Commissioner Of Income Tax, Kochi vs Trans Asian Shipping Services (P) Ltd on 5 July, 2016

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Bench: R. Banumathi, A.K. Sikri, T.S. Thakur

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5869 OF 2016
(ARISING OUT OF SLP (CIVIL) NO. 25251/2015)

COMMISSIONER OF INCOME TAX, KOCHI	.....APPELLANT(S)	
VERSUS		
TRANS ASIAN SHIPPING SERVICES (P) LTD.	.....RESPONDENT(S)	

W I T H

CIVIL APPEAL NO. 5870 OF 2016
(ARISING OUT OF SLP (CIVIL) NO. 25252/2015)

J U D G M E N T

A.K. SIKRI, J.

Leave granted. Matter finally heard as the case was fixed for final hearing.

Chapter XIIG of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') contains special provisions for assessments relating to income of shipping companies. Under this Chapter, shipping companies are given a choice to either get income from the shipping business computed in accordance with the provisions contained in the Act meant for computation of income in respect of business or profession or opt for methodology of computing income as per the special formula provided in that Chapter which accords a different treatment and different manner of computation of income for the shipping business.

Chapter IV of the Act deals with 'Computation of Total Income' and as per the scheme of the Act, such a computation of total income is governed by five heads which are provided in Section 14 of the Act. These are: (i) Salaries; (ii) Income from House Property; (iii) Profits and Gains of Business or Profession; (iv) Capital Gains and (v) Income from Other Sources. Thereafter, manner of computation of the income under the aforesaid heads is stipulated in various sections falling under Chapter IV. As far as Income from Profits and Gains of Business or Profession is concerned, Sections 28 to 44DB of the Act contain the procedure for computation of income under this head. Therefore, any person, natural or juristic, who earns income from business in India is supposed to get the income from the said business computed in the manner provided in those sections. However, Chapter XIIG makes an exception thereto by carving out special provisions relating to income of shipping companies. It would mean that those companies which are shipping companies are permissible to get their income computed under the said Chapter. Section 115VA of the Act gives this option and reads as under:

> “115VA. Computation of profits and gains from the business of operating qualifying ships. - Notwithstanding anything to the contrary contained in sections 28 to 43C, in the case of a company, the income from the business of operating qualifying ships, may, at its option, be computed in accordance with the provisions of this Chapter and such income shall be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession".
>
> As is clear from the bare reading of this Section, option is given to the shipping company, which is operating “qualifying ships”, to get its income computed in accordance with the provisions of Chapter XIIG, irrespective of those stipulations otherwise contained in Sections 28 to 43C for computation of business income. Once such an option is exercised and income is computed in accordance with the provisions of the said Chapter, a fiction is created by deeming the said income to be the profits and gains of such business chargeable to tax under the head 'Profits and Gains of Business or Profession'. To put it otherwise, though the income of such shipping company would be computed in the manner provided under Chapter XIIG, the same would be treated as income from business which is chargeable to tax as provided under the head 'Profits and Gains of Business or Profession' and would be treated as chargeable to tax under that head.
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> For a shipping company to be eligible to exercise such an option, there are certain conditions to be fulfilled, which are as under:
>
> (i) In the first place, the assessee has to be a 'company'. The word 'company' is defined in Section 2(17) of the Act. Such a company may have various businesses and one such business may be the business of operating qualifying ships. However, it is only that income which is generated from 'The Business of Operating Qualifying Ships' that will be computed as per the special provisions in Chapter XIIG. Income from other businesses will be computed in the same manner as provided in Sections 28 to 43C. In case the business of the company is to operate qualifying ships only,

then the income from that sole business will be under this Chapter.

(ii) Income from the business of operating qualifying ships shall be computed under Chapter XIIG only if such an option is specifically exercised by the assessee company. This requirement is particularly mentioned in Section 115VP of the Act. Such an option, when given, is to remain in force for a period of ten years from the date on which the said option is exercised, and this period is prescribed in Section 115VQ of the Act. However, it can be renewed within one year from the end of the previous year in which the option ceases to have effect (Section 115VR).

In certain circumstances stipulated in Section 115VS of the Act, there is a prohibition to opt for the scheme.

The scheme that is to be opted for computation of income under this Chapter is known as 'Tonnage Tax Scheme' (for short 'TTS') as defined in sub-section (m) of Section 115V of the Act.

