

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH, CHENNAI
श्री वी.दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER
AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपीलसं./ I. T. A. Nos. 83 to 87/Chny/2021
(निर्धारणवर्ष / Assessment Years: 2013-14 to 2017-18)

The Assistant Commissioner of Income Tax, Central Circle1(1) Chennai-600 034	vs.	M/s. Buhari Holdings Pvt.Ltd 5, 3 rd floor, Bhuhari Building Moores Road, Egmore, Chennai-600 006.
		PAN: AAACB2679M
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Mr. P.Sajit Kumar,JCIT
प्रत्यर्थीकी ओर से/Respondent by	:	Mr. G.Baskar & Mr. I.Dinesh, Advocates

सुनवाईकीतारीख/Date of hearing	:	09.05.2022
घोषणाकीतारीख /Date of Pronouncement	:	09.05.2022

आदेश / O R D E R

PER G.MANJUNATHA, AM:

These five appeals filed by the Revenue are directed against separate, but identical orders passed by the learned Commissioner of Income Tax (Appeals)-18 / 1 Chennai, dated 31.12.2020 / 05.08.2020 and pertain to assessment years 2013-14 to 2017-18. Since, facts are identical and issues are common, for the sake of convenience, these appeals are heard together and are being disposed off, by this consolidated order.

2. The Revenue has more or less filed common grounds of appeal for all these assessment years, therefore, for the sake of

brevity, grounds of appeal filed for the assessment year 2013-14 are reproduced as under:-

“1. The order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts of the Case and in law.

2. The Ld. CIT(A) erred in deleting the addition of Rs.7,02,44,725/- made by the assessing officer towards Shipping income.

2.1. The Ld.CIT(A) ought to have consider following reasons while allowing the Tonnage Tax Scheme.

2.2 To be eligible for Tonnage Tax Scheme, the assessee has to not only obtain the approval of the Additional Commissioner of Income Tax, but also fulfil the stipulation laid down under Chapter XII-G of the IT Act.

2.3 Mere obtaining approval u/s. 115VP would not prelude the AC from examining whether the other conditions laid down under Chapter XII-G are fulfilled.

2.4 The assessee is only a fractional owner of the ship and does not satisfy the provisions of Sec.115VC(c). Similarly, the assessee also does not fulfil the provisions of sec.115VD in the sense it is not a qualifying ship.

2.5. The assessee does not own any qualifying ship and the assessee has fractional ownership only and management and operation of the ship is done by another co - owner.

2.6. The operation of the ship was done by West Asia Maritime Ltd and the assessee company is sharing profits without actual operation.”

3. At the outset, we find that there is a delay of 12 days in ITA Nos. 83, 85 to 87/Chny/2021 and 169 days in ITA No. 84/Chny/2021 filed by the revenue. During the course of

hearing, when defect was brought to the notice of learned DR present for the Revenue submitted that delay in filing of appeals is mainly due to lockdown imposed by the Govt. on account of spread of Covid-19 infections and in view of Hon'ble Supreme Court suo motu Writ Petition No.3 of 2020, if the period of delay is covered within the period specified in the order of the Apex Court, then same needs to be condoned in view of specific problem faced by the public on account of Covid-19 pandemic.

4. The learned AR, on the other hand, fairly agreed that delay may be condoned in the interest of justice.

5. Having heard both sides and considered reasons given by the learned DR, we find that the Hon'ble Supreme Court in suo motu Writ Petition No.3 of 2020, has extended limitation applicable to all proceedings in respect of courts and tribunals across the country on account of spread of Covid-19 infections w.e.f. 15.03.2020, till further orders and said general exemption has been extended from time to time. We further noted that delay noticed by the Registry pertains to the period of general exemption provided by the Hon'ble Supreme Court extending limitation period applicable for all proceedings before Courts

and Tribunals and thus, considering facts and circumstances of the case and also in the interest of natural justice, we condone delay in filing appeals filed by the Revenue.

