$~11

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 256/2019

PR. COMMISSIONER OF INCOME TAX -8 ..... Appellant

Through: Mr. Indruj Singh Rai, Sr. SC alongwith Mr. Sanjeev Menon and Mr. Rahul Singh, Jr. SCs with Mr. Anirudh, Advocate

versus

M/S SARENS HEAVY LIFT INDIA PVT. LTD., ... Respondent

Through: Mr.Ved Jain, Mr.Nischay Kantoor and Ms.Soniya Dodeja Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

% **28.05.2024**

1. The Principal Commissioner has instituted the present appeal impugning the order of the Income Tax Appellate Tribunal ["**ITAT**"] dated 02 April 2018.

2. The appeal posits the following questions for our consideration:-

> "A. Whether in law and in facts of the case Learned ITAT was justified in deleting the Written Down Value of Cranes in the books of the Associated Enterprise of the Assessee as ALP as valid CUP?
>
> B. Whether Learned ITAT was correct in holding that the Written Down Value in the books of the associated enterprise of the assessee cannot be considered as ALP applying internal CUP?
>
> C. Whether Learned ITAT was correct in upholding the findings of the DRP that assessee justified the price paid by the valuation of an independent chartered engineer, or customs authorities or

> determined under DCF Method when they do not establish the Arm's Length Price under CUP?"

3. We note that the issue today stands confined to the Arm's Length Price ["**ALP"**] for the cranes in question which had undisputedly been procured by the respondent-assessee from its Associated Enterprise.

4. The Transfer Pricing Officer ["**TPO**"] had while computing the ALP, taken into consideration the Written Down Value ["**WDV**"] of the assets as reflected in the books. This was a decision which was neither accepted by the Dispute Resolution Panel ["**DRP**"] nor has it been confirmed by the ITAT. The WDV methodology appears to have been rejected bearing in mind the undisputed mandate of Rule 10B of the Income Tax Rules, 1962 ["**Rules**"] and which requires the identification of ALP from the point of view of the uncontrolled price method as being referable to a comparable uncontrolled transaction.

5. The expression "uncontrolled transaction" has been defined in Rule 10A(ab) of the Rules as being a transaction between enterprises other than associate enterprises. Admittedly, the equipment had been purchased from the AE of the respondent. Resort to WDV would have thus fallen foul of this fundamental precept.

6. In any case and in our considered opinion, the WDV as may be reflected in the books would clearly not be liable to be taken into consideration while answering the issue of ALP.

7. The ITAT has while dealing with the aforesaid aspect ultimately held as follows:-

> "9. Basing on these facts DRP observed that the written down value of cranes in the books of the AE cannot be considered as ALP as it is not derived from the transactions between enterprises other than associated enterprises. They have also considered the submission of the assessee that ALP will be based on valuation done by chartered

> engineer or accepted by custom authorities or done by DCF method, some of the recognized methods which are accepted by various benches of the tribunal and more particularly in Tecumseh Products India Private limited case (supra) wherein it was held that the assessee justified the price paid by way of a certificate which can be considered as external CUP and since the TPO/DRP did not rely on any other certificate and in the absence of any contrary information, price paid by assessee, which was less than the value mentioned in the certificate can be accepted as such.
>
> 10. Having considered all these aspects ld. DRP directed the TPO to accept the valuation report of the assessee company and to delete the addition made on account of the ALP of cranes. Consequently DRP also directed the deletion of the adjustment on account of payment of interest amount also. Hence, the revenue is in this appeal before us challenging such deletions. At the same time, assessee also preferred a Cross Objections in support of the DRP's directions."

8. Although, it was vehemently argued before us that the three methodologies which were taken into consideration were wholly alien to the scheme of Rule 10B of the Rules, we find that ultimately the ITAT has on an overall consideration taken into account the transaction value as identified.

9. Viewed in light of the above and an apparent failure of the appellant to bring forth any other comparable or any other methodology which may have been examined by the TPO, we find no ground to interfere with the view ultimately expressed by the ITAT.

10. The appeal fails and shall stands dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MAY 28, 2024

p'ma