

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'G' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
MS PADMAVATHY S, ACCOUNTANT MEMBER**

**ITA No.2258/Mum/2023 to 2263/Mum/2023
(Assessment Year :2012-13 to 2017-18)**

Samson Maritime Limited 201/202, Raheja Xion, Near DCP Zone-III, Dr. Baba Ambedkar Road, Byculla East, Mumbai- 400 027	Vs.	Dy. Commissioner of Income Tax, Central Circle 5(3) Mumbai- 400 021
PAN/GIR No.AAACS9177M		
(Appellant)	..	(Respondent)

**ITA No.2326/Mum/2023 to 2329/Mum/2023
(Assessment Year :2012-13 to 2015-16)**

**ITA No.2343/Mum/2023
(Assessment Year: 2016-17)**

**ITA No.2330/Mum/2023
(Assessment Year: 2017-18)**

&

**ITA No.2344/Mum/2023
(Assessment Year: 2018-19)**

Dy. Commissioner of Income Tax, Central Circle 5(3) Mumbai- 400 021	Vs.	Samson Maritime Limited 201/202, Raheja Xion, Near DCP Zone-III, Dr. Baba Ambedkar Road, Byculla East, Mumbai- 400 027
PAN/GIR No.AAACS9177M		
(Appellant)	..	(Respondent)

Assessee by	Shri Ajay R Singh & Shri Akshay Pawar
Revenue by	Shri Dr Kishor Dhule, CIT DR
Date of Hearing	18/12/2024
Date of Pronouncement	17/03/2025

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeals have been filed by the assessee as well as by the Revenue against separate order of even date i.e. 24/04/2023 passed by CIT(A)-53, Mumbai for the quantum of assessment passed u/s.153A r.w.s. 143(3) for the A.Y.2012-13 to 2017-18.

2. The grounds raised by the Revenue are as under:-

1. *"The appellant craves to leave, to add, to amend and/or to alter any of the ground of appeal if need be."*

2. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is right in deleting the addition made by the AO on account of expenses related to exempt income?"*

3. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is right in relying on the judicial pronouncement of the Hon'ble Special Bench, Delhi ITAT in the case of Vireet Investments while deleting the addition made by the AO on account of expenses related to exempt income, whose facts are completely different from the present case?"*

4. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is right in reversing the non-tonnage income as tonnage income ignoring the fact that the assessee failed to satisfy the first condition specified in 115VD(a) in order to be a*

qualifying ship for the purpose of TTS that the ship should be a sea going ship or vessel ?"

5. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is right in reversing the non-tonnage income as tonnage income ignoring the fact that the assessee has been given preferential treatment under the TTS with a particular purpose in mind which is the promotion of Indian Shipping Industry. If the ship is not put to use for the specified purpose, definitely the same would not become eligible for the preferential treatment?"*

6. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is right in reversing the non-tonnage income as tonnage income ignoring the fact that the sea going vessel as defined in the MSA clearly states that the vessel should be "proceeding beyond specified limits and not merely capable of proceeding beyond". The certification qualifies the ship to be sea worthy but that does not mean that it is proceeding beyond the certified limits in actual usage or is carrying out any cargo or passenger carrying activity though capable of doing so ?"*

7. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is right in reversing the non-tonnage income as tonnage income ignoring the fact that the rules of evidence require the assessee to provide documents or facts which support its stand, if it is in possession of the same, however, the assessee has failed to do the same even after being specifically provided with the seized evidence which establishes its undue tax claim"*

8. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is right in deleting addition on account of victualling expense of Rs. 3,27,27,894/- ignoring the fact that even after giving ample opportunities during search/post search and assessment proceedings the assessee failed to establish with supporting documents that these expense were incurred as part of normal business activity?"*

9. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is right in restricting the disallowance on account of sundry expense and sales promotion from Rs.*

76,61,552/- to Rs. 4,26,954/- ignoring the fact that even after giving ample opportunities during search/post search and assessment proceedings the assessee failed to establish with supporting documents that these expense were incurred as part of normal business activity?"

3. Whereas, assessee has challenged the validity of the assessment order passed by the ld. AO u/s.153A that the additions have made without any incriminating material found during search. In all these years almost common issues are involved arising out of identical finding and similar set of facts therefore, same were heard together and being disposed of by way of this consolidated order.

4. The main issue involved in the Revenues appeal has been raised from ground No.4 to 7, i.e., the denial of Tonnage Tax Benefit by the ld. AO. For the sake of ready reference, appeal for the A.Y.2012-13 is being taken at first.

5. The brief facts are that assessee company is engaged in business of shipping operations since 1994, however, it has been stated that assessee was into this business from the year 1974, The assessee company owns and operates various types of operating platform supply vessels, offshore supply vessels, anchor handling tugs, anchor handling tugs supply vessels, etc. These vessels are owned by the assessee company and are also given on charter for offshore activities ranging. It has been stated that most of the companies were even chartered out to clients (public sector and limited company) for long term tenure. At this point it would be relevant to mention various types of vessels

owned and operated by the assessee, which are illustrated in brief here under:-

Platform Supply Vessel. The PSV is designed for supplying offshore drilling rigs and production platforms with necessary equipment, stores and drilling consumables. These are typically cement, barite and bentonite transported as dry powders; drill water, oil or water based liquid mud, methanol and chemicals for specialized operations. They have Dynamic Positioning (DP) System onboard.

Offshore Support Vessel: OSV are specially ships designed for operating on the ocean, serving multiple purposes. They can serve as platform support, anchor handling, construction, maintenance, and more

Anchor Handling Tug Supply Vessels: AHTS have multiple functions, but are capable of assisting drilling rigs with the handling of mooring chains and anchors, towing rigs, and supply platforms. Due to this work, they need a high bollard pull, reflected in the propeller size, power requirements, and hull shape. Stability is paramount and there must be space for chains and equipment. A stern roller is used to help with the passage of wires and anchors over the stern during operations.

Diving Support Vessel: A diving support vessel is a vessel that is used as a floating base for diving projects. Basic requirements are the ability to keep station accurately and reliably throughout a diving operation, often in close proximity to drilling or production platforms, for positioning to degrade slowly enough in

deteriorating conditions to recover divers without excessive risk, and to carry the necessary support equipment for the mode of diving to be used. These vessel are used for operation and maintenance of SPM (Single Point Mooring)

SPM: Single point mooring (SPM) is a floating buoy/jetty anchored offshore to allow the handling of liquid cargo such as petroleum products for oil tankers. SPM is mainly used in areas where a dedicated facility for loading or unloading liquid cargo is not available. Located at a distance of several kilometers from the shore facility and connected using sub-sea and sub-oil pipelines, these single-point mooring (SPM) facilities can even handle vessels of massive capacity.