(iii) Though, these special provisions relate to income of shipping companies, it is only that income which is received from business of "operating qualifying ships" that is eligible for computation under this Chapter.

"115VD. Qualifying ship.- 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) (Clause (vii) omitted by the Finance Act, 2005 (18 of 2005), sec. 36 (w.e.f. 1-4-2006). Clause (vii), before omission, stood as under: “(vii) dredgers”.

a qualifying ship which is used as a fishing vessel for a period of more than thirty days during a previous year.” Which ship should be treated as 'operating ship', is to be understood from the prescription thereof as mentioned in Section 115VB which reads as under:

> “115VB. Operating ships.- For the purposes of this Chapter, a company shall be regarded as operating a ship if it operates any ship whether owned or chartered by it and includes a case where even a part of the ship has been chartered in by it in an arrangement such as slot charter, space charter or joint charter :
>
> Provided that a company shall not be regarded as the operator of a ship which has been chartered out by it on bareboat charter-cum-demise terms or on bareboat charter terms for a period exceeding three years.” As per this, a ship would be treated as 'operating ship' if a company:
>
> (a) operates any ship, whether owned or chartered by it;
>
> (b) where even a part of the ship has been chartered by that company in an arrangement such as slot charter, space charter or joint charter. The only exception is that if a ship has been chartered out by the company on bareboat charter-cum-demise terms or on bareboat charter terms for a period exceeding three years, then that company shall not be regarded as the operator of that particular ship.
>
> (iv) The company operating such ships has to be a “qualifying company” as defined in clause (g) of Section 115V of the Act which says qualifying company means a company referred to in Section 115VC of the Act. Section 115VC lays down certain conditions to be fulfilled for a company to be qualifying company. It reads as under:
>
> “115VC. Qualifying company. - For the purposes of this Chapter, a company is a qualifying company if—
>
> (a) it is an Indian company;
>
> (b) the place of effective management of the company is in India;
>
> (c) it owns at least one qualifying ship; and
>
> (d) the main object of the company is to carry on the business of operating ships.

Explanation.—For the purposes of this section, "place of effective management of the company" means— (A) the place where the board of directors of the company or its executive directors, as the case may be, make their decisions; or (B) in a case where the board of directors routinely approve

the commercial and strategic decisions made by the executive directors or officers of the company, the place where such executive directors or officers of the company perform their functions." As may be seen from the reading of the aforesaid provision, apart from the conditions that a company has to be an Indian company with effective management of the company in India and main objective of the company is to carry on business of operating ships, the other significant condition is that the company itself should own 'at least one qualifying ship'. The description of qualifying ship is contained in Section 115VD, as already noted above, and owning at least one qualifying ship is one of the eligibility conditions for getting the income computed under these special provisions.

Once aforesaid conditions are fulfilled, the income from the business of operating qualifying ships is to be computed under Chapter XIIG. The manner of computation of such income, as provided under this Act, is under 'TTS'. Clause (m) of Section 115V defines TTS as under:

> "(m) "tonnage tax scheme" means a scheme for computation of profits and gains of business of operating qualifying ships under the provisions of this Chapter." The provisions for TTS are contained in Section 115VE onwards. For our purposes, it is not necessary to take stock of all these provisions. As we are primarily concerned with Section 115VE and Section 115VG of the Act, we shall discuss the schemes with reference to these provisions. The TTS talks of 'Tonnage Income' which is to be computed under Section 115VG of a Tonnage Tax Company. This Tonnage Income, as per Section 115VG of the Act, is the income of each qualifying ship. The formula of calculating this Tonnage Income of each qualifying ship is stipulated in sub-sections (2) and (3) of Section 115VG. Sub-section (4) of Section 115VG defines 'Tonnage' to mean tonnage of a ship indicated in the certificate referred to in Section 115VX and 'includes the deemed tonnage computed in the prescribed manner'. Explanation to sub-section (4) of Section 115VG clarifies that deemed tonnage shall be the tonnage in respect of an arrangement of purchase of slots, slot charter and an arrangement of sharing of break-bulk vessel.
>
> Section 115VE deals with the manner of computation of income under TTS. In nutshell, such company which has exercised option under this Chapter is known as a 'Tonnage Tax Company' and its income from the business of operating qualifying ships shall be considered as a separate business distinct from all other activities of the business carried on by the company. The income from this particular business only is to be computed separately from the profits and gains from any other business. The income for this activity under TTS is known as 'tonnage income' (Section 115VF). The computation of tonnage income is to be done in the manner prescribed in Section 115VG. As this is an important provision for the purposes of deciding the instant appeal, same is reproduced below:
>
> "115VG. Computation of tonnage income.- (1) The tonnage income of a tonnage tax company for a previous year shall be the aggregate of the tonnage income of each qualifying ship computed in accordance with the provisions of sub-sections (2) and (3).

