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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 8th November, 2012

\+ ITA 1395/2010
THE COMMISSIONER OF INCOME TAX
NEW DELHI ..... Appellant
versus

JAGGON INTERNATIONAL LTD ..... Respondent

\+ ITA 1289/2011

CIT ..... Appellant
versus

JAGSON INTERNATIONAL LTD ..... Respondent

Presence : Mr. Sanjeev Sabharwal, sr. Standing counsel with Mr. Puneet Gupta, jr. Standing counsel for the appellant

Mr. C S Aggarwal, Sr. Adv. with Mr. Rajeev Saxena, Mr. Pravesh Kumar and Ms. Pushpa Sharma, Advs. for the respondent.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE R.V.EASWAR

S. RAVINDRA BHAT, J: (OPEN COURT)

The substantial question of law arising for consideration is *"Whether on the true and correct interpretation of section 115VD of the Act could it be held that "Deep Sea Matdrill" is a ship for the purposes of chapter XX-G of I.T. Act?"*

2. The relevant facts are that the assessee sought to opt for tonnage tax scheme under Chapter XII-G especially Section 115VP/115VR of the Income

Tax Act, 1961. The assessee claims to be owner of ship/ vessels engaged in drilling operations. Its claim was rejected on the ground that in terms of Section 115VD, Deep Sea Matdrills were not qualifying ships. The Assessing Officer rejected the claim stating as follows:

> "*I have gone through the submission of the assessee and the AO's report. After going through the submission of the assessee as well ass (sic) the AO's report, I am satisfied that assessee's claim is not found to be acceptable for the purpose of Section 115VP/115VR of the I.T.Act because as per I.T. Act, the drilling rig is not covered under the definition of "Qualifying ship". The claim of the assessee was not registered as a ship under the Merchant Shipping Act, 1958. The assessee's main object of business was not the carrying on of the business of the operation of ships."*

3. It transpired that the assessee had applied but had not been granted registration under Section 407 of the Merchant Shipping Act, 1958 which was granted on 19.5.2006. In these circumstances, the Appellate Commissioner directed the assessing officer to reconsider the vessel of the assessee as a "qualifying ship". The Commissioner after considering the remand report dated 5.2.2007 allowed the claim and permitted the respondent to claim tonnage tax. The Revenue, claiming to be aggrieved approached the Income Tax Appellate Tribunal ('Tribunal', for short). Its contentions essentially were that the vessels used by the assessee did not amount to qualifying ships in view of the Section 115VD; more particularly they amounted to "off shore installations" under sub-clause 115VD. The Tribunal considered various materials including the dictionary meaning of "off shore" and "installations". It observed as follows: -

> *"It may be appreciated that the word "offshore" therefore means away from the shore or located at a little distance from the shore while the installations" has been explained as an apparatus or establishment which have been fixed at a*

place or set in a position for use. It does not mean anything i.e. apparatus or establishment which is being used without being fixed or set in a position for its use. Anything which is moving from one place to another for using the same cannot be termed as installed. Any movable thing cannot be treated as installation. Thus any installation which has been fixed or set in a position at distance place from shore or away from the shore is called "offshore installation". The 'installation' is built by installing various equipments, fixing them for the work and then dismantled and shifted to another site. The ship is build or constructed also by various equipments and material for the purpose for which it is required to be used but they are not dismantled instead ship itself shifts from one place to another for working on the other site. The ships are required to be registered under Merchant Shipping Act but not installations secondly they are not those which are not moveable and required to be shifted after dismantling. In the modern world there could be a case of installing any equipment on the ship for the specific cause or requirement but this would not be called offshore installation instead it would be called installation on the ship. There may be a case of installation which is taken from one place to another but that cannot be called as ship because while shifting from one place to another it is required to be partially or totally dismantled according to distance of place and availability of facilities. Further for a ship it is not only necessary to be registered under the Merchant Shipping Act but it has to fulfill all the requirements and formalities to be fulfilled.

7. The relevant chapter of Merchant Shipping Act is named as "Control of Indian ships and ships engaged in coasting trade". This clearly shows that it applies to only ships and not to the offshore installation. Section 405 specifically explained about application of part – it clearly states as under :

> *"Application of part. – This Part applies only to sea-going ships fitted with mechanical means of propulsion of not less than one hundred and fifty tons gross, but the Central Government may, by notification in the Official Gazatte, fix any lower tonnage for the purposes of this part"*

Thus 'ship' required to be licensed is sea-going ship fitted with

mechanical means of propulsion which is not provided in any of the "offshore installation".