6. It is an undisputed fact that since AY. 1995-96 to A.Y. 2004-05, the assessee was covered u/s. 33AC of the Act (then existing provision) which was pertinent to shipping companies and after 2005-06, assessee was covered by Tonnage Tax Scheme (TTS) under Chapter XII-G of the Act. Before us, order u/s.115VP of the Act dated 28/01/2005 has been filed wherein, in pursuance of application filed by the assessee in Form No.65 from 21/12/2004, the department has approved the option for TTS for the period of 10 years and further, w.e.f. A.Y.2014-15 another order u/s.115VP was passed and it continues till date. In all the previous years' assessee's claim under TTS has been allowed and accepted by the department. In support, assessment orders from Assessment Years passed u/s. 143(3), since A.Y.2005-06 has been placed on record before us alongwith different applications

in Form No.65, D.G. Shipping certificate certifying the tonnage of the vessels, etc.

7. For the A.Y.2012-13 assessee had declared total income of Rs.12,52,54,524/- under normal provisions and book profit of Rs.15,23,08,685/-. The assessment order u/s. 143(3) was passed accepting the returned income and TTS benefit. Thereafter, a search and seizure operation u/s.132 was conducted in the case of the assessee and accordingly, notice u/s.153A was issued on 29/12/2018. In the return of income, income which was assessed u/s 143(3) was declared as the return in response to notice u/s.153A. However, in this case assessee has preferred a writ petition before the Hon'ble High Court against the issuance of notice u/s.153A and Hon'ble High Court vide its order dated 29/10/2021 set aside the notice and directed the ld. AO to issue a fresh notice u/s.153A and in pursuance of such direction, fresh notice u/s153A was issued on 18/11/2021.

8. The ld. AO issued a detailed show-cause notice as to why benefit of TTS should be given. The said show-cause notice was based on certain data seized from the computer which were in the form of e-mails and daily activity reports. From there it was gathered that assessee is not engaged in the movement of passengers and cargo and also operation of ships are within the port limits. It is on this premise, ld. AO was of the view that assessee does not qualify for a benefit under Tonnage Tax Scheme. The detailed show-cause notice by the ld. AO on

11/02/2021 has been incorporated from pages 5-23 in the assessment order which also contains certain e-mails and other activity reports. First of all, he rejected assessee's plea that these-mails and documents found from the computer does not constitute any incriminating material because these are day to day reports and activities of the business of the assessee and nowhere it has been found that assessee has been carrying out any activities of transportation of cargo or passengers which is core activity to qualify for TTS benefit. His reasons have been elaborate in detail by the ld. AO in the assessment order as been incorporated from pages 43-46. Thereafter, ld. AO proceeded to analyse assessee's submissions and explanation and denied the benefit of Tonnage Tax Scheme.

9. The relevant extracts of the finding of the conclusion drawn by the ld. AO after rejecting various explanation of the assessee are as under:-

"5.2.2.1. According to the assessee it is registered under the MSA as required u/s 34 of MSA and therefore it becomes a qualifying ship for the purposes of the TTS. It draws upon Sec. 20 of the MSA to say that the certification is provided only for sea going ships and the definition of sea going vessel provided in Sec. 3(41) of MSA will not apply to Sec. 34 of MSA. Basically the assessee wishes to say that just because it has received a certificate as a sea going ship, it is entitled for the TTS, irrespective of what it does. This is absolute fallacy. The provisions of Section 115VD of the Act, clearly specify the conditions which make the ship a qualifying ship for the purposes of the Tonnage Tax Scheme The first condition specified in 115VD(a) is that the same should be a sea going ship or vessel which has a net tonnage of 15 tons at least. The second condition is that the same should have a valid certificate. That implies, the primary condition is that the ship should be a sea going vessel and to say that the same is to be

ignored just because it satisfied the second condition would be fallacious argument. To take the argument further, any ship or vessel would be eligible for the tonnage tax scheme if it is certified and is not falling in the negative list. That would need an understanding whether there is any difference between "ship/vessel" and "seagoing ship/vessel". The guidance is provided by the General Clauses act which defines "ship" and 'vessel'. "Ship" has been defined in section 3(55) of the General Clauses act, 1897 as every description vessel used for navigation and not exclusively propelled by oars whereas "vessel" has been defined in section 3(63) of the same Act to include any ship/boat/vessel used for navigation. That implies, navigation anywhere may be a feature of the ship but to be 'seagoing', it has to satisfy certain additional qualifications and that is "proceeding beyond the smooth/partially smooth waters" or proceeding beyond the port limits. And seized evidence conclusively establishes that the assessee doesn't satisfy the same.

5.2.2.2. The assessee has been given preferential treatment under the TTS with a particular purpose in mind which is the promotion of Indian Shipping Industry. If the ship is not put to use for the specified purpose, definitely the same would not become eligible for the preferential treatment. The actual use of the ship is a factor that has to be considered for any kind of claim that is to be allowed. Going by the argument of the assessee, if it starts using the ship for office purpose or for hotels and restaurants, it would still remain eligible for TTS because it has got a certificate. In fact, the certificate that the assessee refers to simply makes it sea worthy or capable of going beyond a port limit or to undertake a sea voyage. But it does not mean if that it is actually doing the same. If the actual activity is performed within a specified beat limits, the certification is not enough for it to be eligible under the TTS. In fact even if a certificate exists under the MSA, the assessee needs to be certified again by the Jt.CIT of Income Tax, to be proved eligible for the TTS and therefore, to say that the department has no right to query further if flaunts the certificate under MSA is not legally tenable. Further, if the department finds that the assessee has abused the provisions of TTS by including its non tonnage tax activities under TTS, then it has the right to exclude it from the same as well. To go by the argument of the assessee that it is tonnage tax company and therefore, there is no

