2018 on the following substantial questions of law:

> "1. Whether, on the facts and in the circumstances of the case, the Tribunal has erred in holding that for the purpose of Section 92C of the Income Tax Act read with Sub-Rule (1) of Rule 10B of the Income Tax Rules, while making the selection of comparables, the turnover filter is not a relevant criterian for selection and accordingly erred in not excluding such comparables?
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> 2. Whether, on the facts and circumstances of the case, the Tribunal was right in including certain comparables and excluding certain comparables for the purpose of Section 92C of the Income Tax Act read with Sub-Rule (3) of Rule 10B of the Income Tax Rules without appreciating the fact that the aforesaid comparables materially affect the profitability of the appellant company? and
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> 3. Whether, on the facts and circumstances of the case, the Tribunal was right in disallowing depreciation adjustment charged in excess of Schedule IV of the Companies Act and unutilized capacity adjustment, which were required to be made in order to make the assessee company comparable as per Section 92C of the Income Tax Act read with Rule 10B(3)?"

3. We have heard Mr.R.Venkata Narayanan, learned counsel appearing on behalf for the appellant/assessee and Mr.J.Narayanaswamy, learned Senior Standing Counsel appearing for the respondent/Revenue.

4. The learned counsel for the appellant/assessee submits that the assessee has opted for Vivad Se Vishwas Scheme and appellant/assessee has already filed the declaration/undertaking on 29.12.2020 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 learned counsel for the appellant has brought to the notice of this Court that since the assessee's name has been changed to M/s.Inchcape Shipping Services SSC Private Limited, Form-1 and Form-2 declarations have been filed in the said name and prayed that the cause title in the present appeal has to be amended.

7. Though the assessee has not filed a separate application for amending the cause title, since we are inclined to dispose of the appeal on account of the fact that the assessee has opted for Vivad Se Vishwas Scheme, we direct the cause title to be amended. Office to carry out necessary amendment before issuing order copies.

8. The tax case appeal stands disposed of with the aforementioned liberty and consequently, the substantial questions of law framed are left open. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

hvk

To

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

2. The Dy. Commissioner of Income Tax,
Corporate Circle - 6(1),
Chennai - 600 034.

+1cc to Mr.Subbaraya Aiyar Padmanabhan, Advocate, S.R.No.4541

TCA.No.530 of 2018

MP(CO)
CS/01/04/2021