For the purposes of sub-section (1), the tonnage income of each qualifying ship shall be the daily tonnage income of each such ship multiplied by—

(a) the number of days in the previous year; or

(b) the number of days in part of the previous year in case the ship is operated by the company as a qualifying ship for only part of the previous year, as the case may be.

For the purposes of sub-section (2), the daily tonnage income of a qualifying ship having tonnage referred to in column (1) of the Table below shall be the amount specified in the corresponding entry in column (2) of the Table:

Table	
Qualifying ship having net tonnage (1)	Amount of daily tonnage income (2)
up to 1,000	Rs. 70 for each 100 tons
exceeding 1,000 but not more than 10,000	Rs 700 plus Rs. 53 for each 100 tons exceeding 1,000 tons
exceeding 10,000 but not more than 25,000	Rs. 5,470 plus Rs. 42 for each 100 tons exceeding 10,000 tons
exceeding 25,000	Rs. 11,770 plus Rs. 29 for each 100 tons exceeding 25,000 tons.]

(4) For the purposes of this Chapter, the tonnage shall mean the tonnage of a ship indicated in the certificate referred to in section 115VX and includes the deemed tonnage computed in the prescribed manner. Explanation.—For the purposes of this sub-section, "deemed tonnage" shall be the tonnage in respect of an arrangement of purchase of slots, slot charter and an arrangement of sharing of break-bulk vessel.

The tonnage shall be rounded off to the nearest multiple of hundred tons and for this purpose any tonnage consisting of kilograms shall be ignored and thereafter if such tonnage is not a multiple of hundred, then, if the last figure in that amount is fifty tons or more, the tonnage shall be increased to the next higher tonnage which is a multiple of hundred and if the last figure is less than fifty tons, the tonnage shall be reduced to the next lower tonnage which is a multiple of hundred; and the tonnage so rounded off shall be the tonnage of the ship for the purposes of this section.

(6) Notwithstanding anything contained in any other provision of this Act, no deduction or set off shall be allowed in computing the tonnage income under this Chapter." We would also like to point out at this stage that Section 115V-I deals with 'relevant shipping income' and as per Section 115VF, such relevant shipping income shall not be chargeable to tax.

After narrating the scheme of Chapter XIIG containing special provisions for computation of profits and gains from the business of operating qualifying ships by a company, we advert to the precise nature of dispute that has arisen in the instant appeal. As mentioned above, it is only income from the business of operating qualifying ship that has to be computed in accordance with the provisions of Chapter XIIG. As per Section 115VB of the Act, a company is regarded as operating a ship if it operates any ship which is owned by it or a ship which is chartered by it and it also includes a case where even a part of the ship has been chartered by it in an arrangement such as slot charter, space charter or joint charter etc. The question that has arisen for consideration pertains to 'slot charter' i.e. should the 'slot charter' operations of a 'Tonnage Tax Company' be carried on only in 'qualifying ships' to include the income from such operations to determine the 'tonnage income' under 'TTS' in terms of the provisions of Chapter XIIG of the Act? In other words, is the income derived from 'slot charter' operations of a 'Tonnage Tax Company' liable to be excluded while determining the 'Tonnage Income' under the 'TTS' if such operations are carried on in ships which are not 'qualifying ships' in terms of the provisions of that Chapter of the Act and the relevant provisions of the Income Tax Rules, 1962?

As a matter of fact, the respondent-assessee owns a qualifying ship and fulfills all other conditions as well to make it a qualifying company under Section 115VC. The income that is generated from the said qualifying ship is exigible to tax as per the special provisions contained in Chapter XIIG, as assessee has exercised the requisite option in this behalf. However, in addition to operating its qualifying ship, in the relevant Assessment Years i.e. 2005-2006 and 2008-2009 it had also 'slot charter' arrangements in other ships. In the relevant income tax returns filed by the assessee, the assessee had also included the income earned from such slot charter arrangements for the purpose of computation thereof under Chapter XIIG. It is in this context the question has arisen as to whether the assessee was eligible to include the income derived from activities through 'slot charter' arrangements as relevant shipping income to determine the deemed tonnage in terms of Rule 11Q of the Income Tax Rules.

