OD-12

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION [INCOME TAX]
<u>ORIGINAL SIDE</u>

ITAT/76/2024
IA NO: GA/2/2024
PRINCIPAL COMMISSIONER OF INCOME TAX 1,KOLKATA
VS
MS 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.

<u>Appearance :</u>
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.442/Kol/2016 for the assessment year 2011-12.

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

i. Whether the Learned Tribunal has committed substantial error in law in revising the adjustment made by the Assessing Officer/TPO for international transaction in respect of management & support services and research development services?

ii. Whether the Learned Tribunal has substantially erred in law by failing to appreciate that the benefit test for intra group services ought to be evaluated every year and that the reliance on subsequent year APA agreement to hold whether the alleged services meet the benefit test criteria or not?

iii. Whether the Learned Tribunal has substantially erred in law in failing to appreciate that the assessee is making payment to its foreign associate enterprise for those alleged services which are stewardship in nature, and therefore arm's length price for such services should be nil?

iv. Whether the Learned Tribunal has committed substantial error of law in not distinguishing the functional comparability of the company as identified by the TPO and later upheld by DRP and has merely held the principles laid down in APA for the subsequent year 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.