

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, CHENNAI
श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष
**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A.No.1235/CHNY/2019
(निर्धारण वर्ष / Assessment Year: 2014-15)

The DCIT,
Corporate Circle – 2(1),
Chennai – 600 034.

(अपीलार्थी/Appellant)

Vs **M/s.East Coast Terminal
Operations & Port Services Ltd.,**
No.4, 6th Floor, Bhurai Towers,
Moores Road, Egmore,
Chennai – 600 006.
PAN: AAACE4812D

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Ms. R. Anitha, JCIT

प्रत्यर्थी की ओर से/Respondent by

: Shri G. Baskar, Advocate

सुनवाई की तारीख/Date of hearing

: 26.10.2020

घोषणा की तारीख /Date of Pronouncement

: 09.11.2020

आदेश / ORDER

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The Revenue filed this appeal against the order of the Commissioner of Income Tax (Appeals)-6, Chennai in ITA No.477/CIT(A)-6/2016-17 dated 11.01.2019 for the assessment year 2014-15.

2. M/s. East Coast Terminal Operations & Port Services Ltd., the assessee, a shipping company and a co-owner of commercial ship, M.V. Gem of Ennore, along with three other companies opted for Tonnage Tax Scheme (TTS) u/s.115V of the Income Tax Act, 1961 (hereinafter the 'Act') in its return of income filed for the assessment year 2014-15. The AO examined the claim and found that the impugned ship was mainly used for transporting thermal coal for TNEB between various ports of India which are well connected by roads, the services rendered by the ship are services of a kind normally provided on land and hence held that it does not satisfy the conditions laid for a "qualifying ship" as per Section 115VD(c)(i) of the Act. Since this issue being a recurrent one, the CIT(A) and the ITAT has decided against the Revenue, however, the Revenue's appeal before the Hon'ble High Court is pending, therefore the AO concluded that the assessee is not eligible to opt for TT scheme. Further, the AO found that the shareholders of the company viz. Trans Arab Maritime LLC of Dubai held 58.67% of shares, Emirates Trading LLC of Dubai held 41.33% of shares. Therefore, 99.99% of the shares were held by two foreign companies and effective control management of the assessee company is outside India and hence the assessee is not a "qualifying company" to opt for TTS u/s.115VC also. Further, the AO made disallowances of forex loss and u/s.14A

r.w.r 8D and concluded the assessment. Aggrieved, the assessee filed an appeal before the CIT(A). The Ld.CIT(A) allowed the appeal. Aggrieved against that order, the Revenue filed this appeal.

3. The case was heard through video conferencing. The Ld.DR submitted that the Ld.CIT(A) following the decision of the Hon'ble ITAT in the earlier years in the assessee's case, wherein the issue whether the assessee is a "qualifying company" u/s.115VC of the Act was not there, decided the appeal based on the decision rendered u/s.115VD of the Act alone. Therefore, the Ld.DR presented the case on the lines of grounds of appeal. Per contra, the Ld.AR invited our attention to the ITAT decisions in the assessee's case viz., in ITA No.1636/Mds/2017 for the AY 2013-14 dated 13.09.2017, wherein this Tribunal following earlier years orders decided the issue u/s.115VD of the Act in favour of the assessee and in ITAT Nos.1426 to 1430/Chny/2016 for the AYs 2005-06 to 2009-10 dated 12.02.2018 wherein the issue u/s.115VC of the Act was remanded to the AO for a fresh adjudication. Thereafter, both the Ld.DR and the LD.AR agreed that the issue u/s.115VC of the Act be restored to the AO for a fresh adjudication. Since the other issues viz., disallowances of forex loss and u/s.14A r.w.r. 8D of the Rules are also dependent on the determination of whether the assessee is a qualifying company within

the scope of Section 115VC of the Act, they pleaded that these issues be remitted back to the AO for a fresh examination.

4. We heard the rival submissions. Since this Tribunal has remitted the issues u/s.115VC of the Act in the orders, *supra*, to the AO for a fresh adjudication and the other issues are dependent on the decision of this issue, we deem it fit to remit the issues in the appeal to the AO for a fresh examination. The AO after giving due opportunity to the assessee to substantiate its case, shall decide the issues in accordance with law.

5. In the result, the Revenue's appeal is treated as partly allowed for statistical purposes.

Order pronounced on 9th November, 2020 at Chennai.

Sd/-

(वी दुर्गा राव)

(V. Durga Rao)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated 9th November, 2020

Sd/-

(एस जयरामन)

(S. Jayaraman)

लेखा सदस्य /Accountant Member

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF |