

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE MS. JUSTICE J. UMA DEVI

I.T.T.A.Nos. 24 of 2015 and 131 of 2016

COMMON JUDGMENT: *(Per VRS,J)*

The Revenue has come up with both these appeals under Section 260A of the Income Tax Act, 1961, raising the following questions of law:

1) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is justified in deleting the addition made u/s 40(a)(i) of the I.T. Act, inspite of the assessee's default in causing deduction of tax at source, in respect of the commission payments made to agents through banking channels in India? and

2) Whether the Appellate Tribunal is justified in sustaining the assessee's view point, as regards applicability of Circular No.786, dated 07.02.2000, issued by the C.B.D.T., inspite of the admitted position that the remittances were made through banking channels in India and the banks acting as agents of the payee situate abroad?

2. Heard Mr. B. Narasimha Sarma, learned senior standing counsel for Income Tax Department, appearing for the appellant. Mr. K. Vasanth Kumar, learned counsel, takes notice for the respondent/assessee.

3. The Assessing Officer held two issues against the assessee and they are as follows:

- a) that commission payments made by way of demand drafts and sent through medium of couriers to a non-resident abroad, are

remittances deemed to have been received in India, by virtue of Section 5(2)(a), and

- b) that since the entries regarding the commission payments were made in the books of accounts of the assessee maintained in India, the commission payments would be deemed to have been received in India.

4. But, both the above conclusions of the Assessing Officer are contrary to the law laid down by this Court and the Hon'ble Supreme Court. In *Sriram Refrigeration Industries Vs. Income Tax Officer*¹, this Court held that in the absence of a contract between a foreign bank and a bank in India, the bank cannot be taken to be acting as an agent. Therefore, the first question of law has to be answered against the appellant/Revenue, since Section 195 itself is not applicable in such cases.

5. Insofar as the second question of law is concerned, the issue is settled by the decision of the Supreme Court in *Commissioner of Income Tax, A.P. Vs. Toshoku Limited*². It was held therein that the making of entries in the books of accounts of the assessee cannot be taken to be the receipt, actual or constructive by non-resident sales agents, as the amounts so credited in their favour were not at their disposal or control. Therefore, the second question of law is also answered against the appellant/Revenue.

¹ (2014) 361 ITR 0119 (AP)

² Vol.125 – 1980 ITR 525

6. In view of the above, both the appeals are dismissed.

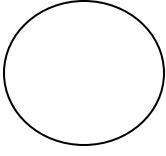
Consequently, miscellaneous petitions if any pending in the appeal shall stand dismissed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J.

20th February, 2017
cbs





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