IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **04.03.2025**

CORAM

THE HONOURABLE MR JUSTICE S. S. SUNDAR

AND

THE HONOURABLE MR JUSTICE C. SARAVANAN

TCA NO. 45 of 2025

Principal Commissioner of Income Tax
International Taxation,
Chennai-34

..Appellant

Vs

M/s.Daechang Seat Co.Ltd.,
C/o. Ms/. Daechang India Seat Co. Pvt Ltd.,
No. 491, Mannur Village,
Sriperumbudur Village,
Kanchipuram- 602105 ..Respondent

Prayer : This Appeal is filed under Memorandum of Appeal under Section 260-A of the Income Tax Act 1961 against the order of the Income Tax Appellate Tribunal dated 05.07.2023 in ITA No. 1643/Chny/2019.

For Appellant : Mr. R.Karthik Ranganathan, Standing Counsel

JUDGMENT

(Order of the Court was made by the Hon'ble S.S.Sundar J.)

This appeal is directed against the formal order of the Income Tax Appellate Tribunal dated 05.07.2023 in ITA No. 1643/Chny/2019. In this appeal the appellant has raised the following substantial questions of law to be answered;

For AY 2014-15:

1. Whether, on the facts and in the circumstances of the case and in law, the Ld. ITAT was correct in holding that the guarantee fee received is subject to provisions of Article 22 of India-Korea DTAA?

2. Whether, on the facts and in the circumstances of the case and in law, the Ld. ITAT was correct in holding that the assessee is eligible for the benefit of Article 22 of India-Korea DTAA?

3. Whether, on the facts and in the circumstances of the case and in law, the Ld. ITAT was correct in holding that guarantee fee is not income taxable in India without appreciating the fact that assessee had offered the guarantee fee as business income and paid the taxes by way of TDS made and had never claimed the benefit of provisions of India-Korea DTAA?

4. Whether, on the facts and in the circumstances of the case and in law, the Ld. ITAT was correct in going beyond the issue involved in the assessment order which pertains to the rate of tax applicable under the provisions of the Income Tax read with India-Korea DTAA, on the income brought to tax?

FOR AY 2015 – 16

5. Whether, on the facts and in the circumstances of the case and in law, the Ld. ITAT was correct in quashing the order u/s 263 passed by CIT (Intl. Taxn)?

6. Whether on the facts and in the circumstances of the case and in law, the Ld. ITAT was correct in holding that the guarantee fee received is subject to provisions of Articuls 22 of India-Korea DTAA?

7. Whether, on the facts and in the circumstances of the case and in law, the Ld. ITAT was correct in holding that guarantee fee is not income taxable in India without appreciating the fact that assessee had offered the guarantee fee as business income and paid the taxes by way of TDS made and had never claimed the benefit of provisions of India-Korea DTAA?

8. Whether on the facts and in the circumstances of the case and in law, the Ld. ITAT was correct in going beyond the issue involved in the assessment order which pertains to the rate of tax applicable under the provisions of the Income Tax read with India-Korea DTAA on the income brought to tax?

2. Learned standing counsel appearing for the appellant submitted that the amount involved in the present appeal is below the monetary limit as per the circulars issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes in Circular No. 5/2024 and 09/2024 dated 15.03.2024 and 17.09.2024 respectively.

3. In view of the aforesaid submissions made by the learned standing counsel for the appellant, the appeal is dismissed as withdrawn. However, the substantial questions of law are left open. No costs.

(S.S.SUNDAR J.) (C.SARAVANAN J.)
04.03.2025

Index: Yes/No
Internet : Yes
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S. S. SUNDAR, J.
and
C. SARAVANAN, J.

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