

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "J", MUMBAI

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 1987/Mum/2021 (A.Y.2012-13)

M/s. Van Oord India Pvt. Ltd.

201, 2nd floor, Central Plaza,
166 CST Road, Kalina,
Raheja Towers, Opp. SIDBI,
Mumbai-400 098
PAN: AAACH5430J

..... Appellant

Vs.

ACIT Circle 5(3) (2)

Aayakar Bhavan,
M. K. Road,
Mumbai- 400 020

..... Respondent

&

ITA No. 2323/Mum/2021 (A.Y.2012-13)

ACIT Circle 5(3) (2)

Aayakar Bhavan,
M. K. Road,
Mumbai- 400 020

..... Appellant

Vs.

M/s Van Oord India Pvt. Ltd.

201, 2nd floor, Central Plaza,
166 CST Road, Kalina,
Raheja Towers, Opp. SIDBI,
Mumbai-400 098

PAN: AAACH5430J

..... Respondent

Appellant by : Shri Divesh Chawle, Ld. AR
Respondent by : Shri Asif Karmali, Ld. DR

Date of hearing : 21/11/2023
Date of pronouncement : 29/01/2024

ORDER

PER GAGAN GOYAL, A.M:

These cross appeals by Assessee and Revenue are directed against the order of Ld. CIT (A) – 55, Mumbai dated 20.09.2021 passed u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2012-13. The assessee has raised the following grounds of appeal:-

GROUND OF APPEAL

On the facts and in the circumstances of the case and in law, Van Oord India Private Limited (hereinafter referred to as the 'Appellant') craves leave to prefer an appeal against the order passed by the Commissioner of Income-tax (Appeals) - 55, Mumbai (hereinafter referred to as 'CIT-A') under section 250 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') on the following grounds, each of which are without prejudice to one another:

Refund of excess Dividend Distribution Tax ('DDT') paid on dividend received by the Appellant

On the facts and in the circumstances of the case and in law, the learned CIT-A:

- 1. erred in not restricting the DDT rate on dividend paid by the Appellant to 5 percent as provided under Article 10 read with Article IV of the Protocol to the India - Netherlands DTAA and Article 10 of India - Slovenia DTAA.*
- 2. Erred in not granting refund of excess DDT paid of Rs. 5, 79, 36,286/- on the dividend income received by the appellant.*

The appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at, the time of appeal, so as to enable the Hon'ble Tribunal to decide the appeal in accordance with the law.

2. The revenue has raised the following grounds:-

On the facts and in the circumstances of the case and in law, the learned CIT (A) has erred in allowing relief to the assessee to the extent impugned in the grounds enumerated below:

1. Whether on the facts and circumstances of the case and in law, Hon'ble CIT(A) was right in deleting the transfer pricing adjustment of Rs. 1,92,98,946/- on account of Allocation of head office cost, and transfer pricing adjustment of Rs. 19,17,683/- on account of charging notional interest on the outstanding balance of receivables from AE beyond 30 days.

2. Whether on the facts and circumstances of the case and in law, Hon'ble CIT (A) is right in holding that Chapter-X has no application in computing the income of the assessee chargeable to tax as per Chapter-XII-G of the Income-tax Act, 1961.

3. Whether on the facts and circumstances of the case and in law, Hon'ble CIT(A) was justified in holding that the income computed under Tonnage Tax Scheme (TTS) overrides section 92(1) of the Act, seeking to compute the Arm's Length Value of transaction with Associated Enterprises in order to adjust profits and gains.

4. Whether on the facts and circumstances of the case and in law, Hon'ble CIT(A) was not appreciating the facts that income under TTS does not take into consideration, the effect of International transactions between assessee and its AEs on its income and to mitigate this, Section 92(1) of the Act is there, which reads as "computation of income from international transaction having regards to arm's length price"; thus thereby the provisions contained in the Chapter X are distinct, separate and over and above the provisions of the computation of income under section 28 and 43C or even TTS.

5. Whether on the facts and circumstances of the case and in law, the Hon'ble CIT(A) is correct in not appreciating the fact that the assessee did not furnish the records and documents maintained for the expenses incurred for the Indian entity by VODMCBV despite this being a mandatory condition as provided in the agreement dated 01.04.2004 for the rendering of services between the assessee company and its AE, indicating that the assessee is not interested in disclosing the true facts further indicating that the assessee

has more to hide than to disclose, which goes against the assessee as it may be inferred that, had the Assessee provided the actual evidence, the same would have gone against it and such an inference derives strength from provisions of section 114(g) of the Evidence Act, 1872?

