

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER) AND
SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)**

**ITA No. 30/MUM/2019
Assessment Year: 2014-15**

The Shipping Corporation of India
Limited,
245, Shipping House, Madam Cama
Road, Nariman Point,
Mumbai-400021.

PAN No. AAAC1524 F
Appellant

Vs. Deputy Commissioner of
Income Tax (L.T.U.)-Circle-2,
29th floor, Centre-2, World
Trade Centre, Cuffe Parade,
Mumbai-400006.

Respondent

Assessee by : Mr. Vinay Deshmane, AR
Revenue by : Mr. Vijay Shankar, CIT-DR

Date of Hearing : 28/04/2022
Date of pronouncement : 13/05/2022

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against final assessment order dated 30.11.2018 passed by the Deputy Commissioner of Income-Tax (Large Taxpayer Unit), Mumbai (hereinafter referred as 'the Assessing Officer') for assessment year 2014-15, pursuant to

the direction of Ld. Dispute Resolution Panel ('DRP') dated 26.09.2018.

2. The grounds raised by the assessee in the appeal are reproduced as under :

"The Appellant appeals against the impugned assessment order dated 30 November 2018 passed by the Deputy Commissioner of Income Tax (L.T.U.) Circle-2 for assessment year 2014-15 under section 143(3) read with section 144C(13) of the Income Tax Act ("the Act). The said appeal is being filed under section 253(1) (d) of the Act on the following amongst other grounds each of which is in the alternative and without prejudice to each other.

- (1) The learned Deputy Commissioner of Income Tax - (L.T.U.) Circle-2, Mumbai ("the Id. AO") and learned Dispute Resolution Panel-2 ('Id. DRP*), have erred in law and on facts and in circumstances of the case in excluding receipts aggregating to Rs.69,67,71,459/- comprising of overheads for managed vessel of Rs.29,90,42,691/- and excess provision written back of Rs. 39,77,28,768/- while calculating total turnover from core activities thereby working out adjustment of 0.25% of turnover of core activities of ships at Rs. 10,27,76,555/- as against Rs. 10,45,18,484/- claimed by the appellant.*
- (2) The Id. AO/Id. DRP have erred in law and on facts and in circumstances of the case in disallowing deduction of administrative expenses amounting to Rs.10,60,21,624/-*

against income from other sources amounting to Rs. 102,67,38,871 /-.

(3) The Id. AO while passing the order u/s 143(3) read with section 144C(13) of the Act has erred in law and on facts and in circumstances of the case in not granting credit of Rs 2,25,00,000/- u/s 115JAA for the taxes paid in earlier years”.

3. The assessee is a Public Sector Undertaking engaged in the business of Merchant shipping. The assessee is filing return of income since assessment year 2005-06, under the Tonnage Tax Scheme i.e. a presumptive taxation scheme mentioned in Chapter XII-G of the Income-tax Act, 1961 (in short ‘the Act’). Under the scheme, income from business of qualified ships related to core activities is taxed on presumptive basis rather than under the provisions of section 28 to 43C of the Act i.e. profit and gains of business or profession. In section 115V-I of the Act, income from operation of the qualified ships is defined as ‘relevant shipping income’, which consists of profit from ‘core activities’ and profit from ‘incidental activities’. The profit from incidental activities in excess of 0.25% turnover from core activities has been excluded

from the relevant shipping income and made liable for taxable under other provisions of the Act. Any other income from non-qualified ships or other business is also to be computed in accordance with other provisions of the Act.

