

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 29TH DAY OF JUNE 2018

PRESENT

THE HON'BLE DR.JUSTICE VINEET KOTHARI

AND

THE HON'BLE MRS.JUSTICE S.SUJATHA

I.T.A. No.73/2016

BETWEEN :

1. PR. COMMISSIONER OF INCOME TAX
C.R. BUILDING,
QUEENS ROAD,
BANGALORE – 560 001.
2. THE DEPUTY COMMISSIONER
OF INCOME TAX
CIRCLE 7(1)(1),
BANGALORE. ... APPELLANTS

(BY SRI.SANMATHI E I, ADV.)

AND:

M/S UAE EXCHANGE &
FINANCIAL SERVICE LTD
NO.12 & 13, GROUND FLOOR,
NORTH BLOCK, MANIPAL CENTRE,
DICKENSON ROAD,
BANGALORE.
PAN:AAACU2040P. ... RESPONDENT

(BY SRI.TATA KRISHNA, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER SEC.260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED:29/06/2015 PASSED IN IT(TP)A NO.213/BANG/2015, FOR THE ASSESSMENT YEAR 2010-2011. PRAYING TO: 1. DECIDE THE FOREGOING QUESTION OF LAW AND / OR SUCH OTHER QUESTIONS OF LAW AS MAY BE FORMULATED BY THE HON'BLE COURT AS DEEMED FIT. 2. TO SET ASIDE THE APPELLATE ORDER DATED:29/06/2015 PASSED BY THE ITAT, 'C' BENCH, BENGALURU, IN APPEAL PROCEEDINGS NO. IT(TP)A NO.213/BANG/2015 FOR A.Y.2010-11.

THIS APPEAL COMING ON FOR HEARING, THIS DAY, **Dr. VINEET KOTHARI, J.**, DELIVERED THE FOLLOWING:

J U D G M E N T

Mr. E.I. Sanmathi, Adv. for Appellants - Revenue
Mr. Tata Krishna, Adv. for Respondent – Assessee.

This Appeal is filed by the Revenue purportedly raising substantial questions of law arising from the Order of the Income Tax Appellate Tribunal, Bangalore Bench 'C', Bangalore, in **IT[TP]A No.213/Bang/2015** dated **29.06.2015**, relating to the Assessment Year **2010-11**.

2. The proposed substantial question of law framed by the Revenue in the Memorandum of Appeal is as under:

“Whether on the facts and in the circumstances of the case, the Tribunal is right in applying first and second proviso of Section 92C of the Act and allowing +/- 5% range in the case where there is only one reference rate of RBI as a benchmarking rate for determining Arms’ Length Price and Tribunal cannot go into issue as to how RBI decides a reference rate of price of a currency which was not an issue before Tribunal?”

3. The learned Tribunal, after discussing the rival contentions of both the Appellants-Revenue and Respondent-Assessee, has returned a finding as under:

“05. We have perused the orders and heard the rival contentions. Question before us is whether second proviso to Section 92C (2) which allows +/- 5% range to an assessee could be applied even in a case where the transactions involved were on account of

trading in foreign exchange, where RBI rates were considered to be a bench-mark for the arms length study. In the case of Development Bank of Singapore v. DDIT (supra) the Mumbai Tribunal considered the question whether the +/-5% range would be available when libor rate was considered for bench marking the arms length pricing with respect to interest charges on loans. At para 11 to 13 of its order, the coordinate bench held as under:

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06. Mumbai Bench had held that libor rates were also an averaging of rate of interest charged or paid on inter-bank deposits by a number of panel banks. Of course, here for the ALP analysis what has been considered was the RBI exchange rates. However, we find that RBI in its press release dt.06.08.2008 has mentioned as under:

“August 6, 2008

*Computation and Dissemination of RBI
Reference Rate*

The Reserve Bank of India complies on a daily basis and publishes reference rates for Spot USD/INR and Spot EUR/INR. The rates are arrived at by averaging the mean of the bid/offer rates polled from a few select banks among 12 noon every week day (excluding Saturdays). The contributing banks are selected on the basis of their standing, market share in the domestic foreign exchange market and representative character. The Reserve Bank periodically reviews the procedure for selecting the banks and the methodology of polling so as to ensure that the reference rate is a true reflection of the market activity.

G.Raghuraj

Deputy General Manger

Press Release : 2008-2009/ 163”

It is clear from the above that the RBI rates of foreign exchange were also based on averaging. Therefore in our opinion, the principle evolving out of the decision of coordinate bench of Mumbai in Development Bank of Singapore (supra) will apply here as

well. Assessee was therefore well justified in claiming the benefit available to it under proviso to section 92C(3) of the Act. DRP, in our opinion, was justified in holding that assessee's prices were within +/- 5% range of the RBI rates and therefore there was no necessity for transfer pricing adjustment."

4. The controversy involved herein is no more *res integra* in view of the decision of this Court in **I.T.A. Nos.536/2015 and 537/2015** dated **25.06.2018**, wherein it has been observed that unless the finding of the Tribunal is found *ex facie* perverse, the Appeal u/s. 260-A of the Act, is not maintainable. The relevant portion of the Judgment is quoted below for ready reference:

"Conclusion:

55. *A substantial quantum of international trade and transactions depends upon the fair and quick judicial dispensation in such cases. Had it been a case of*

*substantial question of interpretation of provisions of Double Taxation Avoidance Treaties (DTAA), interpretation of provisions of the Income Tax Act or Overriding Effect of the Treaties over the Domestic Legislations or the questions like Treaty Shopping, Base Erosion and Profit Shifting (BEPS), Transfer of Shares in Tax Havens (like in the case of Vodafone etc.), if based on relevant facts, such substantial questions of law could be raised before the High Court under **Section 260-A** of the Act, the Courts could have embarked upon such exercise of framing and answering such substantial question of law. On the other hand, the appeals of the present tenor as to whether the comparables have been rightly picked up or not, Filters for arriving at the correct list of comparables have been rightly applied or not, do not in our considered opinion, give rise to any substantial question of law.*

56. *We are therefore of the considered opinion that the present appeals filed by the Revenue do not give rise to any substantial*

*question of law and the suggested substantial questions of law do not meet the requirements of **Section 260-A** of the Act and thus the appeals filed by the Revenue are found to be devoid of merit and the same are liable to be dismissed.*

57. We make it clear that the same yardsticks and parameters will have to be applied, even if such appeals are filed by the Assesseees, because, there may be cases where the Tribunal giving its own reasons and findings has found certain comparables to be good comparables to arrive at an '**Arm's Length Price**' in the case of the assesseees with which the assesseees may not be satisfied and have filed such appeals before this Court. Therefore we clarify that mere dissatisfaction with the findings of facts arrived at by the learned Tribunal is not at all a sufficient reason to invoke **Section 260-A** of the Act before this Court.

58. The appeals filed by the Revenue are therefore dismissed with no order as to costs."

5. In the circumstances, having heard the learned Counsel appearing for both the sides, We are of the considered opinion that no substantial question of law arises for consideration in the present case.

6. Hence, the Appeal filed by the Appellants-Revenue is liable to be dismissed and is accordingly dismissed. No costs.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

AN/-