The Assessing Officer was of the view that the income earned under slot charter arrangement did not qualify for coverage to be given special treatment in Chapter XIIG as this income was not generated by the assessee from its own ship, i.e., it is neither from the ship owned by the assessee nor from the entire ship chartered by the assessee. He took the view that in order to avail the benefit of Chapter XIIG, the assessee was supposed to show that the ship operated by it was qualifying ship and for this purpose it was incumbent upon the assessee to produce a 'valid certificate indicating its net tonnage' as provided in Section 115VX(1)(b) of the Act. However, the assessee had submitted such valid certificate only in respect of its own ship and did not submit the same in respect of ship chartered by the assessee under the slot charter arrangement. The contention of the assessee was that the requirement of producing 'valid certificate' is to be insisted only for assessee's own ships and for the ships hired fully. This contention was not accepted by the Assessing Officer. The assessee had also argued that as per the method of computation provided under Section 115VG of the Act read with Rule 11Q of the Rules income for full ship is to be computed on the basis of 'net tonnage' shown in the valid certificate, whereas income of part of the ship is computed as 'deemed tonnage'. This argument was also rejected by the Assessing Officer on the ground that there was a requirement of producing valid certificate even for part of the ship and in the absence thereof

income from slot charter arrangement could not be included for the purpose of computation of tonnage income under the TTS.

The order of the Assessing Officer was upheld by the Commissioner of Income Tax (Appeals) resulting into dismissal of appeal filed by the assessee. Even the ITAT accepted the view taken by the Assessing Officer and dismissed the appeal filed before it by the assessee thereby upholding the order of the Assessing Officer. However, in further appeal that was preferred by the assessee to the High Court under Section 260A of the Act, the assessee has succeeded in getting its way through as the High Court has found merit in its contention. Thus, the High Court, vide impugned judgment and order dated 23.01.2015, has allowed the appeal of the assessee holding that the income earned by the assessee under slot charter arrangement comes under the definition of 'deemed tonnage tax' as per explanation to sub-section (4) of Section 115 VG of the Act and, therefore, exclusion of this income while assessing the same under the said special provisions was not appropriate. In other words, the High Court has held that the assessee is eligible for tonnage on slot charter related income also. This view taken by the High Court is under examination in the present proceedings.

Mr. Rohatgi, learned Attorney General who appeared for the Income Tax Department/Revenue, at the outset referred to the reasoning which was adopted by the ITAT and submitted that the ITAT had rightly interpreted the provisions even in respect to deemed tonnage and came to the correct conclusion that even slot charter arrangement has to be in respect of a qualifying ship. He read out the relevant portions of the discussion contained in the order of ITAT in this behalf and submitted that in order to get a particular income covered under these special provisions, it was necessary to fulfill all the conditions which are stipulated in various provisions of this Chapter. His argument was that it is only the business of operation of qualifying ships that was covered by the Chapter. Therefore, even the slot charter arrangement had to necessarily be in respect of 'qualifying ship'. It was submitted that unless this threshold is crossed and the test of eligibility as per the conditions stipulated under Section 115VA to Section 115VE of the Act are fulfilled, the question of crossing over to the second stage of computation of income as per the method of determination of tonnage would not arise. On that basis, he argued that the entire approach of the High Court by solely relying upon explanation to sub-section (4) of Section 115VG was erroneous.

Per contra, Shri Porus Kaka, senior advocate appearing for the assessee, made an endeavour to justify the view taken by the High Court by adopting the reasons which are given in the impugned judgment. In the process, the learned senior counsel went into the background as to how TTS was introduced in the scheme on the basis of the recommendations contained in the Report given in January, 2002 by the Rakesh Mohan Committee, which was appointed by the Government. He emphasised that the main purpose of introducing TTS was to ameliorate the hardships suffered by the Indian shipping companies vis-a-vis foreign shipping lines because of the stiff competition faced by the Indian companies and also to ensure an easily acceptable fixed rate low tax regime for shipping companies. His submission was that Chapter XIIG incorporating this TTS which was introduced by the Finance Act, 2004, had to be interpreted keeping in view the aforesaid objective. He also argued that the legal fiction created by sub-section (4) of Section 115VG along with Rule 11Q of the Rules had to be given its proper and sensible meaning and read in this manner and the insistence of the Income Tax Authorities requiring production of valid certificates even in respect of

slot charter was a totally inappropriate demand and that would render redundant and otiose many provisions of this Chapter.

