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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ ITA 606/2023
THE COMMISSIONER OF INCOME TAX -
INTERNATIONAL TAXATION -3 Appellant
Through: Mr. Ruchir Bhatia, SSC with
Ms. Deeksha Gupta, Adv.
versus

S.A.CHITRA VENTURES LTD. Respondent
Through: Mr. Piyush Kaushik, Adv.

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+ ITA 607/2023
THE COMMISSIONER OF INCOME TAX -
INTERNATIONAL TAXATION -3 Appellant
Through: Mr. Ruchir Bhatia, SSC with
Ms. Deeksha Gupta, Adv.
versus

S.A.CHITRA VENTURES LTD. Respondent
Through: Mr. Piyush Kaushik, Adv.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

% **16.02.2024**

CM APPL. 57131/2023 in ITA 606/2023

CM APPL. 57133/2023 in ITA 607/2023

Bearing in the mind the disclosures made, the delay of 250 days in re-filing the appeals is condoned.

The applications shall stand disposed of.

ITA 606/2023 & ITA 607/2023

1. The Commissioner of Income Tax - International Taxation questions the correctness of the judgment rendered by the **Income Tax Appellate Tribunal**¹ dated 21 July 2022 and proposes the

¹ ITAT



following questions of law for our consideration:-

ITA 606/2023

a) Whether the ITAT has erred in law by holding that the Final Assessment Order passed on 15 February 2018 in this case is barred by limitation as there was no variation in the income of the assessee without appreciating the fact that the deviation in the departmental stand from the stand adopted by the assessee has led to additional tax burden on the assessee which is prejudicial to the interest of the assessee and the same is akin variation which mandates the Draft Assessment Order to be taken to **Dispute Resolution Panel**² or wait for Final Order to be taken to **Commissioner of Income Tax (Appeals)**³ at the option of the assessee?

b) Whether the ITAT has erred in law in allowing the appeal of the assessee without going into the merits of case as to whether the assessee was eligible to claim benefit of the India Cyprus **Double Taxation Avoidance Agreement**⁴?

c) Whether the ITAT has erred in law by allowing the appeal of the assessee without appreciating the intent of the legislature behind introduction of Section 144C of the **Income Tax Act, 1961**⁵ as per Finance Act, 2009 vide which all variations proposed on or after 01 October 2009 which is prejudicial to the interest of the eligible assessee

² DRP

³ CIT(A)

⁴ DTAA

⁵ Act



mandates the **Assessing Officer**⁶ to forward the Draft Order under Section 144C of the Act?

ITA 607/2023

a) Whether the ITAT has erred in law by holding that the Final Assessment Order passed on 09 February 2018 in this case is bared by limitation as there was no variation in the income the assessee without appreciating the fact that the deviation in the departmental stand from the stand adopted by the assessee has led to additional tax burden on the assessee which is prejudicial to the interest of the assessee and the same is akin variation which mandates the Draft Assessment Order to be taken to DRP or wait for the Final Order to be taken to CIT(A) at the option of the assessee?

b) Whether the ITAT has erred in law in allowing the appeal of the assessee without going into the merits of case as to whether the assessee was eligible to claim benefit of the India Cyprus DTAA?

c) Whether the ITAT has erred in law by allowing the appeal of the assessee without appreciating the intent of the legislature behind introduction of Section 144C of the Act as per Finance Act, 2009 vide which all variations proposed on or after 01 October 2009 which is prejudicial to the interest of the eligible assessee mandates the AO to forward the Draft Order under Section 144C of the Act?

⁶ AO



2. While ITA 607 of 2023 pertains to **Assessment Year**⁷ 2014-15, ITA 606 of 2023 relates to AY 2015-16. For the purposes of brevity, we propose to notice the facts as obtaining in ITA 607 of 2023.

3. The assessee submitted a Return of Income on 26 November 2014 declaring its income for the year to be INR 26,62,42,773/-. The aforesaid Return was selected for scrutiny assessment and notices under Section 143(2) of the Act came to be issued. In the course of the assessment proceedings, the AO took notice of an international transaction between the assessee and its **Associate Enterprises**⁸ and which led to the matter being referred to the **Transfer Pricing Officer**⁹. The **Arm's Length Price**¹⁰ was thereafter determined by the TPO in terms of an order dated 31 March 2017. However, no adverse inference was drawn.

4. The AO thereafter proceeded to frame a Draft Assessment Order on 22 December 2017 and came to form the opinion that the income as shown was liable to be taxed at the rate of 20% as per the provisions of Section 115A of the Act. The AO appears to have rejected the stand of the assessee which had claimed benefits of Article 11 of the India Cyprus DTAA. The assessee chose not to file any objections before the DRP against the aforesaid order dated 22 December 2017. Accordingly, a Final Assessment Order came to be framed on 09 February 2018 in terms of which while the total income as declared by the assessee remained untouched, it was subjected to tax at the rate of 20%.

5. The assessee thereafter assailed the Final Assessment Order by

⁷ AY
⁸ AEs
⁹ TPO
¹⁰ ALP



way of an appeal before the CIT(A) which came to be allowed with the appellate authority taking the view that the assessee would be entitled to claim the benefits of Article 11 of the DTAA.

6. Aggrieved by the aforesaid, the appellants here preferred an appeal before the ITAT. In that appeal, the assessee also filed cross objections principally contending that since the changes as suggested by the AO originally would not impact the income or loss returned, the provisions of Section 144C of the Finance Act, 2020 would not be attracted and the AO would have no authority or jurisdiction to frame a Draft Assessment Order in terms of that provision. It is this objection which has ultimately come to be accepted by the ITAT in terms of the impugned order.

7. The ITAT has noticed that undisputedly the respondent was an eligible assessee in terms of Section 144C(15)(b)(ii) of the Act. It, however, took note of Section 144C of the Act as it stood at the relevant time and prior to the amendments which came to be introduced by virtue of Finance Act, 2020 w.e.f. 01 April 2020. It becomes pertinent to note that the provision as it stands presently uses the expression “*any variation which is prejudicial to the interest of such assessee*”. However, and prior to the provision being recast by Finance Act, 2020, the aforesaid provision employed the phrase “*any variation in the income or loss returned*”. It is thus manifest that it was only a “*variation*” which would impact the “*income or loss returned*” that Section 144C(1) of the Act would have stood attracted.

8. As has been noticed by the ITAT, and which fact remained uncontested even before us, there was no variation in the income as returned. The only point of dispute was with respect to whether



the respondent was entitled to claim the benefits under Article 11 of the DTAA. It was that claim of the respondent which alone came to be negated by the AO. Accordingly, while the income offered became subject to tax at the rate of 20%, the total income as declared remained unvaried. As we read Section 144C of the Act as it stood at the relevant time, it would have empowered the AO to frame a Draft Assessment Order only if a variation in the *income returned* was suggested. This was clearly not the case which obtained.

9. We, consequently, find no error in the view as expressed by the ITAT. The appeals thus raise no substantial question of law and shall consequently stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDR KUMAR KAURAV, J.

FEBRUARY 16, 2024/RW