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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION [INCOME TAX]
ORIGINAL SIDE

ITAT/46/2024
IA NO: GA/2/2024
PRINCIPAL COMMISSIONER OF INCOME TAX 1 KOLKATA
VS
M/S COOKSON INDIA PVT LTD

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
DATE : 15th May, 2024.

*Appearance :*
*Mr. Vipul Kundalia, Adv.*
*Mr. Amit Sharma, Adv.*
*...for appellant in item no.12.*
*Ms. Smita Das De, Adv.*
*Mr. Amit Sharma, Adv.*
*...for appellant in item no.13.*
*Ms. Sutapa Roy Chowdhury, Adv.*
*Mr. R. N. Dutt, Adv.*
*Ms. Aratrika Roy, Adv.*
*...for respondents.*

The Court :- This appeal has been filed under Section 260A of the Income Tax Act, 1961 against the order dated 20.11.2020 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata in ITA no.633/Kol/2016 for the assessment year 2009-10.

The revenue has suggested the following substantial questions of law:-

i. Whether on the facts and circumstances of the case the Tribunal was justified in law to revise the adjustment made by the Assessing Officer/Transfer Pricing Officer for International Transaction in respect of Management & Support services ?

ii. Whether in the facts and circumstances of the case the Tribunal was justified in law in not appreciating the fact that the benefit test for intra group services ought to be evaluated every year and that reliance on subsequent years APA agreement to hold that the alleged services meet the benefit test criteria ?

iii. Whether in the facts and circumstances of the case the Tribunal was justified in law in not appreciating the fact that the assessee is making payment to its foreign AE for those alleged services which are stewardship in nature and therefore the arm's length price for such services should be Nil ?

iv. Whether in the facts and circumstances of the case the Tribunal was justified in law in not distinguishing the functional comparability of the company as identified by the TPO and affirmed by DRP holding inter alia that the principle laid down in the APA for the subsequent year should be followed ?

We have heard learned Counsel on either side.

In the light of the certain subsequent developments, the substantial questions of law raised in this appeal are not required to be considered and answered. The order passed by the learned Tribunal in ITAT 633 and 442/Kol/2016 have been given effect to and an order has been passed on the said effect on 2.2.2022.

In the light of the same nothing further survives to adjudicate in this appeal.

Accordingly, the appeal stands disposed of and substantial questions of law are left open.

The application being GA/2/2024 stands closed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

pkd/GH.