3.1 For the year under consideration, the assessee filed return of income on 26.11.2014 declaring total income of Rs.164,54,14,530/- under normal provisions of the Act and book profit of Rs.255,65,29,795/-. The return of income filed by the assessee was selected for scrutiny and statutory notices under the Act were issued and complied with. In view of international transactions carried out by the assessee with its Associated Enterprises (AEs), matter was referred to the Transfer Pricing Officer (Ld. TPO) for determination of Arm's Length Price (ALP) of the international transactions. After getting order of Transfer Pricing Officer, the Ld. Assessing Officer issued a draft assessment order on 20.12.2017 wherein, he following the finding of the Assessing Officer in earlier

years, excluded the reimbursement of over head expense for managed vessels amounting to Rs.29,10,42,691/- from the turnover of core activities and re-worked total turnover of core activities at Rs.4109,94,55,049/- instead of turnover of Rs.4180,73,93,484/- declared by the assessee. In view of adjustment in turnover, the quantum of profit from incidental activity @ 0.25% of the turnover of core activity also got reduced to Rs.10,27,76,555/- as against Rs.10,45,18,484/- claimed by the assessee. The Assessing Officer also made other adjustment including disallowance of deduction of administrative expenses amounting to Rs.10,60,21,624/-.

4. Aggrieved with the adjustments proposed in draft assessment order, the assessee filed objection before the Ld. DRP. Pursuant to the direction of the Ld. DRP, the Assessing Officer passed the final assessment order on 30.09.2018.

4.1 Aggrieved with the same, the assessee is in appeal before the Tribunal raising the ground as reproduced above.

5. Before us, the assessee has filed a Paper Book containing pages 1 to 191.

6. We have heard the rival submissions of the parties on the issue-in-dispute and perused the relevant material on record. As far as Ground No. 1 of the appeal is concerned before us the Ld. counsel of the assessee submitted that issue-in-dispute is covered by the decision of the Tribunal for assessment years 2005-06, 2006-07, 2007-08 and 2009-10. He submitted that according to Ld. DRP its proceedings are in continuation of the assessment proceedings and therefore the Ld. DRP retained the additions/disallowances proposed by the Assessing Officer rather than following the precedent in the case of the assessee. The Ld. DR relied on the order of lower authorities.

6.1 The issue of excluding amount of reimbursement of overhead expenses for managed vessels, and excess provision written back was raised in the case of the assessee for the first time in the

assessment year 2005-06 & 2006-07, before the Tribunal in ITA No. 2944 & 2945/Mum/2016. The relevant finding of the Tribunal is reproduced as under :

“22. Respectfully following the Tribunal's order dated 29th July, 2011 (supra) in assessee's own case for A.Y. 2007-08, we uphold the action of the authorities below in reducing the profit on sale of ships and fixed ships from the turnover of core shipping. The action of the authorities below in reducing the excess provision written back and sundry credit balances written back, however, is set aside and the A.O. is directed to include the said income in the turnover of core shipping. As regards item No. 3 (sundry receipts from core shipping) and item No. 6 (reimbursement from managed vessels), the Id. Counsel for the assessee has submitted that neither the A.O. nor the Id. CIT(A) has examined the relevant details placed at 157 of the paper book and urged that the matter may be sent back to the A.O. for deciding the same afresh after verifying the said detail. As the Id. D.R. has no objection in this regard, the issue relating to inclusion or exclusion of item No. 3 & 6 is restored to the file of the A.O. for deciding the same afresh after verifying the said details. Ground No. 5 of the assessee's appeal for AY 2006-07 is thus partly allowed.”

6.2 We find that the Tribunal (supra) has directed to include the income from excess provision written back in the turnover of the core activity of shipping. Regarding reimbursement for managed vessels the matter has been restored back for deciding afresh after

verifying the details. The issue-in-dispute before us, being identical to issue in AY 2005-06 & 2006-07, respectfully following the finding of the Tribunal (*supra*), the Assessing Officer is directed to include the amount of excess provision written back for the purpose of the turnover of the core activity and the issue of inclusion of reimbursement from managed vessels for the purpose of the turnover of core activity is restored back to the file of the Assessing Officer for verifying the claim of the assessee and decide in view of the Tribunal (*supra*) for AY 2005-06 & 2006-07. The ground No. 1 of the appeal is accordingly allowed to the extent of excess provision written back and allowed for statistical purpose in respect of reimbursement of overhead expenses for managed vessels.