Dilating the aforesaid submissions, he argued that explanation to Section 115VG(4) which clarifies 'deemed tonnage' to include slot charter had to be read along with Circular No. 05/2005 which was a contemporaneous expositio circular issued after inserting the said Chapter and clarifies that “the tonnage income shall be further increased by the deemed tonnage” which is to be computed in the manner prescribed in Rule 11Q. Deemed tonnage means the tonnage in respect of an arrangement of purchase of slots, slot charter, and an arrangement of sharing of break-bulk vessels. He, thus, argued that arrangements of slot charter even on non-qualifying ship are statutorily included within the ambit of the term 'income from the business of operating qualifying ship'.

We have given our earnest consideration to the respective submissions.

To recapitulate briefly, the assessee is a company as defined under Section 2(17) of the Act and is also in the business of operating qualifying ship(s). It is also not in dispute that it owns a qualifying ship and fulfillment of this condition permits the assessee to exercise its option for computation of income from the business of operating qualifying ships under Chapter XIIG of the Act. The assessee exercised the option in this behalf, as per Section 115VP of the Act in respect of Assessment Years in question. Therefore, the assessee is a 'qualifying company' under Section 115VC of the Act. In fact, the income that is generated from the qualifying ship owned by the assessee is also assessed under the special provisions contained in Chapter XIIG of the Act. The dispute, however, pertains to the income from the slot charter arrangements which the assessee has made in other ships during the concerned Assessment Years. The ships where slot charter are arranged are obviously not owned by the assessee. Further, as only some slots are chartered, full ships are not chartered.

In this context, the first question would be as to whether such a slot charter can be treated as 'operating ships' within the meaning of Section 115VB of the Act? This provision specifically provides that for the purpose of Chapter XIIG, a company would be regarded as operating a ship 'if it operates any ship whether owned or chartered by it and includes a case where even a part of the ship has been chartered by it in an arrangement such as slot charter, space charter or joint charter'. It is clear from the above that slot charter is specifically included as an instance of a ship chartered by the company.

Next comes the issue as to whether it would be treated as a 'qualifying ship' as defined under Section 115VD of the Act. A perusal of the provisions of Section 115VD of the Act would indicate that all the conditions laid down therein are fulfilled by the assessee, except the conditions stipulated in clause (c) which impose an obligation on the assessee to produce a valid certificate in respect of such a ship where slot is chartered, indicating its net tonnage in force. The entire controversy revolves around the production of this certificate. As per the Revenue, this is an essential requirement contained in Section 115VD of the Act which cannot be done away with because of the formula that is contained in Section 115VG of the Act for the computation of Tonnage Income. It is argued that computation of Tonnage Income under TTS has to be as for the provisions of Section 115VG and sub-section (4) thereof defines 'Tonnage' to mean tonnage of a ship indicated in the certificate referred to in Section

115VX. This Section makes the following reading:

> "115VX. (1) For the purposes of this Chapter,—
>
> (a) the tonnage of a ship shall be determined in accordance with the valid certificate indicating its tonnage;
>
> (b) "valid certificate" means,— in case of ships registered in India—
>
> (a) having a length of less than twenty-four metres, a certificate issued under the Merchant Shipping (Tonnage Measurement of Ship) Rules, 1987 made under the Merchant Shipping Act, 1958 (44 of 1958);
>
> (b) having a length of twenty-four metres or more, an international tonnage certificate issued under the provisions of the Convention on Tonnage Measurement of Ships, 1969, as specified in the Merchant Shipping (Tonnage Measurement of Ship) Rules, 1987 made under the Merchant Shipping Act, 1958 (44 of 1958);
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> (ii) in case of ships registered outside India, a licence issued by the Director-General of Shipping under section 406 or section 407 of the Merchant Shipping Act, 1958 (44 of 1958) specifying the net tonnage on the basis of Tonnage Certificate issued by the Flag State Administration where the ship is registered or any other evidence acceptable to the Director-