other verification to be done, would make Sub Sec. 2(ii) of 115VZB of the IT Act, redundant. Moreover, the sea going vessel as defined in the MSA clearly states that the vessel should be "proceeding beyond specified limits and not merely capable of proceeding beyond". The certification qualifies the ship to be sea worthy but that does not mean that it is proceeding beyond the certified limits in actual usage or is carrying out any cargo or passenger carrying activity though capable of doing so. The assessee further states that the IT department should not sit in judgment over the legitimacy of certificates or approvals issued by authorities and as cited the certificates recognized for the purposes of claims u/s 80IB of the Act, 80HHC of the Act, export oriented undertakings etc to support its stand. Going by the understanding of the assessee, there can be no verification of claims of deduction or exemption by the income tax department if the technical certifications are available from respective authorities which is not only actually incorrect but also legally untenable. The certifications are essential documents to carry out certain activities and sometimes constitute prima facie proof. But whether a tax benefit is being claimed unduly is for the department to verify and therefore, we do have the verifications and the remedial provisions including cancellation/ disallowance of claim for the deductions and exemptions in the IT Act itself. To say that if the Charity Commissioner has not found faults with a Charitable Trust, the same cannot be denied exemption even if the actual activities are found to be in contravention of Sec. 12A of the Act would be absurd. To say that the project is approved by the local authority is enough to prove that the assessee is eligible for claim u/s 80IB of the Act, would also be incorrect. The claim of the assessee falls in this league as it says that if MSA has granted registration, the same is the final word for TTS.

5.2.2.3. The assessee has further tried to argue that the sec 3(41) of MSA has got no relevance as far as TTS is concerned and is relevant only for the purposes of navigation. It may be stated that the certification itself is relevant to navigation and that too the entire shipping business. In fact, the purpose of introduction of TTS was to ensure that the Indian Shipping Industry competes globally and the activity of shipping is regulated under the MSA. Therefore, starting from the registration till the terminology, references have been derived from the MSA. To say that the basic

definition should be ignored from that Act, but the certification portion should be derived from that is nothing but a self serving argument of convenience,

5.3. It may be noted from the above arguments that the assessee has not countered the fact that its vessels are operating within the port limits or are of such a nature that they are not carrying cargo or passengers. It has not countered the fact that the different activities in the form of the services that it renders will not qualify under TTS or otherwise and has merely argued that it has got a certificate and hence is eligible. Not a single shred of evidence has been provided to say that the ships have operated outside the specified limits or are sea going vessels carrying passengers or goods or performing services proceeding beyond the port limits. The rules of evidence require the assessee to provide documents or facts which support its stand, if it is in possession of the same and the assessee has failed to do the same even after being specifically provided with the seized evidence which establishes its undue tax claim.”

Accordingly, the receipt of Rs.5,54,95,103/- was treated as not covered under Tonnage Tax and was taxed accordingly.

10. Before the ld. CIT (A) on merits, assessee has given detail / submissions, and rebuttal on various findings and allegations of the ld. AO which has been summarized in the appellate order from pages 17-22. Apart from that, ld. CIT (A) has incorporated the reply of the assessee in response to the detailed notice issued by the ld. AO u/s. 142(1). Ld. CIT(A) after considering the reasoning given by the ld. AO as well as the submissions made by the assessee and after analysing Section 115VD which defines ‘qualifying ship’, observed and held as under:-

6.5.4 Thus, the definition laid down above is a very comprehensive one. As regards "sea going ship", the same is

defined in S. 115V(1) as "seagoing ship means a ship if it is certified as such by the competent authority of any country After a careful consideration of the definition, I find that all the conditions laid down in S.115VD (a), (b), (c) stand fulfilled. There is no finding in the assessment order that the vessels operated by the appellant are of less than 15 net tonnage or that they are not "seagoing ship" as per the definition laid down in the Act. The contentions that vessels should be proceeding beyond specified limits and not merely capable of proceeding beyond or that they should be carrying any cargo or passengers do not emanate from the definitions. In fact, S.115VD clearly lays down certain exclusions.

According to the appellant, "the ships are involved in the movement of men and materials from shore to marine related activities. The vessels of the appellant do not fall under any of the exclusions. It is also noted that dredgers were initially specifically excluded under TTS but included under TTS w.e.f. AY 2006-07. Dredgers are most certainly not Involved in carrying passengers or cargo. Thus, this supports the viewpoint that carriage of passengers or cargo is not the criterion, but fulfillment of the conditions laid down therein in the Act is.

6.5.5 Once the appellant is a "Qualifying Company" and the vessels operated by it fulfill the condition of "Qualifying Ship", the benefit of TTS cannot be denied, in my considered opinion. It is noted that in terms of S.115VI(6), the Act itself prescribes that a ship which is not a qualifying ship shall result in income being determined under normal provisions. The appellant is also seen to have offered its income partly under TTS and also under non-TTS, which is certified by the auditor in Enclosure B to Form 66. This being the case, the appellant cannot be denied being taxed under TTS

.....

6.5.7

One of the contention of the AO is that Shri Suresh Samant (promoter director of the appellant) in his statement u/s.132(4) stated in reply to qn.12 "Both Samson Maritime Ltd and Underwater Services Co Ltd are not a cargo carrying company and

therefore tonnage tax scheme is not applicable to both these companies". It is the claim of the appellant that Shri. Suresh Samant has subsequently filed a retraction. Nevertheless, an admission on an issue which is legal in nature can always be re-examined if the provisions of the Act are otherwise satisfied. The statement of Shri. Suresh Samant is on the premise of it being a "non-cargo company", for which a detailed finding has already been given while deciding this issue. Hence, the statement of Shri. Suresh Samant is not the final determinant of eligibility for TTS, as far as this case is concerned.

6,6. In view of the above discussion, the hiring income from time charter of vessels given on hire to M/s. USCL and other companies is eligible for tonnage tax. Accordingly, the action of the AO treating the hiring income as normal business income is reversed."