6. Whether on the facts and circumstances of the case and in law, Hon'ble CIT(A) has not appreciated the fact that the transfer pricing provisions and adjustment between assessee and associated enterprises takes broader consideration than the provision contained in the TTS, as adjustment of transfer pricing on account of transaction between assessee and its associated enterprises may lead to the income from the facts which were not taken into consideration while arriving at income under TTS.

7. Whether on the facts and circumstances of the case and in law, Hon'ble CIT(A) is not correct in appreciating the fact that the adjustment on account of interest on the outstanding balance of receivables from AE beyond 30 days is not as result of computation provided under TTS, but it is default where assessee has foregone opportunity cost and the AE has benefit in the form of interest saved/earned.

8. On the facts and circumstances of the case and in law, whether the Hon'ble CIT(A) is correct in not realizing that there was no uniformity in not charging of interest from AEs and non AEs as in the case of AEs, the maximum delay was 225 days while in the case of non AEs, the maximum delay was 879 days (Dighi Port Ltd) and 318 days (Mumbai Port Trust and thus, there was no complete uniformity, and therefore, the judgment of Hon'ble High Court in the case of Indo American Jewellery limited was not applicable?"

9. On the facts and circumstances of the case and in law, whether the Hon'ble CIT (A) is correct in not giving opportunity to the AO/TPO to verify the claim of the assessee that the average delay in receivables from AEs was only 225 days while the average delay from Non AEs was 879 days (Dighi Port Ltd) and 318 days (Mumbai Port Trust)?

10. On the facts and circumstances of the case and in law, whether the Hon'ble CIT(A) is correct in ignoring the fact that in the specific case of the assessee, the assessee has made a provision for doubtful debt which is substantial at Rs. 9,79,95,706/- which pertains to non AEs; thus, the fact that the delayed non AE receivables are due to the recovery difficulties or some business exigencies or some other factors and the same is exceptional and this cannot be used to claim that the same (i.e. pertaining to interest realizable on non AE receivable) should be the norm while dealing with the interest realizable on AE receivable.

3. The brief facts of the case are that assessee is a company registered in India, engaged in the activity of undertaking dredging, maintenance dredging projects and other dredging related activities. Assessee filed its return of income on 30-11-2012 declaring total income at Rs. 59, 57,440/- under the normal provisions of the Act and at Rs. 53, 42,020/- as per the provisions of section 115JB of the Act. Case of the assessee was selected for scrutiny under CASS.

4. During the assessment proceedings based on the report of TPO u/s. 92CA (3) of the Act an addition of Rs. 2, 12, 16,629/- was made and total income was assessed at Rs. 2, 71, 74,068/-. The above addition of Rs. 2,12,16,629/- was made on account of Rs. 1,92,98,946/- (Allocation of head office cost) and Rs. 19,17,683/- on account of receivables. Assessee being aggrieved with this order passed u/s. 143(3) r.w.s. 144C (3) of the Act preferred an appeal before the Ld. CIT(A), who in turn allowed the appeal of the assessee and deleted the addition made by the AO on account of Transfer Pricing Adjustment. During the appeal proceedings before the Ld. CIT (A), assessee raised additional ground of appeal also pertaining to Dividend Distribution Tax (DDT) u/s. 115O of the Act, which was not allowed by the Ld. CIT (A).

5. Order passed by Ld. CIT (A) u/s. 250 of the Act made aggrieved both the sides, i.e. Revenue and assessee. Being aggrieved both the sides preferred appeal before us against the order of Ld. CIT (A). We have gone through the order of AO passed u/s. 143(3) r.w.s. 144C (3) of the Act, order of TPO u/s. 92CA (3) of the Act and order of the Ld. CIT(A) passed u/s. 250 of the Act alongwith submissions of the assessee and grounds raised by Revenue and assessee.