General of Shipping produced by the ship owner while seeking permission for chartering in the ship." This argument seems to be convincing in the first blush as requirement of producing a valid certificate is specified in Section 115VD as well as in sub-section (4) of Section 115VG. However, a little closer scrutiny of the aforesaid provisions would take away the sheen of this submission and negate the contention of the Revenue, thereby persuading us to accept the reasoning given by the High Court as well as the manner in which aforesaid statutory provisions are interpreted by it. In this behalf, we reproduce sub-section (4) of Section 115VG of the Act which is a provision regarding computation of tonnage income:

> (4) For the purposes of this Chapter, the tonnage shall mean the tonnage of a ship indicated in the certificate referred to in section 115VX and includes the deemed tonnage computed in the prescribed manner.

Explanation.—For the purposes of this sub-section, "deemed tonnage" shall be the tonnage in respect of an arrangement of purchase of slots, slot charter and an arrangement of sharing of break-bulk vessel.

Aforesaid provision is in two parts insofar as computation of tonnage is concerned. When it comes to tonnage of a ship, a certificate as mentioned in Section 115VX is to be produced. Second part of this provision talks about 'deemed tonnage' in contradistinction to the 'actual tonnage' mentioned in

the certificate. Thus, it is not only the actual tonnage that is mentioned in the certificate referred to in Section 115VX of the Act which this provision deals with. In addition, deemed tonnage is also to be included if there is such a deemed tonnage, and that deemed tonnage is to be added to the actual tonnage which is indicated in the certificate. Explanation to sub-section (4), inter alia, mentions that insofar as slot charter arrangements are concerned, purchase of such slot charter shall be treated as deemed tonnage. The Legislature has, thus, clearly visualised that insofar as deemed tonnage is concerned, there would not be any possibility of producing a certificate referred to in Section 115VX of the Act. When we read the provision in this manner, it becomes amply clear that Section 115VD of the Act which talks of a qualifying ship, contemplates the situation in which entire ship is either owned or chartered. Similar is the position which inheres in Section 115VX of the Act as it refers to 'the tonnage of a ship'. Therefore, whenever the question of a tonnage of a ship crops up and the said tonnage is to be determined, it has to be in accordance with the valid certificate indicating its tonnage and it is a compulsory obligation of the assessee to produce such a certificate. However, this requirement of producing a certificate would not apply when entire ship is not chartered and the arrangement pertains only to purchase of slots, slot charter and an arrangement of sharing of break-bulk vessel. The contention of the senior counsel for the assessee is right that the legal fiction created by sub- section (4) of Section 115VG is to be given its proper and sensible meaning. This position becomes abundantly clear by reading Rule 11Q of the Rules which specifies the basis/formula of computing deemed tonnage in respect of arrangement of slot charter and reads as under:

> “11Q. (1) For the purpose of the Explanation to sub-section (4) of section 115VG, deemed tonnage in respect of an arrangement of purchase of slots and slot charter shall be computed (illustrative formula given in Note 3 appearing after the corresponding Form No. 66) on the following basis :
>
> TEU = 1 Net Tonnage (1 NT) where TEU is Twenty foot Equivalent Unit (Container of this size) Computation of deemed tonnage (illustrative formula given in Note 4 appearing after the corresponding Form No. 66) in respect of an arrangement of sharing of break-bulk vessel shall be made on the following basis :
>
> (i) in case where cargo is restricted by volume:
>
> 19 cubic meter (cbm) = 1 net tonnage (1 NT); and
>
> (ii) in case where cargo is restricted by weight 14 metric tons = 1 net tonnage (1 NT)”
> In Karimtharuvi Tea Estates Ltd. v. State of Kerala and Ors.[1], a Constitution Bench of this Court, while interpreting conflicting tax provisions held that the Rules made under the Act, must be taken to be prescribed by the Act and the definitions contained therein must apply to other provisions. In the same judgment, it was held that if two provisions are in conflict, they must be interpreted in a harmonious manner. The calculation of income arising from carriage of goods on slot basis has, in the wisdom of the Legislature, been disconnected from the capacity of a ship, on account of impossibility of getting such information in relation to ships on which slot

> charter is undertaken. This aspect has due recognition in Note 3 of the said Form 66. Thus, the Act and the Rules for computation on tonnage tax specifically and categorically differentiate the requirement of the Certificate with regards to owned ship and slot charter.

