



\$~53

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

% *Date of Decision: 12.09.2023*

+ **ITA 518/2023**

PRINCIPAL COMMISSIONER OF INCOME TAX- 12, NEW
DELHI

..... Appellant

Through: Mr Sanjeev Menon, Standing
Counsel.

versus

MS L AND T SUCG JV CC27

..... Respondent

Through: Mr Satyen Sethi with Mr Arta Trana
Panda, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

CM APPL. 46720/2023 [*Application filed on behalf of the appellant/revenue seeking condonation of delay of 387 days in re-filing the appeal*]

1. This is an application moved on behalf of the appellant/revenue, seeking condonation of delay in re-filing the appeal.

1.1 According to the appellant/revenue, there is a delay of 387 days.

2. Mr Satyen Sethi, counsel who appears on behalf of the respondent/assessee, says that he does not oppose the prayer made in the application.



3. Accordingly, the delay is condoned.
4. The application is disposed of, in the aforesaid terms.

ITA 518/2023

5. This appeal concerns Assessment Year (AY) 2014-15.
6. *Via* this appeal, the appellant/revenue seeks to assail the order dated 28.10.2020, passed by the Income Tax Appellate Tribunal [in short, “Tribunal”].
7. The only issue which arose for consideration before the Tribunal was whether or not the penalty order dated 27.09.2018, passed under Section 271AA of the Income Tax Act, 1961 [in short, “The Act”] should be sustained.
8. The record shows that the Commissioner of Income Tax (Appeals) [in short, “CIT(A)”] had confirmed the penalty order.
 - 8.1 The record also shows that the penalty was imposed on the respondent/assessee on the basis of the fact that it had neither reported the transaction concerning the purchase of equipment from an entity going by the name Shanghai Pudong Machinery Complete Equipment Co. Ltd. [hereinafter referred to as “SPMCECL”] as required under Section 92E of the Act, nor maintained a record of the transaction, as per the provisions of Section 92D of the Act.
9. To be noted, the respondent/assessee was subjected to scrutiny assessment, and an assessment order was framed under Section 143(3) of the Act whereby, its assessed income was pegged at Rs. 297.18 crores.
10. The record also discloses that the respondent/assessee, which is a joint venture between Larsen & Turbo (L&T) and Shanghai Urban Construction Group (SUCG), was awarded a contract for the construction of an



underground tunnel from Shankar Vihar Metro Station to Hauz Khas Metro Station, as well as construction of five metro stations i.e., at Vasant Vihar, Munirka, R.K. Puram, IIT, and Hauz Khas.

11. Although during scrutiny assessment several additions were made to the declared income of the respondent/assessee, which was Rs. 8.11 crores, the aspect concerning the transactions entered into with SPMCECL *qua* purchase of the tunnel boring machine turned in favour of the respondent/assessee, inasmuch as it was held by the Tribunal in the quantum proceedings that the transaction was at arm's length. Thus, the addition concerning the purchase of a tunnel-boring machine was deleted.

11.1 The reason that we have referred to this aspect of the matter as it forms the foundation for triggering penalty proceedings against the respondent/assessee.