11. We have heard both the parties at length, perused the relevant finding given in the impugned orders as well as relevant material referred to before us at the time of hearing. The Tonnage Tax Scheme under Chapter XII-G was introduced from A.Y. 2005-06 and prior to that Section 33AC of the Act was governing the various deductions from the computation of income granting benefits for the shipping business. The assessee company was always found eligible for deduction u/s. 33AC from A.Y.1995-96 to A.Y. 2004-05; and thereafter, from A.Y.2005-06 onwards assessee was granted benefit of Tonnage Tax Scheme after considering the Form No.65, certificate of Registration under the Merchant Shipping Act, 1958, certificate of international tonnage issued under the provision of convention on the Tonnage Measurement of Ships, 1969, and other statutory requirements and compliances. It is after examining these details, order u/s.115VP of the Act has been passed wherein assessee's ships

were held to be 'qualifying ships' and option for exercising Tonnage Tax Scheme u/s.115VP was approved. The approval u/s.115VP still continues which makes assessee eligible for TTS. It is also not in dispute that assessee ships are registered and has obtained license under Merchant Shipping Act 1958 by Director General Shipping wherein assessee's ships/ vessels have been certified as "qualifying ship'. Apart from certificate from DG shipping, various other necessary approvals have been obtained including from the Income Tax department from time to time. The main case of the ld. AO is that the first condition specified u/s.115VD(a) that same should be 'sea going ship' or vessel and the second condition that same should have a valid certificate for 'sea going ship' does not fulfill, because assessee's ship cannot be reckoned as 'sea going'. According to him the vessels of the assessee are operating within the port limits. Another important point raised by the AO to deny TTS benefit is that assessee' ship or vessels are not carrying any cargo or passengers and therefore, assessee is not entitled to TTS.

12. Thus, what needs to be seen, whether the conditions of 'qualifying ship' is satisfied in the case of the assessee according to the provision of the Act. First of all, Section 115V provides definition describing 'qualifying ship' and sea going ship in the following manner:-

(a)....

(b)....

(c)....

(d).....

(e)....

(f).....

(g)....

(h) "qualifying ship" means a ship referred to in section 115-VD.

(i) "seagoing ship" means a ship if it is certified as such by the competent authority of any country;

(k) "tonnage tax activities" means the activities referred to in sub-sections (2) and (5) of section 115-V-I"

13. The qualifying ship has been defined in Section 115VD which reads as under:-

115VD. For the purposes of this Chapter, a ship is a qualifying ship if—

(a) it is a seagoing ship or vessel of fifteen net tonnage or more;

(b) it is a ship registered under the Merchant Shipping Act, 1958 (44 of 1958), or a ship registered outside India in respect of which a licence has been issued by the Director-General of Shipping under section 406 or section 407 of the Merchant Shipping Act, 1958 (44 of 1958); and

(c) a valid certificate in respect of such ship indicating its net tonnage is in force,

but does not include—

(i) a seagoing ship or vessel if the main purpose for which it is used is the provision of goods or services of a kind normally provided on land;

(ii) fishing vessels;

(iii) factory ships;

(iv) pleasure crafts;

(v) harbour and river ferries;

(vi) offshore installations;

(vii) [***]

{ *** prior to 1.04.2006 it included "dredgers"}

(viii) a qualifying ship which is used as a fishing vessel for a period of more than thirty days during a previous year.

14. Thus, pre-conditions which have been provided for a ship to be a 'qualifying ship' are that;

- *firstly*, it is a sea going ship or vessel of 15 net tonnage or more;
- *secondly*, ship is registered under the Merchant Ship Act, 1958 or if any ship registered outside India, the license has to be issued by the Director General of ship; and
- *lastly*, it should have a valid certificate in respect of such ship indicating its net tonnage in force, that is, the sea going ship should be certified by the competent authority about the tonnage.

The "seagoing ship" has been defined, a ship if it is certified as such by the competent authority. If the ship or vessel is certified by the competent authority then it is entitled to qualify under TTS.

15. Then there is a negative list which has been provided under the head **"but does not include"**..... Prior to 01/04/2006, the "dredgers" were also excluded from the negative list which *inter alia* means that 'dredger' now qualifies as a ship if it is a sea going vessel of 15 net tonnage or more and other conditions are also satisfied. This amendment itself dislodges the logic of the AO that shipping activity is only confined to carrying cargo and passengers. Ergo, if three conditions mentioned in Section 115VD are satisfied, then it is a 'qualifying ship' and any

income from qualifying ship would be entitled for computation of tonnage income. In the later part we will deal with the provision of 'relevant shipping income' to be determined in Section 115 VI.

16. Ld. CIT DR before us first of all pointed out about the nature of the vessels operated by the assessee as incorporated by the ld. AO in his show-cause notice at pages 5-7 of the assessment order and has concluded that none of the ships of the assessee are involved in the shipping of cargo from one port to another port. He submitted that basically these vessels are in the nature of tug boats, boat and harbor tugs, platform supply vessels, SPM terminal and O & M services and anchor handling tug supply vessels. The activities of these ships are like towing of another ship, vessel or structure, some kind of marine assistance like the anchor handling or operation and maintenance services provided to installations. None of these activities actually involved navigation in high sea, which involves the transport of passengers and goods beyond the inland / smooth / partially smooth waters, i.e., in high sea. Many of the vessels of the assessee are located within the port limits and hence, it cannot be reckoned as ship proceeding beyond the smooth / partially smooth waters which is an essential condition for eligibility under TTS. He further submitted that Section 115VI provides that relevant shipping income should be either its profit from core activities or its profits from incidental activities. Incidental activities have been defined in Rule 11 and the details of which has been given in Form No. 65. The incidental activities include

maritime consultancy charges, income from loading and unloading of cargo, ship management fees, and maritime execution / recruitment fees. The activities of the assessee are neither falls within the core nor into incidental activities. Accordingly, he strongly supported the order of the ld. AO.

17. On the other hand ld. Counsel for the assessee submitted that what is required to be seen is whether assessee vessels are qualifying ship or not? There is absolutely no dispute that assessee ship or vessels are more than 15 net tonnage and in support, he drew our attention to various certificates issued under the Merchant Ship Act, for the vessels and pointed out that in so far as tonnage is concerned, all the vessels were far higher tonnage of 15 tons. Secondly, it has been certified and registered as a sea going ship under the Merchant Shipping Act and also all the vessels had a valid certificate from the DG shipping. The activities of the assessee include hiring income which was mainly time charter of vessels given on hire to various entities. One important fact brought on record and also been discussed by the Ld. CIT(A) that assessee has qualified its income from shipping activity, partly under tonnage tax scheme and partly under non-tonnage tax scheme which has been duly certified by the auditor as per Enclosure B to Form 66. Nowhere, the assessee's Form 66 which is a mandatory requirement in terms of Section 115VI (6) has been rejected. Thus, if any income does which does not qualify under section 115VD or any income under section 115VI assessee has offered as normal business

income and no TTS benefit has been taken. Apart from that assessee's ships are involved in the movement of men and materials from the shore to marine related activities and it does not mean that it has not deployed the vessels in the sea waters. Further, once in all the earlier years assessee has been given the benefit of tonnage tax scheme then, no different view can be taken. In the so called e-mails and other seized documents, the only inference which ld. AO has drawn that it is running from port to port and not carrying out any passengers in cargo. This cannot be the criteria for denying benefit of tonnage tax scheme. Once there is no such restriction provided in the Act, the ld. AO cannot incorporate his own conclusion. Once operation of ships includes chartering of ships on time charter basis, same is also recognised as shipping income. Such a narrow interpretation to contend that operation of shipping core activity of ship only means carrying of passengers or cargo cannot be accepted.