6. Brief facts of the case are that the assessee company along with M/s. West Asia Maritime Ltd., M/s. East Coast Terminal Operations & Port Services and M/s. Four M. Maritime P.Ltd., owns and operates a ship M.V.Gem of Ennore. The assessee held 20% share and interest in shipping business. The assessee has claimed benefit of tonnage tax as per provisions of section 115VC of the Income Tax Act, 1961. The Assessing Officer denied tonnage tax benefit claimed by the assessee u/s.115VC of the Act, on the ground that the assessee is only a fractional owner in the qualifying ship M.V.Gem of Ennore and thus, ship operated by the assessee cannot be considered as qualifying ship as per provisions of section 115VC of the Act. The Assessing Officer had further observed that the assessee does not satisfy conditions prescribed u/s.115VD to be eligible for claiming benefit of tonnage tax. Therefore, the Assessing Officer had rejected tonnage tax benefit claimed by the assessee and assessed income under the head 'income from business and profession'.

On appeal, the learned CIT(A) for the reasons stated in his appellate order dated 31.12.2020 / 05.08.2020, by following decision of the ITAT, Chennai, in assessee's own case for earlier years deleted additions made by the Assessing Officer and allowed benefit of tonnage tax as claimed by the assessee. Aggrieved by the learned CIT(A) order, the Revenue is in appeal before us.

7. The learned DR submitted that although the assessee has got approval u/s.115VP of the Income Tax Act, 1961, to claim benefit of tonnage tax, but mere obtaining approval would not preclude the Assessing Officer from examining whether other conditions laid down under Chapter XII-G are satisfied or not, while examining claim of the assessee. The learned DR further submitted that there is no dispute that the assessee had obtained permission u/s.115VP of the Act to claim the benefit. However, the Assessing Officer had made very categorical observation with regard to eligibility of the assessee to claim benefit as per which the assessee does not operate qualifying ship and further, operation of the ship was carried out by M/s. West Asia Maritime Ltd. and therefore, the

Assessing Officer has rightly rejected tonnage tax and their order should be upheld.

8. The learned A.R for the assessee, on the other hand, supporting order of the learned CIT(A) submitted that issue involved in the present appeals filed by the Revenue is recurring issue and the Assessing Officer right from assessment year 2005-06 onwards rejected claim of the assessee towards tonnage tax as per provisions of section 115VC of the Income Tax Act, 1961. The learned AR further submitted that the issue had been examined by the Tribunal in assessee's own case right from assessment year 2005-06 and after considering relevant facts has rightly held that the assessee is entitled for benefit of tonnage tax, as per provisions of section 115VC of the Act, even though the assessee is fractional owner in the qualifying ship M.V.Gem of Ennore. The learned CIT(A), after considering relevant facts has rightly allowed benefit of tonnage tax and their order should be upheld.

9. We have heard both the parties, perused material available on record and gone through orders of the authorities below. There is no dispute with regard to fact that the assessee

is operating a qualifying ship M.V.Gem of Ennore. It is also not in dispute that the assessee had obtained approval u/s.115VP of the Income Tax Act, 1961, from the prescribed authority for claiming benefit of tonnage tax. In fact, the Assessing Officer never disputed these facts. The Assessing Officer has denied benefit of tonnage tax only for the reason that the assessee is only a fractional owner and holding 20% interest in qualifying ship M.V.Gem of Ennore and further, operation of the ship was done by M/s. West Asia Maritime Ltd. Therefore, the Assessing Officer was of the opinion that the assessee is not entitled for benefit of tonnage tax as per provisions of section 115VC of the Income Tax Act, 1961.

10. We have carefully considered reasons given by the Assessing Officer to deny benefit of tonnage tax as claimed by the assessee in terms of provisions of section 115VC of the Act, in light of various arguments advanced by the learned counsel for the assessee and we ourselves do not subscribe to the reasons given by the Assessing Officer for simple reason that the issue had been examined by the Tribunal in assessee's own case right from assessment year 2005-06 onwards, where the Tribunal after considering relevant facts

and also provisions of section 115VC, 115VD, 115VP of the Income Tax Act, 1961, had very clearly observed that the assessee had satisfied conditions prescribed under Chapter XII-G of the Income Tax Act, 1961, to be qualified for benefit of tonnage tax as per provisions of the section 115VC of the Income Tax Act, 1961. We further noted that the Tribunal in ITA Nos.3195 & 3196/Mds/2016 relevant to assessment years 2012-13 & 2016-17 had considered an identical issue and by following decision of the Tribunal in assessee's own case for earlier assessment years, had held that the assessee is entitled for benefit of tonnage tax. We further noted that the Tribunal had also considered case of other co-owners of qualifying ship M.V.Gem of Ennore and after considering relevant facts has rightly held that the assessee has rightly claimed benefit of tonnage tax as per provisions of section 115VC of the Income Tax Act, 1961. The relevant findings of the Tribunal in the case of ACIT Vs. West Asia Maritime Ltd. (2013) 33 taxmann.com 660 (Chennai) as a Third Member, for assessment year 2006-07 are reproduced as under:-