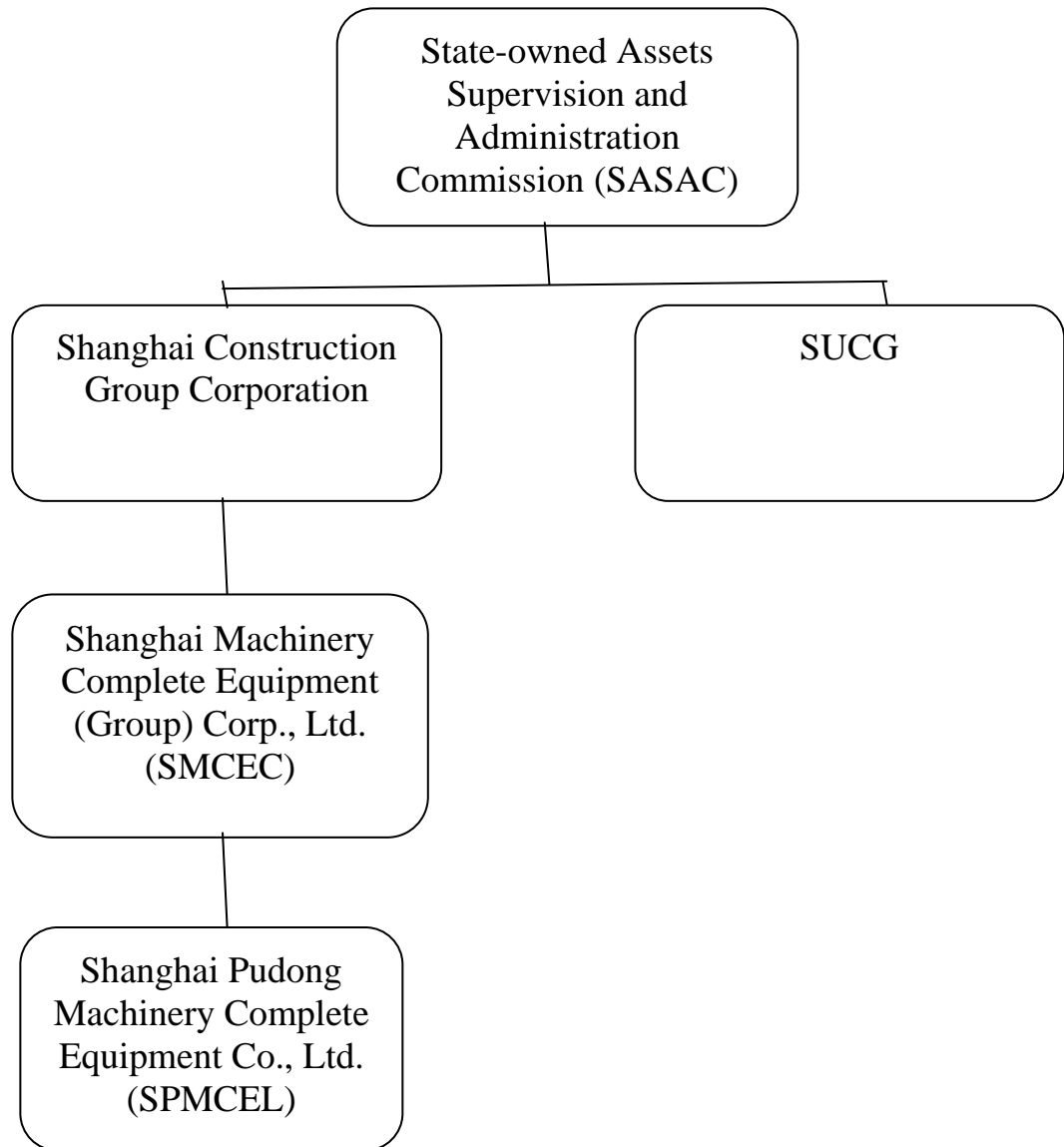
12. Furthermore, what is required to be noticed is that the quantum proceedings were fought right up to the Tribunal.

13. In sum, insofar as the addition made *vis-à-vis* the tunnel-boring machine is concerned, the conclusion drawn was that the transaction was at Arm's Length Price.

14. The Assessing Officer (AO), however, based on the shareholding structure of the respondent/assessee, concluded that the assessee had not made disclosures, as required under Section 92E of the Act.

15. The Tribunal, in our opinion, while examining the veracity of the view taken both by the AO and the CIT(A), has adopted the correct approach.

16. Before we advert to what the tribunal has noted, it may be relevant to note the shareholding structure as recorded by the AO:



17. A perusal of the chart would show that one of the joint venture partners i.e., SUCG, is controlled by the State Assets Supervision and Administration Commission [hereafter referred to as “SASAC”].

18. The record shows that SASAC holds 100% shares in SUCG. There is a downstream control by SASAC of SPMCECL.

19. The record also shows that the two joint venture partners i.e., L&T and SUCG holds shares in the ratio of 68:32 in SPMCECL.



20. L&T, thus, has a dominant control in the joint venture. Given this structure, in our view, the rationale adopted by the Tribunal is correct as is reflected in the following observations made in paragraph 14 of the impugned order:

“14. A perusal of the share holding structure which is exhibited page 4 and 5 at the order of the CIT(A) show that the share holders of Shanghai State Asset Supervision and Administration Commission and SPMCECL are Government organizations. Merely because the share holders are Government organizations would not conclude that these are related parties. In our view if we go by this logic then all the PSUs in India and all nationalized banks will be termed as related parties since the Government of India holds share in these Government undertaking.”

21. Besides this, as to whether SPMCECL was a related party is an issue qua which there can possibly be more than one view. The respondent/assessee has taken a stand that the legal advice that it received seems to indicate that it was not a related party. The CIT(A) has done its own analysis of the Chinese Law and concluded that it was a related party to the transaction and hence required disclosure.

22 One can only say that insofar as Chinese Law is concerned, it is a matter of fact which could only be ascertained, at the very least, by having an expert in Chinese Law being produced as a witness.

23. That apart, we agree with Mr Sethi that the reasonable cause defence which is statutorily ingrained in Section 273B of the Act, perhaps, is the basis of the conclusion reached by the Tribunal.

23.1 Section 273B of the Act, which refers to various penalty provisions, [including Section 271AA] clearly provides that no penalty is imposable on the person or the assessee, as the case may be, for any failure referred to in



the said provisions, if he proves there was a reasonable cause for the said failure.

24. As indicated above, the Tribunal, in our opinion, has taken recourse to the correct approach.

25. We find no difficulty in accepting the view taken by the Tribunal.

26. Accordingly, the appeal is closed as according to us no substantial question of law arises for our consideration.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

SEPTEMBER 12, 2023/tr/ry