18. Here in this case, we find that it is not in dispute that assessee's vessel / ships fulfill the conditions provided in Section 115VD, i.e., all its sea going ship or vessels are more than 15 net tonnage. Secondly all the vessels are registered under MSA and have a valid certificate in respect of ship undertaking its net tonnage. It is also not the case here that any of the assessee's vessel or ship falls in the negative list of Section 115VD. Thus, the primary condition for applicability of tonnage tax scheme is fully satisfied. As regards the contention of the ld. DR that, assessee's vessels cannot be treated as a 'sea going ship', because, sea going ship means beyond inland / smooth /

partially smooth waters, that is, it should only operate in high seas. We are unable to appreciate how this inference has been drawn by the ld. AO that assessee's vessel / ships are running in inland / smooth waters and not on the sea. If assessee's vessel are given on time charter or involved in supply off shore drilling rigs and production platforms or equipment and for carrying out these equipments to the sites at high seas or to the ships docked on the port or anchored in the sea near coastal region, engaged in anchor handling, construction and maintenance in the sea, and carrying materials from one place to another within the coastal sea water or anchor handling or tug supply vessels for the bigger ships or handling SPM for liquid cargo like petroleum products for all tankers, etc to the ships or ferrying from port to sea, then how can it be said it is not operating in sea. The smooth waters and inland waters here is to be inferred as river water or inland water bodies not connected to sea. Coastal sea water can also be reckoned as inland waters connected with the ports or coast. All these activities are carried out in water of the sea. Even if it is inland waters of the sea then also how it can be treated if it is not a sea going ship. Thus, when assessee's vessels are certified as sea going ship by the competent authority under the statute and also holds the tonnage certificate and duly certified by the DGA shipping under MSA and also approved by the Income Tax Department, then it cannot be disqualified by the AO on his own reasoning and interpretation. Nowhere the language of the statute gives any such condition or definition as

inferred by the AO. AO cannot give a restrictive meaning otherwise provided under the Act.

19. Coming to the definition of relevant shipping income, Section 115VI provides that relevant shipping income of a tonnage tax company means profit from core activities which includes activities from operating qualifying ships and other ship related activities like shipping contracts in respect of earning from pooling arrangements; contracts of affreightment; specific shipping trades, being- (i) on-board or on-shore activities of passenger ships comprising of fares and food and beverages consumed on board; (ii) slot charters, space charters, joint charters, feeder services, container box leasing of container shipping etc., The incidental activities includes maritime consultancy services, income from loading and unloading of cargo, ship management fees or remuneration received and maritime execution and recruitment fees. For computing income, audit report has to be filed u/s.115VW which provides for filing of Form No.65 duly certified by the Auditor, which here in this case, auditor has duly filed and certified the tax tonnage income. Nowhere, it has been disputed or brought on record that assessee's income is not from time charter. In fact there is a categorical finding by the Id. CIT (A) wherein hiring income from time charter of vessels given on hire to M/s. USCL and other companies have been given. Such hiring income from time charter falls in the category of core activities. It is not necessary that only carrying any cargo passengers alone is to qualify for the TTS. What is to be required to be seen before giving benefit of

TTS is that, it should be a 'qualifying ship' and Section 115VI defines the relevant shipping income to compute the tax tonnage for which Auditor has to certify the relevant shipping income under the head 'tax tonnage' whether it is qualified as a tax tonnage or does not qualify. Here in this case, assessee has also offered its income partly under TTS and also under non-TTS which is duly certified by the auditor in Enclosure B(2) in Form 66. Accordingly, we hold that the claim of the assessee qua the income for tax tonnage scheme has to be allowed and to that extent finding of the ld. AO is reversed and order of the ld. CIT (A) is confirmed. Thus this issue is decided in favour of the assessee.

20. Another issue raised in department's appeal is with respect to victualling expenses which ld. AO had added sum of Rs.3,27,27,894/- and ld. CIT(A) has deleted the same. Victualling expenses in shipping industry are basically expenses incurred towards Tea, Coffee, snacks, lunch and dinner for crew on board and are paid on per man day basis at fixed rates. These victualling expenses in the case of crew on board on the vessel are borne by the company. The ld. AO had made the disallowance on the ground that assessee has not made any submissions in compliance with the notice u/s.142(1) and also did not file any details in support of its claim and accordingly, he has added the entire amount debited to the profit and loss account for sum of Rs.3,27,27,894/-. The ld. CIT(A) has deleted the addition on the ground that assessee has furnished vessel-wise monthly summary of details and the cash expense are

negligible which is only to the amount of Rs.2,30,548/- out of total expenses of Rs.3,27,27,894/- and none of the expenses have reached the limit of Section 40A(3).

21. After hearing both the parties and on perusal of the material placed on record, it is seen that these expenses incurred towards beverages, snacks, lunch and dinner for the personnel / crew on board of the vessel at high sea round the clock. These payments are made for man day at fixed amount to meet the victualling cost. The purchase of victualling materials are made directly from the vendors and delivered on board to the vessels and the funds are transferred to the bank accounts of the agencies appointed for marine base office activities. The agents were appointed to withdraw the amount from the bank account and cash advances to the base Managers / vessel masters to use cash for purchasing victualling material from the vendors. It is also seen that assessee has furnished vessel-wise monthly summary of material details which has been placed in the paper book from pages 125-128 and pages 446-450. It is also seen that before the ld. AO, detailed submissions in respect of said expenses were also made vide letter dated 30/11/2019 for the A.Y. 2016-17 which is also impugned before us. The said submission also contained the attendant sheet of the crew on board and the amounts paid to them alongwith documentary evidences. Once these expenses are part of a normal business activity and is prevalent in the shipping industry where the company provides food, snacks and beverages to the crew members on board, it cannot be held that it is for non-business

purpose. Accordingly, we upheld the order of the ld. CIT(A) in deleting the said addition.

