IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDITION

INCOME TAX APPEAL NO.81 OF 2015

The Commissioner of Income Tax-5, Mumbai ... **Appellant**
V/s.
CGU Logistic Ltd. ... **Respondent**

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Mr.N.C.Mohanty, Advocate for the Appellant.

Mr.Nishant Thakkar i/by Mind and Confreres, Advocate for the Respondent.

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CORAM : S.V.GANGAPURWALA & A.M.BADAR JJ.

DATED : 24th July 2017.

P.C.

1 The present Appeal pertains to the Assessment Year 2011-12.

2 Mr.Mohanty, the learned counsel for the Appellant submits that the Tribunal was not justified in holding that FEFG of Rs.7.53 crores is not taxable in this year under Section 43A of the Act. According to the learned counsel, the Assessee had not purchased the Ship. If the Assessee would have purchased the ship, then the Judgment of the Tribunal could have been appreciated. However, in absence of utilizing the loan for the

purpose of purchasing the ship, the Assessee is not entitled for the benefit.

3 The learned counsel further submits that specific finding is arrived at by the Commissioner to the effect that no such ship has been purchased so as to utilize amount of loan and there is no addition to the fixed assets schedule towards acquisition of new ship.

4 The learned counsel further submits that the amount of Rs.23.11 Lakhs had not arisen to Revenue account. The Tribunal erred in holding that FEFG Of Rs.23.11 Lakhs is covered under the Income offered under the TTS under Chapter XX-G of the Act.

5 The learned Senior Advocate for the Respondent submits that the Tribunal has rightly held that the loan has been utilized for the purpose of purchase of ship. Even the Commissioner comes to the conclusion that the Assessee has acquired 'Vessel Bulk Prosperity'. The same is subject matter of the agreement for which the loan was advanced to the present Assessee. The learned Senior Advocate further submits that as far as revenue expenditure of Rs.23.11 lakhs is concerned, it is covered by the Judgment in Income-Tax Appeal No.2394 of 2009 dated 13th January 2010.

6 We have considered the submissions and have gone through the Orders passed. The Tribunal has accepted that the Assessee has utilized the loan for the purpose of purchase of ship. It is also not disputed by the learned counsel for the Revenue that if the Assessee has utilized the loan for the purpose of purchase of ship, then the benefit given by the Tribunal cannot be disputed. However, contention of the learned counsel for the Revenue relying on the observations of the Commissioner (Appeals) in the Judgment is that the Assessee has not purchased the ship from the loan which has been advanced, does not appear to be proper. The Commissioner in its Judgment has accepted that the Assessee has acquired Vessel Bulk Prosperity. On perusing the agreement between the Assessee and the party advancing loan, the ship, as is subject matter of the said agreement, means 10500 deadweight tonne motor vessel bulk cargo transhipper known as "Bulk Prosperity". The Commissioner accepts that the Assessee has acquired Bulk Prosperity. In view of this, the finding of the Tribunal that the Assessee has acquired the ship from the loan advanced is not perverse and the same is based on documentary evidence. We do not find any perversity in the same. Even finding of the Tribunal holding that the FEFG of Rs.23.11 lakhs cannot be separately taxed as FEFG as the Assessee offered income under the TTS is concerned, the same is covered by the Order of this Court in Income-Tax Appeal No.2394 of 2009 dated 13th January 2010.

7 In light of above, no substantial question arises. The Appeal, as such, is dismissed. No costs.

(A.M.BADAR J.) **(S.V.GANGAPURWALA J.)**