IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2024

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

Tax Case Appeal Nos.193 and 194 of 2020
and CMP No.7876 of 2020

The Commissioner of Income Tax IV
Chennai 600 034. ... Appellant in both appeals

Vs.

M/s.Turbo Energy Pvt Ltd
No.67, Chamiers Road
R.A.Puram, Chennai 600 028. ... Respondent in both appeals

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai, dated 17.07.2020 made in ITA Nos.310 and 313 of 2018.

For Appellant : Mrs.V.Pushpa
Senior Standing Counsel

For Respondents : Mr.R.Venkatanarayanan
for M/s.Subbaraya Iyer Padmanabhan

<u>JUDGMENT</u>
(Delivered by R.SURESH KUMAR, J.)

These Tax Case Appeals have been filed by the Revenue calling in question the correctness of the order passed by the Income Tax Appellate Tribunal, Chennai and the appeal was admitted on the following substantial questions of law:

"<u>Common questions in TCA.Nos.193 & 194 of 2020 :</u>

i. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the payments made to M/s.Sonima Logistic, Germany would not come within the purview of managerial/technical services and therefore, no TDS was needed to be deducted even though the said concern was providing composite services and not merely offering warehousing facility ?

ii. Whether, on the facts and in the circumstances of the case, the Tribunal was right in not considering Section 9(1)(vii) on payments made for the purpose of rendering managerial services outside India, which is to be considered only as payments made for fees for technical services and therefore liable for TDS under Section 195 of the Income Tax Act and non deduction of the same renders invoking of Section 40(a)(i) of the Income Tax Act ?

Other Questions in TCA No.193 of 2020 :

iii. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that loss on account of forward contract cancellations amounting to Rs.162,43,545/- is to be allowed especially when hedging forward contracts on foreign exchange fluctuation are not receivables or payables in respect of regular business transactions but are received on account of hedging contracts entered which are totally independent from the assessee's regular business ? And

iv. Whether the reasoning and findings of the Tribunal are proper, especially when foreign exchange loss due to restatement of forward contracts entered into by the assessee are not transacted through regular stock exchange is an allowable loss which is contrary to the provisions of Section 43(5) of the Income Tax Act? "

2. It is brought to our notice by the learned Standing Counsel for the appellant Revenue that in the instant cases, the tax effect is said to be less than the monetary limit imposed and therefore, the appeals filed by the Revenue can be disposed of, keeping the substantial questions of law raised in these appeals open for adjudication at a later point of time.

R.SURESH KUMAR, J.

AND
C.SARAVANAN, J.

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3. Recording the said submission, these Tax Case Appeals are dismissed for low tax effect, keeping open the substantial questions of law for adjudication at appropriate stage. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.K.,J.) (C.S.N.,J.)
01.10.2024

NCS : Yes/No
Index : Yes/No
KST

To

The Income Tax Appellate Tribunal
Chennai

T.C.A.Nos.193 & 194 of 2020