In law, the said Rule also recognizes that identification of the vessel for slot charter cannot be done.

It would also be pertinent to mention that Note 3 below Form No. 66, in terms of Rule 11D, recognizes the reason for prescribing a separate formula for slot charter by mentioning: "3. Formula for conversion of TEUs into NT (Slot Charter)

(i) In addition to loading containers on their own container vessels, shipping companies also hire slots on container ships (not owned by them) plying on various routes. These slots could be hired for a sector voyage or on long term basis, all round the year, in various vessels and in varying numbers and thus cannot be converted to net tonnage identifying the particular vessel on which the slot is hired. Thus, a formula has been worked out to convert the slots hired into net tonnage." The position is taken beyond any pale of doubt with the following Note in Form No. 66:

> "There is no need to mention the name of the ship, income from which is computed on deemed tonnage basis." We may also point out that in terms of Section 115VI(2), relevant shipping income of a Tonnage Tax Company means its profits from core activities and its profits from incidental activities. Core activities of a Tonnage Tax Company have been specified in sub-section (2) of the said section. These include its activities from operating qualifying ships and other ship related activities including slot charter.
>
> When the scheme of the aforesaid special provision for computation of income under TTS is exempted, we find the balance tilted in favour of the assessee as that was the precise purpose in introducing TTS in India. It may be stated in brief that in view of the stiff competition faced by the Indian shipping companies vis-a-vis foreign shipping lines, and in order to ensure an easily accessible, fixed rate, low tax regime for shipping companies, the Rakesh Mohan Committee in its report (of January, 2002) recommended the introduction of the TTS in India, which was similar to, and adopted some of the best global practices prevalent. The whole purpose of introduction of the Scheme was to make the Indian shipping industry more competitive in the global space by rationalising its tax cost. For the reason that it is impossible to cater to all shipping routes on owned ships, it is an accepted and widely prevalent practice globally and in India that shipping companies engage in slot charter operations. If such slot charter arrangements are not entered into, then Indian shipping companies will not be able to take up contract of affreightments and these contracts would have fallen to only foreign shipping lines thereby making Indian shipping industry uncompetitive. Such slot charter arrangements being with a shipping company but not in relation to or for a particular ship, it is impossible for the Indian shipping company to identify the cargo ship, which carried the goods. This

peculiarity has been duly recognized at Note 3 of Form 66 and reproduced as under:

"In addition to loading containers on their own container vessels, shipping companies also hire slots on container ships (not owned by them) plying on various routes. These slots could be hired for a sector voyage or on long term basis, all round the year, in various vessels and in varying numbers and thus cannot be converted to net tonnage identifying the particular vessel on which the slot is hired. Thus, a formula has been worked out to convert the slots hired into net tonnage".

Similarly, for space charter also, this business aspect has been recognized at Note 4(b) to Form 66 as under:

"Since the entire vessel is not chartered and only a small space is booked in the vessel, conversion of chartered space into net tonnage is not available. Hence, a conversion formula of cargo carried on a ship to its net tonnage has been worked out".

Accordingly, there is no requirement of the certificate under the Scheme in relation to the vessel on which slot charter operations are carried out.

We would also like to refer to Circular No. 05/2005 dated 15.07.2005 explaining the need and essence of the introduction of these provisions which was issued contemporaneously by the Central Board of Direct Taxes (CBDT). The Circular clarifies that the Scheme is a "preferential regime of taxation". It also clarifies that "charging provision is under Section 115VA read with Section 115VF and Section 115VG." Circulars of CBDT explaining the Scheme of the Act have been held to be binding on the Department repeatedly by this Court in a series of judgments including Azadi Bachao Andolan v. Union of India[2], Navnit Lal Jhaveri v. K.K. Sen[3], and UCO Bank v. CIT[4].

We, thus, agree with the decision of the High Court and find no merit in the instant appeals. The same are hereby dismissed. There shall, however, be no order as to cost.

.....C.J.I. (T.S. THAKUR) .....J. (A.K. SIKRI) .....J. (R. BANUMATHI) NEW DELHI;

JULY 05, 2016

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[1] (1968) 48 ITR (SC) 28 [2] 263 ITR 706 [3] IAC 56 ITR 198 SC [4] 237 ITR 889 SC