6. Issue raised by the assessee is identical and dealt in by the coordinate bench and Special Bench in the case of [2023] 149 taxmann.com 332 (Mumbai - Trib.) (SB) Deputy Commissioner of Income-tax v. Total Oil India (P.) Ltd. and held as under:

“A plain reading of the provisions of section 115-O shows that it creates a charge of additional income tax on any amount declared, distributed or paid by domestic company by way of dividend for any assessment year. The tax so charged is 'in addition to the income-tax chargeable in respect of the total income of a domestic company for any assessment year'. The additional income tax is referred to as 'tax on distributed profits' commonly referred to as 'Dividend Distribution Tax'. It is a tax on 'distributed profits' and not a tax on 'dividend distributed'. The point of time at which the additional income tax is payable by the domestic company is laid down in section 115-O, viz, within fourteen days from the date of— (a) declaration of any dividend; or (b) distribution of any dividend; or (c) payment of any dividend, whichever is earliest. The person liable for payment of such additional tax is 'principal officer of the domestic company and the company'. The payment has to be made to the credit of the Central Government. Section 115-O is thus, a code by itself, insofar as levy and collection of tax on distributed profits is concerned. The non obstante clause in section 115-O 'notwithstanding anything contained in this Act but subject to the provisions of this section (i.e., section 115-O)' is an indication that the charge under the said section is independent and divorced from the concept of 'total income' under the Act. The tax on distributed profits so paid by the company shall be treated as the final payment of tax in respect of the amount declared, distributed or paid as dividends and no further credit therefore shall be claimed by the company or by any other person in respect of the amount of tax so paid. No deduction under any other provision of this Act shall be allowed to the company or a shareholder in respect of the amount which has been charged to tax under sub-section (1) of section 115-O or the tax thereon. This scheme of section 115-O was abolished by the Finance Act of 2002. Section

115-O was reintroduced by Finance Act, 2003 reverting to the simplistic system. Ultimately, DDT was abolished by the Finance Act, 2020 and the Government reverted to the classical system of taxation of dividend. [Para 58]

During existence of section 115-O between 1997 to 2020, one of the amendments to section 115-O by the Finance Act, 2014 was by insertion of sub-section (1B) to section 115-O with effect from 1-10-2014. The amendment was significant, as it provided for grossing up of rate at which the sum paid was taxed in order to ensure that Dividend Distribution Tax (DDT) is levied on a proper base. [Para 59]

In Circular No. 1/2015, dated 21-1-2015, the CBDT has explained the purpose of introduction of these provisions. Hitherto, the domestic companies did not raise any dispute with regard to the rate of tax applicable for DDT and were paying DDT at the rate prescribed under the Act. After the 2014 amendment, domestic companies paying DDT took a stand that since dividend was ultimately taxable in the hands of the shareholder and since section 115-O merely shifts the burden on the domestic company distributing dividend, the rate at which tax has to be deducted, wherever dividend is paid to non-resident shareholders who are tax resident of a country with whom India has Treaty for Avoidance of Double Taxation (DTAA), it would be the lower rate of tax, if so provided in the relevant DTAA. It appears that it was only in October, 2020 that such a point came up in the case of Giesecke & Devrient India (P.) Ltd. v. Asstt. CIT [2020] 120 taxmann.com 338 (Trib. - Delhi) before the Tribunal, where the tax payer company sought to raise the plea for adopting lower rate of tax on dividend payout based on corresponding Treaty provisions; this is indicative of the fact that, perhaps the trigger for debate on adopting the lower rate of taxation on dividend as provided in the DTAA's in preference to the rate prescribed under section 115-O was the amendment of grossing up made by the Finance Act, 2014 with effect from 1-10-2014. [Para 60]

On behalf of the assessee, it was argued that Supreme Court has laid down the principle that DDT under section 115-O is nothing but a tax in the hands of the shareholder because

they have gone by the nature of income in the hands of the shareholder and not in the hands of the domestic company paying dividend. This argument is devoid of any merit. As was submitted by the revenue, the Supreme Court while dealing with the constitutional validity of section 115-O has held that under section 2(24)(ii) dividend is included in 'income' and is thus covered by Entry 82 of List I to Seventh Schedule, 'taxes on income, other than agricultural income'. The argument on behalf of the assessee was that in 'pith and substance' DDT was a tax on agricultural income, which was rejected by the Supreme Court. The law is well settled that a judicial precedent is only 'an authority for what it actually decides and not what may come to follow from some observations which find place therein'. The Supreme Court was not dealing with the nature of DDT as to whether it is tax on the company or a tax on the shareholder. [Para 70]

