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

\+ ITA 556/2024 & CM No.66848/2024

THE COMMISSIONER OF INCOME TAX - INTERNATIONAL TAXATION -3 .....Appellant

Through: Mr. Ruchir Bhatia, Mr. Anant Mann & Mr. Abhishek Anand, Advs.

Versus

ROLLAND ENTERPRISES LTD. .....Respondent

Through: Ms. Kavita Jha, Sr. Adv. with Mr. Vaibhav Kulkarni & Mr. Himanshu Aggarwal, Advs.

AND

\+ ITA 557/2024, CM Nos.66924/2024 & 66925/2024

THE COMMISSIONER OF INCOME TAX - INTERNATIONAL TAXATION -3 .....Appellant

Through: Mr. Ruchir Bhatia, Mr. Anant Mann & Mr. Abhishek Anand, Advs.

Versus

ROLLAND ENTERPRISES LTD. .....Respondent

Through: Ms. Kavita Jha, Sr. Adv. with Mr. Vaibhav Kulkarni & Mr. Himanshu Aggarwal, Advs.

AND

\+ ITA 559/2024, CM Nos.67063/2024 & 67064/2024

THE COMMISSIONER OF INCOME TAX - INTERNATIONAL TAXATION -3 .....Appellant

Through: Mr. Ruchir Bhatia, Mr. Anant Mann & Mr. Abhishek Anand, Advs.

Versus

ROLLAND ENTERPRISES LTD. .....Respondent

Through: Ms. Kavita Jha, Sr. Adv. with Mr. Vaibhav Kulkarni & Mr. Himanshu Aggarwal, Advs.

AND

\+ ITA 560/2024, CM Nos.67221/2024 & 67222/2024

THE COMMISSIONER OF INCOME TAX - INTERNATIONAL TAXATION -3 .....Appellant

Through: Mr. Ruchir Bhatia, Mr. Anant Mann & Mr. Abhishek Anand, Advs.

Versus

ROLLAND ENTERPRISES LTD. .....Respondent

Through: Ms. Kavita Jha, Sr. Adv. with Mr. Vaibhav Kulkarni & Mr. Himanshu Aggarwal, Advs.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

O R D E R

% **02.12.2024**

1. The Revenue has filed the present appeals under Section 260A of the Income Tax Act, 1961 (hereafter *the Act*) against the common order dated 10.01.2024 (hereafter *the impugned order*) which was passed in ITA bearing Nos.3349/Del/2015, 3350/Del/2015, 3351/Del/2015 & 3352/Del/2015 and in cross objections bearing Co. Nos.353/Del/2015, 354/Del/2015, 355/Del/2015 & 356/Del/2015.

2. The Revenue has projected the following questions of law in the present appeals:

> "2.1 Whether on the facts and in the circumstances of the case, the Ld. ITAT has erred in law in holding that assessment orders passed are unsustainable for not passing the draft assessment order as per the provisions of Section 144C(1) of the Act which is applicable to non-residents and the assessee in this case is a resident of India?
>
> 2.2 Whether on the facts and in the circumstances of the case, the Ld. ITAT has erred by relying on facts in ignoring statements of Sh. Ajay Kalsil Sh. Anil Aggarwal and the documents seized wherein it was established that the control and management of the assessee company is situated wholly in India with Sh. Ajay Kalsi and Smt. Mala Kalsi, who have created different verticals of corporate veil under them to avoid taxability in India?"

3. The context in which the aforesaid questions of law arise are briefly narrated as under:

3.1 Search and seizure operations were conducted by the Investigation Wing on 22.03.2012 in respect of group of entities (M/s Focus Energy Group). It is stated that during the search proceedings certain documents containing information pertaining to the Assessee, were found and seized. Notices under Section 153C of the Act were issued to the Assessee, and assessments for the assessment years (AYs) 2008-09, 2009-10, 2010-11 and 2011-12 were completed under Section 153C/144 of the Act.

3.2 The Assessee is an entity incorporated under the laws of the British Virgin Islands. It is the Assessee's case that it owns certain equipment related to exploration and development of oil fields, which were leased to M/s Focus Energy Limited. The said company paid lease rentals after deducting tax at source (TDS).

3.3 Pursuant to the notice issued under Section 153C of the Act, the assessments were completed. It is the Assessee's case that it is an "eligible assessee" and the procedure as prescribed under the Act was not followed. In as much as, the draft assessment order was not issued as required under Section 144C(1) of the Act.

3.4 The Assessing Officer (AO) held that the Assessee's income was chargeable to tax under the Act, as its control and management is situated in India. The AO held that the Assessee was a resident of India under Section 6(3) of the Act. And, passed assessment orders on 28.03.2014.

3.5 Aggrieved by the assessment orders, the Assessee preferred appeals before the Commissioner of Income Tax (Appeals) [hereafter *CIT(A)*], which were allowed by the orders dated 27.02.2015. The learned CIT(A) found that the control and management of the affairs of the Assessee was in the hands of its Board of Directors who were not the residents of India. The learned CIT(A) faulted the findings of the AO to treat the Assessee as a resident in terms of provision of Section 6(3)(ii) of the Act.

3.6 The Revenue being aggrieved by the orders passed by the learned CIT(A) preferred appeals in respect of the assessment orders in question before the Income Tax Appellate Tribunal (hereafter *ITAT*). The Assessee also filed cross objections on the ground that the procedure prescribed under Section 144C of the Act was not complied. 3.7 The cross objections preferred by the Assessee were allowed and accordingly, the appeals preferred by the Revenue were dismissed.

4. Concededly, the provisions of Section 144C(1) of the Act had not been complied with as no draft assessment order was framed.

5. According to the Assessee, it is an eligible assessee and therefore it was necessary for the AO to pass a draft assessment order and not to proceed straightaway to pass a final assessment order. The said issue is covered in favour of the Assessee by the decision of this Court in ***Pr. Commissioner of Income Tax-7 v. Sumitomo Corporation India (P) Ltd.: 2024 SCC OnLine Del 6125***.

6. The term "eligible assessee" is defined under Section 144C(15)(b) of the Act, which reads as under:

> "144C. Reference to dispute resolution panel. –
>
> ** *** ***
>
> (15) For the purposes of this section,–
>
> (a) *** *** ***
>
> (b) "eligible assessee" means,–
>
> (i) any person in whose case the variation referred to in sub-section (1) arises as a consequence of the

order of the Transfer Pricing Officer passed under sub-section (3) of section 92CA; and

(ii) any non-resident not being a company, or any foreign company."

7. The first question projected by the Revenue proceeds on the basis that the Assessee is taxable as a resident of India. However, it is not disputed that the Assessee is an eligible assessee under Section 144C of the Act. There is no dispute that the Assessee is incorporated under the laws of British Virgin Islands. It is thus a foreign company. Since, the Assessee is an eligible assessee within a meaning of Clause (b) of Section 144C(15) of the Act, the AO was required to follow the procedure as prescribed under Section 144C of the Act.

8. We find no infirmity in the decision of the learned ITAT. Plainly, no substantial questions of law arise in the present appeals. The appeals are, accordingly, dismissed.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

DECEMBER 02, 2024

'gsr'

Click here to check corrigendum, if any