

IN THE INCOME-TAX APPELLATE TRIBUNAL "I" BENCH,
MUMBAI

BEFORE MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER
&
SMT. RENU JAUHRI, ACCOUNTANT MEMBER

ITA No. 2383/Mum/2024
(A.Y. 2021-22)

Celestial Vision Ltd. Closachine R. Agwane, 12,36, Hamani House, Ambalal Doshi Marg, Fort, Mumbai-400001	Vs./ बनाम	ACIT, Int Tax Circle-2(1)(1) 1713, Air India Building Nariman Point, Mumbai-400021
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAICC1160A		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri Vipul Shah
Respondent by :	Shri Anil Sant

Date of Hearing	10.07.2024
Date of Pronouncement	11.07.2024

आदेश / ORDER

PER RENU JAUHRI [A.M.] :-

This appeal is filed by the assessee against the order of the Learned Commissioner of Income-tax (Appeals), Mumbai-56 [hereinafter referred to as "CIT(A)"] dated 06.03.2024 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as "Act"] for Assessment Year [A.Y.] 2021-22.

2. The assessee has raised following grounds of appeal:

"1. On the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) ["CIT(A)"] erred in dismissing the appeal in utter violation of the principles of natural justice without appreciating the fact that a detailed submission was uploaded by the Appellant on the income tax portal, which is duly acknowledged by the



CIT(A) and upholding the action of the Learned Assessing Officer ("Ld. AO") in computing the total income for the subject assessment year AY 2021-22 at Rs. 20,84,28,905/- as compared to returned income of Rs.2,08,42,890/-.

2. On the facts and circumstances of the case and in law the learned CIT(A) erred in dismissing the appeal without intimating the Appellant about the technical issue of not being able to see the contents of the submission. This action of the learned CIT(A) is in utter violation of the guidelines issued by the CBDT from time to time and in violation of the principles of natural justice.

3. On the facts and circumstances of the case and in law the learned CIT(A) erred in assuming that the Appellant is not interested in pursuing the appeal without appreciating that no proceedings in the income tax act can be completed on assumptions and presumptions and that the due opportunity should be granted to the Appellant.

4. On the facts and circumstances of the case and in law the learned CIT(A) erred in upholding the action of the Ld. AO in treating charges received on account of time charter services rendered by the Appellant for its vessels as received for the 'use' of industrial, commercial or scientific equipment, thereby treating the same as "Royalty" under section 9(1)(vi) of the Income Tax Act, 1961.

5. On the facts and circumstances of the case and in law the learned CIT(A) erred in accepting the findings of the Ld. AO that the Appellant had a business connection in India and simultaneously treating the Appellant as the Non-Resident Company. The action of the learned CIT(A) is self-contradictory.

6. On the facts and circumstances of the case and in law the learned CIT(A) erred in not following the judicial precedent of the judgment of the Hon'ble Bombay High Court in the case of Larsen & Toubro Limited v. Director of Income-tax (International Taxation) & Ors. [WP/2235/2008 (Bombay - HC)], where a similar issue has been considered by the Hon'ble High Court.

7. On the facts and circumstances of the case and in law the learned CIT(A) erred in not appreciating that the facts in the case of a. Poompuhar Shipping Cor. Ltd. (2013) 3 taxman com 150 (Madras) are different from the facts of the Appellant's case and hence, the judgment is not applicable.



8. On the facts and circumstances of the case and in law the learned CIT(A) erred in not appreciating the fact that the Ld. AO himself had issued the certificate of the lower deduction for two assessment years by treating the income as eligible u/s 44BB of the Act.”

3. The brief facts of the case are that the assessee is a non-resident company incorporated in the British Virgin Islands and is engaged in the business of charter hire of vessels. The assessee company had filed its return declaring total income of Rs. 2,08,42,890/- for AY 2021-22. The case was selected for scrutiny and after holding that the assessee had business connection in India, the assessment was finalized at an income of Rs. 20,84,28,905/- as royalty income taxable @10% under the Act.

4. An appeal was filed by the assessee before Ld. CIT(A) on 01.03.2023 against the order u/s 143(3) r.w.s. 144C of the Act dated 13.01.2023. The appeal was decided exparte vide order dated 06.03.2024 after holding that there was no compliance to the three notices for hearing issued by the Ld. CIT(A).

5. Before us, the Ld. AR submitted that complete details were submitted on the portal on 02.03.2024, however, due to some technical problem, the same was not visible to the Ld. CIT(A) as also noted in his order. Ld. AR also submitted proof of uploading details/submissions running into 186 pages on the portal on 02.03.2024. Since the assessee's submissions have not been considered by the Ld. CIT(A) before passing the order on 06.03.2024, we set



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aside the order of the Ld. CIT(A) for adjudication on merits after providing due opportunity of hearing to the assessee.

6. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 11.07.2024.

Sd/-

KAVITHA RAJAGOPAL

(न्यायिक सदस्य/JUDICIAL MEMBER)

Sd/-

RENU JAUHRI

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 11.07.2024

अनिकेत सिंह राजपूत/ स्टेनो

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.