The charge under section 115-O is on the amount declared, distributed or paid as dividend out of accumulated profits. Intrinsic evidence is available in the form of the structure of the section. The section starts with a non obstante clause overriding the other provisions of the Act, including section 4. The provisions of section 115-O are subject to the other provisions of the section. Section 115-O fixes responsibility for compliance on the domestic company and its Principal Officer. Sections 115P and 115Q provide for machinery provisions for recovery. The chapter XII-D is a complete code in itself on DDT. The provisions of TDS and TCS specifically provide that tax deducted at source and tax collected at source are payments on behalf of the payee i.e., the person liable to pay income tax on the sum paid. It provides for discharge for the payer on payment to the credit of Central Government of the amounts due to the payee. In the event the payer pays excess over and above what he has to pay the payee, he gets a right to recover the TDS or TCS and gets rights of subrogation. Such provisions are absent in the entire scheme of Chapter XII-D of the Act. These features are again an indication that DDT is a charge to tax on the profits of the company and not a charge in the hands of the shareholder or tax paid on behalf of the shareholder by the domestic company. Further, it is also seen from the provisions of section 115-O(3) and (4) the tax on distributed profits so paid by the

company shall be treated as the final payment of tax in respect of the amount declared, distributed or paid as dividends and no further credit therefor shall be claimed by the company or by any other person in respect of the amount of tax so paid and no deduction under any other provision of this Act shall be allowed to the company or a shareholder in respect of the amount which has been charged to tax under sub-section (1) or the tax thereon. These provisions also show that shareholder does not enter the domain of DDT at all. [Para 77]

Another argument that was advanced was that the incidence of tax in the form of DDT is on the domestic company but in effect it is a tax paid on behalf of the shareholder and it is income of the shareholder that is sought to be taxed albeit in the hands of the domestic company. In this regard, the proposition advanced by the revenue was that in fundamental concept of income-tax there is nothing which prevents imposition of immediate and apparent incidence of tax on a person other than person whose income is to be assessed, i.e., the legislature has power to enact provisions imposing tax liability on domestic company on income of shareholder (even if it is construed as income of shareholder without conceding that it was tax on income of the domestic company). [Para 78]

The purpose of DTAA is to avoid double taxation/allocation of taxing rights between two Sovereign nations. If it is held that DDT is a tax not on the shareholder but on the amount declared, distributed, paid as the case may be, by way of dividend and being a tax on income of the company, there is no double taxation of the same income. DTAAs seek to reduce the impact of double taxation which has harmful effects on the international exchange of goods and services and cross-border movements of capital, technology and persons. Bilateral tax treaties address instances of double taxation by allocating taxing rights to the contracting States. Most existing bilateral tax treaties are concluded on the basis of a model, such as the OECD Model Tax Convention or the United Nations Model, which are direct descendants of the first Model of bilateral tax treaty drafted in 1928 by the League of Nations. As a result, while there can be substantial variations between one

tax treaty and another, double tax treaties generally follow a relatively uniform structure, which can be viewed as a list of provisions performing separate and distinct functions: (i) Articles dealing with the scope and application of the tax treaty, (ii) Articles addressing the conflict of taxing jurisdiction, (iii) Articles providing for double taxation relief, (iv) Articles concerned with the prevention of tax avoidance and fiscal evasion, and (v) Articles addressing miscellaneous matters (e.g. administrative assistance). Articles 23A and 23B of the OECD model convention give methods to eliminate double taxation. [Para 79]

A reading of article 10 of the model OECD DTAA shows that Dividends paid by a company which is a resident of a Contracting State, say, India to a resident of the other Contracting State (say, France) may be taxed in that other State (France). However, if the beneficial owner of the Dividend is a resident in France, the tax so charged shall not exceed specified per cent. The first condition is that the non-resident in France should be taxed in India. DDT is paid by the domestic company resident in India. It is a tax on its income and not tax paid on behalf of the shareholder. In such circumstances, the domestic company under section 115-O does not enter the domain of DTAA at all. [Para 80]