22. Next issue relates to disallowance of sundry and sales promotion expenses of Rs.76,61,552/-. Ld. AO noted that assessee has debited sundry expenses and sales promotion expenses for which assessee has not filed any submissions. On the contrary, before the ld. CIT (A) it was pointed out that assessee had submitted the details vide letter dated 15/12/2021 wherein note on sundry expenses and sales promotion expenses alongwith summary of the expenses incurred during the year was submitted. The ld. CIT(A) has noted that assessee has *suo-moto* disallowed 50% of the expenses in the return of income on estimate basis because meticulous records were not maintained for these expenses. The details of sundry and sales promotion expenses debited and disallowed in the return of income was as under:-

Particulars	Sales promotion & sundry expenses				
	A.Y. 2012-13	A.Y. 2013-14	A.Y. 2014-15	A.Y. 2015-16	A.Y. 2016-17
Amount booked	76,61,552	64,79,915	74,14,478	80,40,738	106,90,524
Disallowed in Return	38,30,775	32,39,959	37,07,240	40,20,370	53,45,263
Added by AO	76,61,552	6,47,79,916	74,14,478	80,40,738	53,45,263
Disallowed by assessee in Non-Tonnage Income as per ROI	4,26,954	3,50,796	9,09,722	5,36,582	5,42,737

Amount to be further disallowed if AO's view is upheld in respect of 100% disallowance and assessee is entitled for tonnage tax scheme	4,26,954	3,50,796	9,09,722	5,36,582	5,42,737
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23. The Id. CIT (A) held that since assessee has not been able to conclusively establish that these expenses were incurred wholly and exclusively for the purpose of business, however, he restricted the disallowance only to that part of income which is not eligible to be taxed under TTS and he also noted that Id. AO has made a mistake by including one extra digit in A.Y.2013-14 erroneously. Accordingly, he restricted he disallowance in the following manner:-

Particulars	Sales promotion & sundry expenses				
	A.Y. 2012-13	A.Y. 2013-14	A.Y. 2014-15	A.Y. 2015-16	A.Y. 2016-17
Disallowance by AO	76,61,552	6,47,79,916	74,14,478	80,40,738	53,45,263
Disallowance confirmed	4,26,954	3,50,796	9,09,722	5,36,582	5,42,737

24. After hearing both the parties and on perusal of the material placed on record it is seen that these expenses mainly comprise of complimentary gifts and presents to business associates, however, no details were given. The assessee had suomoto disallowed 50% and the Id. Counsel sated that disallowance has to be restricted only to that part of income,

which not eligible to the part under TTS. We do not find any infirmity in the order of the Id. CIT (A) because even if the disallowance has to be made then, the same has to be restricted to the part of income which is completed under those incomes which is not eligible to be taxed under TTS. Thus, any way disallowance has been confirmed albeit, it has been restricted to be disallowed from the income from non-TTS income. Accordingly, the ground raised by the Revenue is dismissed.

25. In so far as various issues raised with regard to validity of assessment u/s.153A on the ground that there is no incriminating material, the same is treated as academic because all the additions made by the Id. AO has been deleted on merits. Accordingly, the appeal of the Revenue as well as appeal of the assessee is dismissed.

A.Y.2013-14

26. In so far as appeals pertaining to A.Y.2013-14, the grounds raised by the Revenue pertains to denial of tonnage tax benefit, sales / disallowance of promotion and sundry expenses and vitualling expenses which we have already decided in the appeal for the A.Y.2012-13. Accordingly, in view of the above finding given therein, the grounds raised by the Revenue are dismissed. In assessee's appeal, ground No.1 relates to validity of assessment u/s.143A which we have dismissed as infructuous in A.Y.2012-13 and other ground relates to part disallowance of sales promotion, sundry expenses which also we have decided

and accordingly, both the grounds raised by the assessee are dismissed.

27. The next ground which has been raised pertains to interest of FD margin not allowed as tonnage income of Rs.4,25,35,359/- The brief facts are that the company is required to maintain margin deposits with the banks in connection with the borrowings made for acquisition of qualifying ships and for issuance of performance guarantees to the charters of the ships. On such margin deposits, the company earns interest. While filing the return of income u/s 153A of the Act, the interest income on FD margin was considered as part of Tonnage income as the netting effect of interest earned and interest paid is already a part of tonnage income calculation.

28. The ld. AO while passing the order u/s 153A of the Act did not provide netting off of the interest expenses which was part of tonnage income calculation.

29. The ld. CIT(A) further upheld the ld. AO's order and considered the said income as income from other sources.

30. Before us ld. Counsel submitted that the loan facility agreements, for the purpose of acquisition of qualifying ships, signed with the borrower banks mandate the assessee to place Margin Deposits as a condition for the loan. Further in order to issue bank guarantees to the charterers, the banks mandate providing margin deposits. In support of the claim, the assessee had demonstrated the nexus of fund deployed for the business

purpose i.e. for acquiring ships/vessels and for placing performance guarantee margin vis a vis each contract with banks and financial institution. The ld. AO has not considered these documents to decide this issue. He further submitted that the margin deposits are integral to part of the core activity of arranging financial resources for operating qualifying ships and they do not constitute an independent source of income but rather an inseparable part of assets deployed for the operation of qualifying ships. Further, without providing the bank guarantees, the charterers would not move ahead with the charter of ships thus impacting the revenue. Since the income of the assessee is chargeable to tax as per tonnage tax scheme, the said presumptive income assumes that all the expenses have been subsumed in the calculation and will have no impact on calculating the taxable income. Therefore, any interest income which can be directly related to interest expenses are to considered after providing the netting off of interest income from interest expenses.

31. Without prejudice he submitted that if interest income has to be taxed separately as 'income from other sources' then, interest expenses should also be allowed under same head of 'income. In support, he relied upon decision of Shipping Corporation of India vs. Addl. CIT reported in (2024) 164 taxmann.com 391 (Mum. Trib).

32. Ld. CIT DR submitted that on one hand assessee is contending the interest income and expenses pertain to income

and deduction under tonnage scheme and on the other wants deduction of interest. This stand cannot be accepted.