“The normal activities of operating a seagoing ship are to carry passengers, carry cargo, to do towage, salvage or other marine assistance or transport in

connection with other services of kind necessarily provided at sea. The restriction has to be looked into in the above background. The restriction is that the vessel is not a qualifying ship for the purpose of section 115VD if the main purpose for which it is used is the provision of goods or services of a kind normally provided on land. The law does not say that the ship should always do its voyage between international ports. The law does not say anything about the distance to be covered by ship in a single voyage. The law presumes that the benefit of tonnage tax scheme is available to all seagoing ships satisfying the condition where it is operated between Indian ports or between Indian ports and foreign ports. The operation of a sea going ship does not assume any different character only for the reason that the ship is operating between two Indian ports.

The assessing authority denied the benefit of tonnage tax scheme to the assessee in respect of its operating ship 'M.V. Gem of Ennore' by holding that the ship was not a qualifying ship under section 115VD as the said ship was transporting thermal coal from one port to another ports all located within the country and well connected by road and rail on land. Therefore, the Assessing Officer held that since the transport of coal between these ports could be routed through land

either by road or rail transport, the assessee could not claim the benefit of tonnage tax scheme.

Held that the contention of the assessing authority that the ship was excluded from the ambit of tonnage tax scheme mainly for the reason that the ship was rendering services only between Indian ports, which would have also been rendered on land by road or rail, was too far-fetched. There was no such stipulation anywhere in law. The tonnage tax scheme does not distinguish ships operating in coastal waters and ships operating in international waters. There is no bar on the coastal shipping for the tonnage tax scheme. Even though the ship operated by the assessee was transporting thermal coal from Indian ports to Indian ports, the ship was performing exactly the core function of a ship of carrying bulk cargo from port to port. Therefore, the ship operated by the assessee was a qualifying ship under section 115VD and the assessee was entitled for the benefit of tonnage tax scheme provided under Chapter XII-C.”

11. As regards observations of the Assessing Officer with regard to operation of the ship by M/s. West Asia Maritime Ltd., we find that as per provisions of section 115VH of the Income Tax Act, 1961, where a qualifying ship is operated by two or more companies by way of joint interest in the ship or by way

of an agreement for the use of ship and their respective shares are definite and ascertainable, the tonnage income of each such company shall be an amount equal to a share of income proportionate to its share of that interest. In this case, the claim of the learned AR for the assessee was that the assessee had claimed benefit of tonnage tax, as per definite and ascertainable share of the assessee in terms of agreement with other co-owners. Therefore, we are of the considered view that there is no merit in the observations of the Assessing Officer that operation of the ship was done by M/s. West Asia Maritime Ltd. and thus, the assessee is not entitled for benefit of tonnage tax.

12. In this view of the matter and consistent with the view taken by the Tribunal in assessee's own case for earlier years, we are of the considered view that the assessee is entitled for benefit of tonnage tax as per provisions of section 115VC of the Income Tax Act, 1961. The learned CIT(A), after considering relevant facts has rightly allowed benefit of tonnage tax to the assessee. Hence, we are inclined to uphold findings of the learned CIT(A) and dismiss appeals filed by the Revenue for the assessment years 2013-14 to 2017-18.

13. In the result, appeals filed by the revenue for the assessment years 2013-14 to 2017-18 are dismissed.

Order pronounced in the open court on 9th May, 2022

Sd/-
(वी. दुर्गा राव)
(V. Durga Rao)
न्यायिक सदस्य /Judicial Member

Sd/-
(जी. मंजुनाथ)
(G.Manjunatha)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,
दिनांक/Dated 9th May, 2022
DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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