If domestic company has to enter the domain of DTAA, the countries should have agreed specifically in the DTAA to that effect. In the Treaty between India and Hungary, the Contracting States have extended the Treaty protection to the dividend distribution tax. It has been specifically provided in the protocol to the Indo-Hungarian Tax Treaty that, when the company paying the dividends is a resident of India the tax on distributed profits shall be deemed to be taxed in the hands of the shareholders and it shall not exceed 10 per cent of the gross amount of dividend. While, making reference in the case of Total Oil India (P.) Ltd. the division bench has made observations, that the dividend distribution tax, not being a tax paid by or on behalf of a resident of treaty partner jurisdiction, cannot thus be curtailed by a tax treaty provision. [Para 81] The above exposition of law is correct as laid down in the case of Total Oil India (P.) Ltd. (supra) is correct. Therefore, the DTAA does not get triggered at all when a domestic company pays DDT under section 115-O. [Para 82]

For the reasons give above, it is held where dividend is declared, distributed or paid by a domestic company to a non-resident shareholder(s), which attracts Additional Income-tax (Tax on Distributed Profits) referred to in section 115-O, such additional income tax payable by the domestic company shall be at the rate mentioned in section 115-O and not at the rate of tax applicable to the non-resident shareholder(s) as specified in the relevant DTAA with reference to such dividend income. Thus, wherever the Contracting States to a tax treaty intend to extend the treaty protection to the domestic company paying dividend distribution tax, only then, the domestic company can claim benefit of the DTAA, if any. Thus, the question before the Special Bench is answered, accordingly. [Para 83]"

7. In view of above findings of Special Bench, we respectfully followed the same ratio as laid down in the case of Total Oil India (P.) Ltd. (supra) and grounds raised by the assessee are dismissed.

8. **In the result, appeal of the assessee is dismissed.**

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9. As far as appeal of the revenue is concerned same is covered in favour of assessee's own case vide ITA (TP) No. 720 (Mum.)/2015, A.Y. 2010-11, ITA No. 7228 (Mum.)/2012, A.Y. 2007-08 and held as under:

"The Tonnage Tax Scheme (TTS) was introduced in the Finance (No. 2) Act, 2004, with the intention of increasing foreign direct investment in the Indian shipping industry and making it globally competitive. The income of a tonnage tax company depends on the tonnage capacity of the qualifying ships and the number of days for which it has been held. A reading of the provisions of TTS in Chapter XII-G suggest that the TTS is a charging section for the income generated by carrying out business of operating ships. Further, it

also prescribes the mechanism for computation of income which is to be brought to tax. Thus, TTS is a presumptive basis of taxation, whereby the taxability of income from qualifying ships is restricted to the framework provided in the TTS. Further, the tonnage tax company is liable to pay taxes even in a case where the financial statements reveal a loss on actual operations. Further, all expenses, deduction, allowances or tax incentives are deemed to be allowed while computing the total income of a company as per TTS. The income thus computed shall be deemed to be the income chargeable to tax under the head 'Profit and gains of business or profession'. Hence, it is clear from the above that actual receipts/revenues earned and expenses incurred are not taken into consideration for the purpose of determining the tonnage income of the company. The entire computation of the tonnage income depends on the tonnage capacity of qualifying ships and number of days it has been held. The transfer pricing provisions envisage computation of income from specified international transactions of receipt or expenditure, of-course with reference to the stated price of such transactions. This is completely in contrast to Chapter-XII-G, where the stated price of the transaction has no relevance to the computation of income of qualifying ships, which is based on the weight of the ship and the number of days it has been held. In other words, the determination 'of income/expense having regard to arm's length price as envisaged in Chapter-X has no relevance, as it would not affect the computation of income liable for taxation in Chapter-XII-G. [Para 6]

Section 115VA starts with 'notwithstanding anything to the contrary contained in section 28 to section 43....' TTS thus provides for computation of income to the exclusion of section 28. In case of an assessee entering into international transactions with associated enterprise, the amount of allowable expenses is required to be determined as per the arm's length principle as per the machinery provisions of Chapter-X (section 92 to section 92F). The amount of allowable expenses determined as per the arm's length principle under section 92(1) would thus be relevant to compute business profits as provided for in sections 28 to 43C. The assessee has opted to be governed by TTS, thus the provisions of

section 115VA would override section 28 to section 43C and hence income has to be calculated with reference to the registered tonnage of the ships and not on basis of net profits depicted in the financial statements or as per the profits adjusted in terms of Chapter-X. In fact, the related party transactions are not relevant for computing income chargeable to tax as per Chapter-XII-G and therefore, the arm's length price determined under transfer pricing provisions would be of no relevance. In other words, determination of income/expense having regard to arm's length price would not alter the computation of income and the taxability of tonnage income of an assessee covered by TTS. [Para 7]