7. The ground No. 2 of the appeals of the assessee relates to disallowance of deduction of administrative expenses against the income from other sources. Before us, the Ld. counsel of the assessee submitted that issue-in-dispute is covered against the

assessee by the order of the Tribunal (supra). The Ld. DR affirmed the same.

7.1 We have heard rival submissions of the parties. We find that identical issue of disallowance of administrative expenses against interest income under the head 'income from other sources' has been held against the assessee in ITA No. 2944 & 2945/M/2010 for assessment year 2005-06 and 2006-07. The relevant finding of the Tribunal (supra) is reproduced as under :

"10. After considering the rival submission and perusing the relevant material on record, we find no infirmity in the impugned order of the Id. CIT(A) confirming the disallowance made by the A.O. on account of assessee's claim for deduction from interest and dividend income on account of common costs attributable to the tonnage tax business as per section 115 VJ of the Act. As per the said provision, where tonnage tax company also carries on any business or activity other than the tonnage tax business, then common costs attributable to the tonnage tax business is required to be determined on a reasonable basis. In the present case, the income was earned by the assessee company on account of interest on fixed deposits made out of surplus funds and dividend income earned on investment made in the shares of other company and having regard to all the facts of the case, we

are of the view that the same cannot be said to have earned by the assessee by carrying on any separate business activity other than the tonnage tax business as envisaged in section 115 VJ of the Act. The said income was chargeable to tax in the hands of the assessee under the head "income from other sources" as rightly held by the authorities below and even the assessee itself had originally offered the said income under the head "income from other sources". As regards the decision of Hon'ble Bombay High Court in the case of Punit Commercial Ltd. (supra) cited by the Id. Counsel for the assessee, it is observed that the same was rendered in the context of section 80HHC(3) (a) of the Act and the ratio of the said decision therefore cannot be applied in the present case which involves the issue in the context of section 115 VJ of the Act. In the case of Indo Swiss Jewels Ltd. and Other (supra) cited by the Id. Counsel for the assessee, the facts involved were different from the present case inasmuch as inter-corporate deposits were made by the assessee from the surplus funds that were kept apart for payment for imported machinery and the interest earned on such short term deposits of the money kept apart for the purpose of business was held to be business income of the assessee by the Hon'ble Bombay High Court. The case laws cited by the Id. Counsel for the assessee thus are not applicable in the present case. On the other hand, a similar issue involving identical facts and circumstances has already been decided by the Tribunal in assessee's own case for AY. 2007-08 vide its order dated 29th July, 2011 (supra) and respectfully following the said decision of the co-ordinate Bench of this Tribunal in assessee's own case, we uphold the impugned order of the Id. CIT(A) confirming the disallowance made by the A.O. on account of assessee's claim for deduction from interest and dividend income

on account of common costs attributable to the tonnage tax business as per the provisions of section 115VJ of the Act. Ground No. 3 & 4 of the assessee's appeal for A.Y. 2005-06 are accordingly dismissed."

7.2 The issue-in-dispute before us, being identical to the issue before the Tribunal in AY 2005-06 & 2006-07, respectfully following the finding of the Tribunal (supra), the ground of the appeal of the assessee is accordingly dismissed.

8. In ground No. 3, the assessee is praying for granting credit of Rs.2,25,00,000/- u/s 115JAA for the taxes paid in earlier years. Before us, the parties agreed that payment of the taxes and allowing of credit thereon is matter for verification by the Assessing Officer and therefore, accordingly the issue is retored back to the file of the Assessing Officer for verification and if the assessee is eligible for credit of taxes in year under consideration for the taxes paid under MAT in earlier years, the claim of the assessee shall be considered in accordance with law. The ground No. 3 is accordingly allowed for statistical purposes.

9. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 13/05/2022.

Sd/-

(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-

(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;

Dated: 13/05/2022

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai