IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10076 OF 2024

Benteler Automotive (China) Investment Limited ...Petitioner
Versus
Assistant Commissioner Of
Income-Tax, (It) Circle 1, Pune & Ors. ...Respondents

Mr. V. Sridharan, Sr. Advocate a/w Mr Ravi Sawan, Ms. Neha Sharma i/b Sriram Sridharan for the Petitioner.

Mr. A. K. Saxena a/w K. Dubey for Respondents.

CORAM: G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.

DATE: 02 DECEMBER 2024

P.C.

1. Leave to amend to implead the Ministry of Finance, Government of India as a party respondent through its Secretary. Amendment be carried out during the course of the day. Copy of the amended petition be served on the Joint Secretary, Law & Justice, Aaykar Bhavan New Marine Lines, Mumbai, so as to obtain instructions, on a issue which falls for consideration of the Court on Exhibit-G namely, circular dated 9 December 1994 issued by the State Administration of Taxation, Government of China which, according to the petitioner, would reflect the common understanding between the Republic of India as also the Republic of China, under the Double Taxation Avoidance Agreement (DTAA) dated 21 November 1994, along with its amendments.

2. Although reply affidavit is filed to the petition, it is filed on behalf of respondent Nos.1 and 2 by Mr. Merwyn Paes, Assistant Commissioner of Income Tax (IT) Circle-1, Pune. However, thrust of the petitioners case is on such circular at Exhibit-G to the petition. On the earlier occasion in our order dated 8 October 2024 we had requested Mr Saxena, learned counsel for the respondents to take instructions on Exhibit-G. He has expressed his inability to take instructions from respondent Nos.1 and 2. We accordingly direct the added respondent (Secretary, Ministry of Finance) to place on record a reply affidavit on the relevant issues including the applicability of Exhibit-G in the context of the petitioner's request for a certificate being rejected under Section 197 of the Income Tax Act, 1961.

3. Let an affidavit to this effect be placed on record on or before the adjourned date of hearing and a copy of the same be served on the advocate for the petitioner well in advance.

4. Affidavit be filed by the Secretary of Ministry of Finance or any other competent Officer, and not by the Commissioner of Income Tax.

5. Considering the nature of the issues as involved, we would request the learned Additional Solicitor General of India to appear in the present proceeding so as to assist the Court.

6. Stand over to **16 December 2024 (HOB)**.

7. Parties to act on authenticated copy of this order.

(ADVAIT M. SETHNA, J.) (G. S. KULKARNI , J.)