Further, tonnage income is based on the weight of the vessel and not on 'arm's length price'. Section 92C prescribes methods for computation of arm's length price. None of the methods prescribed can have any application to computation of the tonnage income. In these circumstances, the computation provisions of Chapter-X would fail and therefore, application of Chapter-X in such circumstances has to fail. Tonnage tax provisions determine the entire chargeable income earned by the tonnage tax vessel including income from an international transaction with associated enterprise. In contrast, transfer pricing provisions apply only to international transactions entered with associated enterprises. It is not possible to segregate what portion of the final taxable tonnage income is relatable to international transactions with associated enterprises and then apply transfer pricing provisions to such transactions, because the statutorily prescribed formula to compute income under chapter XII-G is based on the weight of the qualifying ship and number of days it has been held, irrespective of whether the ship has been used for a related party or an unrelated party. Once again, therefore, the computation provisions of Chapter-X fail and, in such circumstances, the application of Chapter-X fails. [Para 8]

An identical situation arose in assessee's own case for assessment year 2013-14 where the Dispute Resolution Panel ('DRP') vide its order dated 18-9-2017 held that transfer pricing regulations do not apply to the assessee to the extent of operations carried out through operating qualifying ships where the income is taxed under TTS. [Para 13]

To sum up, Tonnage Tax Scheme, as per Chapter XII-G, is a separate code by itself inasmuch as it provides a self-contained charging provision as well as 'method of computation of income in the chapter, and, the method of computation of income under TTS is not dependent on receipt or expenditure of the assessee. Under Tonnage Tax Scheme, the income has to be computed as per the method prescribed in section 115VG. The income as per Tonnage Tax Scheme is computed on the basis of the weight of the vessel and number of days it is held, irrespective of its revenue realisations and the expenditure incurred for the purpose of the business. Hence, neither the business receipts nor the business expenditure of the assessee has any bearing on the method prescribed for computation of income under TTS as per section 115VG. The tonnage tax scheme, in that sense, is a presumptive method of computation of taxable income which is not dependent on actual receipts and expenditure of the assessee. [Para 14]

In fact, the fallacy in the approach of the Assessing Officer can be gauged from a perusal of the computation of taxable income made in the assessment order. The Assessing Officer has sought to add Rs. 5.41 lakhs as a separate line item captioned as 'Proposed adjustment/addition' in view of the above discussion. Thus, as per the perception of Assessing Officer, chapter-X creates an independent or a separate charge of income, an aspect which is contrary to the judgment of the Bombay High court in the case of Vodafone Services (P) Ltd. v. UOI [2015] 53 taxmann.com 286/231 Taxman 645/[2014] 369 ITR 511 (Bom.), wherein after referring to an earlier judgment dated 10-10-2014 in the case of same assessee reported in Vodafone India Services (P) Ltd. v. UOI [2015] 228 Taxman 25/[2014] 50 taxmann.com 300/368 ITR 1 (Bom.) inter alia, held that chapter X does not contain any charging provision but is a machinery provision to arrive at an arm's length price of a transaction between associated enterprises. [Para 15]

In the final analysis, it is seen that in the instant case, the provisions of chapter-X have been invoked to alter an expenditure, namely the mobilisation and demobilisation charges paid for a qualifying ship, an item which has no bearing on the income as computed under

Chapter XII-G and accordingly the provisions of Chapter-X have no application in computing the income of the assessee chargeable to tax as per Chapter XII-G. [Para 16]

In view of the aforesaid discussion, the transfer pricing regulations do not apply to the assessee in taxed under TTS. [Para 17]

10. In view of the above decisions rendered by coordinate benches on identical question and decision of DRP in assessee's own case for A.Y. 2013-14, we don't find any infirmity in the order of Ld. CIT (A) and the same is confirmed. Grounds raised by the Revenue are dismissed.

11. **In the result, appeal of the Revenue is dismissed.**

Order pronounced in the open court on 29th day of January, 2024.

Sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 29/01/2024

Dhananjay, Sr. PS

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

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BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai