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.81 of 2018

MPS Technologies Limited,
(Since merged with MPS Limited)
27, G.N.Chetty Road, T.Nagar,
Chennai - 600 017. ...Appellant

Vs

The Assistant Commissioner of
Income Tax,
Company Circle - IV(3),
121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034. ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 14.02.2017 made in ITA.No.2031/Mds/2011 on the file of the Income Tax Appellate Tribunal, 'D' Bench, Chennai for the assessment year 2007-08.

Appeal filed against the order of the Assistant Commissioner of Income Tax, Company Circle IV (S), Chennai dated 11/10/2011 and made in P.A.No.AAECM0205A and against the order of the Assistant Commissioner of Income Tax Company Circle IV(3),(i/c) Chennai -34, dated 29/12/2010, in PA No.AAECM0205A for the Assessment Year 2007-08 and against the order of the Deputy Commissioner of Income Tax, Transfer pricing Officer IV, Chennai dated 28/10/2010 and made in F.No.M.510/TPO-V/A.Y 2007-08, for the Assessment Year 2007-2008.

For Appellant : Mr.S.P.Chidambaram

For Respondent: Mr.R.Karthik Ranganathan
Senior Standing Counsel

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

This appeal, filed by the assessee, is directed against the order dated 14.02.2017 made in ITA.No.2031/Mds/2011 on the file of the Income Tax Appellate Tribunal, 'D' Bench, Chennai ('the

Tribunal' for brevity) for the assessment year 2007-08.

2. The appeal was admitted on 10.12.2018 on the following substantial questions of law:

> "i. Whether in the facts and circumstances of the case and in law, the conclusion, drawn by the Tribunal that the appellant is a KPO Company, is erroneous being-
> a) contrary to the definition of a KPO Company as contemplated in Rule 10TA of the Rules;
> b) contrary and inconsistent with the evidences on record?
>
> ii. Whether in the facts and circumstances of the case and in law, the Tribunal was justified in not appreciating that the functions performed by the Appellant falls under the definition of a BPO as laid down in Rule 10TA of the Rules?
>
> iii. Whether in the facts and circumstances of the case and in law, the Tribunal was in error in upholding the inclusion of a KPO Company (Eclerx Services Limited) as a comparable without appreciating that Rule 10B(2) of the Rules mandates only functionally similar companies to be selected as comparable?
>
> iv. Whether in the facts and circumstances of the case and in law, the Tribunal was justified in upholding the inclusion of Eclerx Services Limited while not adjudicating on the specific ground raised by the Appellant on the issue that Eclerx Services Limited cannot be considered as a comparable as per Rule 10B(2) of the Rules since it had abnormal growth in revenue and extremely high profits?
>
> v. Whether, having regard to the facts and circumstances of the case and in law, in relation to the arm's length price of an international transaction, that is to be determined/quantified as per Rule 10B of the Rules, an adjustment for start-up costs claimed by the Appellant as per Rule 10B(i)(e) and Rule 10B(3) of the Rules, is legally warranted, under TNMM?"

3. We have heard Mr.S.P.Chidambaram, learned counsel for the appellant and Mr.R.Karthik Ranganathan, learned Senior Standing Counsel appearing for the respondent-Revenue.

4. The learned counsel for the appellant-assessee submits that the appellant-assessee has already filed the declaration/undertaking under the Vivad Se Vishwas Scheme on 29.01.2021 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 and consequently, the substantial questions of law framed are left open. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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

2. The Assistant Commissioner of
Income Tax,
Company Circle - IV(3),
121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

3.The Deputy Commissioner of Income Tax,
Transfer pricing officer IV, Chennai.

TCA.No.81 of 2018

AD(CO)
RMP(24/03/2021)