4. The Tribunal took into consideration the observations of the Appellate Commissioner and noticed that in this case the ship was not initially built and thereafter equipments were amounted or attached. In fact the Tribunal noticed that the Matdrill vessel was built by Nippon Kokan K.K. of Japan in 1981. It was planned for the special purpose of offshore drilling and all equipments befitted or mounted at that stage itself. The Tribunal was thus alive to the fact that the ship was initially designed for the purpose of drilling and that it moves from one place to another and in fact consists of equipments, boats, life saving devices, its quarters having accommodation of 74 person, canteen, recreation facilities etc. The Tribunal also importantly observed that for the exploration of mineral oil various steps are necessary and for different purpose shipping equipments and installations are used. The assessee owns the vessels which were used for the various purposes such as drilling, testing, casing, producing data and preparing all the reports etc. Thereafter, the Tribunal concluded as follows: -

"This clearly show that ships used for drilling, dredging etc are not offshore installations otherwise deletion of dredgers was not required. The offshore installations are those which are fixed for the specific purpose of fishing, production of mineral oil and after finishing the purpose are dismantled and shifted to other site. In case of short distance they are fixed to other site through cranes or through ships. While ships used for drilling, dredging etc are moved from one place to another without being dismantled or without the help of crane. It is therefore submitted that assessee's ship which is duly been registered and has obtained the licence under Merchant Shipping Act, 1958 by an authority of Director General Shipping be treated as "Qualifying ship" and not as an "offshore installations" as understood by Ld. Addl. CIT. Apart from certificate from DG Shipping various other certificates have already been filed which were also

necessary for issuing certificate by the office of DG Shipping."

5. The Tribunal was also made aware of decision of this Court ***CIT Vs. Jagson International*** (2008) 214 CTR (Del) 227 where the same equipment was considered for the purpose of Section 33AC. This Court had also held that Deep Sea Matdrills owned or leased by the assessee were ships. The observations of this Court are as follows :

"The issue whether the 'Deep Sea Matdrill' is a ship for the purposes of section 33AC was decided in favour of the assessee in respect of the assessment year 1994-95. There is merit in the contention urged by learned counsel for the assessee that this issue cannot be agitated by the revenue again and again. The drilling rig was placed on a vessel described as a barge, which could be moved out from place to place for offshore drilling. The Tribunal considered this aspect of the matter and came to the conclusion that the 'Deep Sea Matdrill' is nothing but a ship. It is a barge, which can be moved from place to place like any other ship. When the drilling rig is in use, then apparently to save some expenses the ship's propeller is removed; but whenever it is required to be shifted, the propeller is refixed and the ship is made mobile. On merits, therefore, we are of the view that the claim made by the assessee in respect of section 33AC of the Act is quite justified. Only one view is possible, namely, that the 'Deep Sea Matdrill' is a ship. Even if learned counsel for the revenue is right in contending that the 'Deep Sea Matdrill' is not a ship, we do not think that exercise of power under section 263 of the Act by the Commissioner would be justified only because the assessing officer has taken a view in favour of the assessee. The law requires the view to be erroneous also, and that has not been substantiated by learned counsel for the revenue.

Insofar as the second issue relating to section 80-IA(3) of the Act if concerned, which is to the effect whether the 'Deep Sea Matdrill' was used in the Indian territorial waters before its acquisition by the assessee, we find that this is essentially a question of fact. That apart, we find that under section 148

of the Act, the assessing officer had specifically mentioned in the reasons recorded that he was prima facie of the view that the vessel had been used in the Indian territorial waters prior to its acquisition by the assessee. A response was given by the assessee to the notice in which it was categorically mentioned that the ship was never used in India so deduction under section 80-IA93) could not be denied to the assessee.
The last issue addressed by learned counsel for the revenue relates, to section 80-IA(4) of the Act a bare reading of section 80-IA(4) of the Act shows that what is required to be determined is essentially factual and there is no legal issue which is involved, much less a substantial question of law. This issue was raised by the assessing officer during the course of reassessment proceedings and it was replied to by the assessee. The assessing officer was satisfied with the explanation and did not raise any further questions. The Tribunal has not erred in taking the view that it took, namely, that the CIT had overlooked the agreements dt.28th Feb.1995 and 30th September, 1999 which were on the record of the AO. In all the three issues that have been urged by the counsel for the revenue, no substantial question of law arises. Deduction u/s 33AC is allowable in respect of a barge with the drilling rig over it which can be moved from place to place and therefore, CIT was not justified in exercising power u/s 263 on the ground that the barge is not a ship and assessee's claim for deduction u/s 33AC has been wrongly allowed; question whether the conditions laid down in SS80-IA(3) and 80-IA(4) are fulfilled by the assessee are essentially question of fact and the AO having allowed the claim for deduction u/s 80-IA, revision u/s 263 was not justified."

6. This Court has considered the submissions. Section 115VD which defines a ship as "Qualifying Ship" reads as follows :

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

*(*a*) it is a sea going 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 sea going 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*)3[***]*

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

7. In the facts of this case the vessels were consistently registered under Section 407 of the Merchant Shipping Act and had a valid certificate which was produced for consideration by the appellate authority who sought remand report. It is also not disputed that the vessel is a qualifying ship for sea in terms of clause (a) of Section 115VD. The question as to whether it amounted to "off shore installations" was gone into in considerable detail by the Tribunal. The Tribunal noticed that unlike in the case of offshore installations which are stationed at one place, the very nature of the activity in which the assessee engaged is to carry out operations in different places; necessarily, at least for a short duration the vessel has to be stationed at one place. In these circumstances, Revenue's contentions that the vessel is nothing but "offshore installations" has no merit, in the case of Matdrills of the kind put to use by the assessee.

8. For these reasons the Court is of the opinion that the reasoning and findings of the Appellate Commissioner and the Tribunal cannot be found fault with. The substantial question of law is therefore answered in favour of the assessee and against the Revenue. The appeals are consequently dismissed.

S. RAVINDRA BHAT, J

R.V.EASWAR, J

NOVEMBER 08, 2012
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