33. After considering the rival submissions, we find that assessee has considered the interest income on FD margin as part of tonnage income as the effect of interest earned and interest paid was already part of tonnage interest calculation. The ld. AO has not provided netting of interest expenses which was part of tonnage interest calculation. The assessee as a part of loan facility agreements for the purpose of acquisition of ships signed with the borrower banks mandate that it has to place margin deposits as a condition for loan and further in order to issue bank guarantees to the charters, the banks mandate providing margin deposits. Though there is a nexus of fund deployed for the business purpose, i.e., for acquiring ships and for placing performance guarantee margin vis-a-vis each contract with the banking and financial institutions. Since these margin deposits are integral part of core activities of operating qualifying ships and it is the part of the business requirement to provide the bank guarantees. However the part of the assessee's income is chargeable to tax under tonnage tax and where tax is levied under presumptive rate, accordingly, it presume that all the expenses has been subsumed in the calculation and will have no impact on calculating the taxable income. Thus, any interest claimed for the calculation for tonnage tax scheme cannot be allowed because once the presumptive tax is applicable on tonnage tax then, no separate interest expenses can be allowed. The interest income has to taxed separately under the head

income from other sources and any interest expenses which is directly related to interest income has to be netted and accordingly, we direct the Id. AO to net off interest income from interest expenses and balance should be taxed as income from other sources. In the result, ground No.3 raised by the assessee is partly allowed.

A.Y.2014-15

34. In A.Y.2014-15 in the Revenue's appeal, same three issues have been raised i.e. denial of tonnage tax benefit, disallowance of sales promotion and sundry expenses and victualling expenses. Since all these issues have been decided in favour of the assessee in the appeal for A.Y.2012-13, the appeals raised by the Revenue are dismissed.

35. In so far as assessee's appeal in ground No.1 relates to validity of assessment u/s.153A, the same has been dismissed as infructuous and in so far as sales promotion and sundry expenses, the same is dismissed in view of our finding given in A.Y.2012-13.

36. Ground No.3 relates to interest on FD margin not allowed as tonnage income, same has been decided against assessee however, in view of our direction netting off the interest expenses from the interest income is to be allowed. Accordingly, ground No.3 is partly allowed.

37. In the result, appeal of the Revenue is dismissed and appeal of the assessee is partly allowed.

A.Y.2015-16

38. In A.Y.2015-16 in the Revenue's appeal same three issues have been raised, i.e., denial of tonnage tax benefit, disallowance of sales promotion and sundry expenses and victualling expenses. Since all these issues have been decided in favour of the assessee in the appeal for A.Y.2012-13, the appeals raised by the Revenue are dismissed.

39. In so far as assessee's appeal in ground No.1 relates to validity of assessment u/s.153A, the same has been dismissed as infructuous and in so far as sales promotion and sundry expenses, the same is dismissed in view of our finding given in A.Y.2012-13.

40. Ground No.3 relates to interest on FD margin not allowed as tonnage income, same has been decided against assessee however, in view of our direction to net off the interest expenses from the interest income is to be allowed. Accordingly, ground No.3 is partly allowed.

41. In the result, appeal of the Revenue is dismissed and appeal of the assessee is partly allowed.

A.Y.2016-17

42. Now coming to the appeal for the A.Y.2016-17, in so far as Revenue appeal is concerned, exactly similar grounds have been raised with respect to denial of tonnage tax benefit, disallowance of sales promotion and sundry expenses, victualling expenses. In

view of our finding given in the aforesaid appeals, these grounds are dismissed.

43. In assessee's appeal, ground No.1 relates to sales promotion, sundry expenses of Rs.5,42,737, same is also dismissed in view of our finding given in the aforesaid appeal.

44. In ground No.2, assessee has raised disallowance made for deemed dividend u/s.22 (2) (d) arising out of order of the ld. CIT (A).

45. The brief facts qua the issue are that the assessee has an 100% overseas subsidiary company based out of Singapore i.e. Global Samson Offshore Pte Limited (GSOPL). GSOPL during 2016-17 had effected reduction of share capital as under:-

Particulars	No. of Shares	Amount (INR)
Total Shares held by SML in GSOPL (of SGD 1 each) as on 1 st April 2015	59,64,576	27,81,12,532
Total Shares Extinguished in AY 2016-17	25,11,400	11,71,00,000
No. of Shares left after reduction of Share Capital as on 31 st March 2016	34,53,176	16,10,12,532

46. In support, statutory documents of Singapore pertaining reduction of share in capital in the form of copy of Board Resolution of GSOPL dated 18/03/2016 has been filed alongwith acknowledged copy of resolution filed with Singapore

Government and business profile post reduction in share capital. Table provided working of share capital and extract of financial statement of GSOPL for the F.Y.2015-16 was also filed. Apart from that further documents were filed like, statutory documents of the assessee, i.e., promising maritime limit, FIRC copy of receipt of funds of USD 2 million for the purpose of remittance alongwith bank statement crediting the said money, acknowledged copy of form, Overseas Direct Investment (ODI) part III comprises with the authorised dealer i.e. Standard Chartered Bank for submission to the RBI alongwith financial statement as on 31/03/2016 seeking reduction in number of shares have been filed. The assessee in the original return of income has duly shown said reduction of share capital in the capital gain schedule as the assessee company was of the view that reduction in share capital does not entitle any income by way of dividend and more particularly deemed dividend. Thereafter, the assessee company after seeking opinion from legal counsel to see appropriateness of the position taken in the original return of income decided to offer Rs.1,02,48,576/- as 'income from other sources' as dividend income in order to avoid any litigation with the Income Tax Department. The second impact was taken in the capital gain schedule wherein, loss was claimed. Despite details submissions made before the ld. AO, ld. AO has not given any finding.

47. Before the ld. CIT (A), detailed submissions were made, however he held that the facts have not been brought out adequately by the assessee and it appeared that assessee did not

offer certain income in the original return, but subsequently, as revised return of income and offered dividend income u/s. 2(22)d under the head 'income from other sources'. However, instead of deciding the issue, he did not entertain the claim of the assessee.

48. After hearing both the parties, we find that it is not in dispute that there is a reduction in share capital being reduction in number of shares, the assessee held in its subsidiary and the inflow of funds has arisen due to return of capital invested in subsidiary. This controversy can be explained by way of an example. If 1000 shares of face value of USD 1 was originally invested and during the year 300 shares of USD 1 were cancelled by the repayment of USD back to the holding company. Therefore, cost of shares invested was USD 300 and money received was USD 300 thereby being no income or gain in the hands of the assessee and hence, no capital gain. There is no income arising out of reduction in the share capital up to the value of principal invested. We find that this issue has been discussed in the decision of the **Mumbai Tribunal in the case of Tata Sons Limited vs. CIT reported in (2024) 158 taxmann.com 601**, wherein assessee's shareholding in Tata Telecom Services Ltd. was reduced pursuant to the scheme of arrangement and restructuring and no consideration was paid by TTSL to the assessee and long term capital loss arising to the assessee on account of deduction of capital was allowed to be set off against the other long term capital gain. Since the facts have not been discussed properly by the ld. AO or by ld. CIT (A) accordingly, this matter is restored back to the file of the ld. AO

and to decide afresh in line with the principle laid down in the decision of ITAT Mumbai Bench in case of Tata Sons Ltd., (supra) wherein, it was held that reduction of share capital is to be treated as 'capital loss'. Accordingly, the ground is partly allowed for statistical purposes. Thus, appeal of the Revenue is dismissed and appeal of the assessee is partly allowed.

A.Y.2017-18

49. In this year, the Revenue has raised the grounds pertaining denial of tonnage tax benefit and victualling expenses which has been decided against Revenue in the earlier appeals and accordingly, this issue is decided against the Revenue.

50. Ground No.2 relates to deemed dividend u/s.2(22)d wherein Revenue has challenged that ld. CIT(A) erred in restricting the addition on account of deemed dividend u/s.2(22)d of the Act from Rs.14,29,55,824/- to Rs.1,32,00,000/-

51. The brief facts qua the issue are that assessee is 100% shareholder of Underwater Services Company Ltd. The assessee transferred the property / office premises to USCL for a consideration of Rs.30 Crores and the stamp duty value of the property was Rs.15,70,44,176/-. The ld. AO did not accept the valuation and taxed the differential amount of Rs.14,29,55,824/- u/s.2(22)d. The reasoning given by the ld. AO is as under:-

“From the reply filed by the assessee it is seen that at the time of agreement, M/s Samson Maritime Limited, was in requirement of fund for its business purpose, whereas its subsidiary Company viz., Underwater Services Co Ltd, had sufficient fund by way of

reserve profit. If the USCL had transferred the fund to SML by way of dividend as per the section 115 O of the Income Tax Act, 1961, the company would have to pay the sum equal to 20% of the total consideration paid as dividend distribution tax. If the USCL had transferred the money to the SML by way of unsecured Loan / advance or deposit, being a 100% subsidiary Company, this transaction would have fall under the provision of section 2 (22) (d) or 2 (22) (e) of the Income Tax Act, 1961 and the sum paid by USCL would have been considered as deemed dividend paid by subsidiary company to its holding company.

To avoid paying the DDT, the company has used a colorful devise of transferring property (office premises) from SML to USCL. This transaction is nothing but a tool/colorful devise used by a subsidiary company to transfer a fund to its 100% holding company at the time of having general reserve in the company and to avoid to pay the DDT which is very higher than the actual stamp duty paid at the time of registration of agreement. Though the asset is sold by M/s SML to M/s USCL, being 100% holding company of M/s USCL while M/s SML is still enjoying all the rights of ownership and also taking the benefit of House Property as an owner after entering into a sale agreement.”

52. In response assessee submitted that office property has been sold at arm's length price of Rs.30,00,00,000/- and also filed the valuation report. It was also stated that prior to the sales, property was used by USCL for which user charges were paid to the assessee company and post the sale of the property part thereof was leased to SML at arm's length basis. However, the ld. AO rejected the assessee's submission and treated the entire difference of Rs.14,29,55,824/- as deemed dividend u/s.2(22)d on the ground that asset has been sold at much more than its fair market value, as the asset worth Rs.15.70 Crores

was purchased by USCL for Rs.30 Crores so as to transfer the funds to the assessee which had resulted into reduction in capital in the books of M/s. USCL whereas assessee has recorded at Rs. 30 Crores where the receipt value of Rs.15.70 Crores.

53. The Id. CIT (A) noted that the valuation report furnished by the assessee and value of the assessee ascertained by the Valuer is at Rs.28,68,00,000/- and he observed that valuation report was a comprehensive one considering the comparable sale, market survey and comparables, physical attributes of the property, verification of documents etc., Since, there was no specific reason as to how the price of Rs.30 Crores was arrived, he therefore held that only difference of Rs.1.32 Crores can be added, i.e., to the extent value of the property has been ascertained by the Valuer at Rs.28.68 Crores, accordingly same should be taxable u/s.2(22)d as against the addition of Rs.14,29,55,824/- made by the AO. Now for the balance amount of Rs.1,32,00,000/- assessee is in appeal.

54. After considering the relevant facts as discussed in the impugned order and submissions made by the parties, it is seen that during the relevant assessment year assessee had sold commercial property to subsidiary company USCL. Earlier assessee has purchased the same property for Rs.23 Crores whereas stamp duty value was Rs.13 Crores. This property has again been sold to its subsidiary company in A.Y.2017-18 at Rs. 30 Crores whereas the stamp duty value of Rs.15,70,42,176/-.

Thus, the market value of the property even at the time of purchase and sale was far more than the stamp duty value. Assessee has got the valuation done by a Registered Valuer who has valued the property at Rs.28,68,00,000/- and the reasons given by the ld. AO to discard such valuation report is completely baseless especially when the registered Valuer has given detailed reasons to justify the actual market value. Thus, we agree with the contention of the ld. CIT (A) that the value of the property should be taken at Rs.28,68,00,000/-. Since it is a transaction between two AEs therefore, the arm's length price should be taken at Rs.28,68,00,000/-. Thus, ld. CIT (A) has rightly added the difference of the amount over and above the market value. Accordingly, the order of the ld. CIT (A) is upheld.

55 . In so far as assessee's appeal is concerned, we do not find any merits as the ld. CIT(A) has correctly taken the value of the property as per the valuation report and the difference amount has directly been held to be taxable. Accordingly, the grounds raised by the Revenue and grounds raised by the assessee are also dismissed.

A.Y.2018-19

56. In this year, the Revenue has raised the grounds pertaining denial of tonnage tax benefit and victualling expenses which has been decided against Revenue in the earlier appeals and accordingly, this issue is decided against the Revenue.

57. In the result, appeals of the Revenue are dismissed and appeals of the assessee are partly allowed.

Order pronounced on 17th March, 2025.

**Sd/-
(PADMAVATHY S)
ACCOUNTANT MEMBER**

Mumbai; Dated 17/03/2025
KARUNA, *sr.ps*

**Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai