IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.962 OF 2016

Ratika P.Khurana … Appellant

V/s.

The Income Tax Officer Ward-24(3)-3 … Respondent

Mr.Vipul Joshi i/by Mr.Sameer Dalal for the Appellant.
Mr.Suresh Kumar for the Respondent.

CORAM : AKIL KURESHI AND
M.S.SANKLECHA, JJ.
DATE : JANUARY 22, 2019.

P.C.:-

1. Mr.Joshi, learned counsel appearing for the appellant seeks liberty to carry out amendment in the title of the appeal memo is indicating the correct ward number of the Respondent No.1. Liberty as sought for granted. Amendment to be carried out forthwith. Reverification is dispensed with.

2. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the order dated 12th February, 2015

passed by the Income Tax Appellate Tribunal (the Tribunal). This Appeal relates to Assessment Year 2008-09.

3. The Revenue urges the following questions of law for our consideration:

> "1. Whether on the facts and circumstances of the case and in law, the order of the Tribunal was justified in disallowing freight charges of, Rs.6,58,588/- paid to agents of foreign shipping companies, under section 40(a)(ia) of the Act?
> 2. Whether on the facts and circumstances of the case and in law, the order of the Tribunal was justified in holding that provisions of section 172 of the Act, do not override the provisions of section 194 of the Act and therefore, Appellant was liable to deduct tax at source while making payment of freight charges paid to agents of foreign shipping companies?"
> 3. Whether on the facts and circumstances of the case and in law, the Tribunal was justified in following the decision in the case of, CIT Vs. Orient Goa P. Ltd.-(2010) 325 ITR 554(Bom)?"

4. The appeal is admitted on the above substantial questions of law. The appeal itself is taken up for final disposal as it is an agreed position between the parties that the issue stands concluded in favour of the appellant-assessee and against the respondent-revenue by the decision of the full bench of this Court

in **Commissioner of Income Tax Vs. V.S.Dempo & Co. (P.) Ltd.**[1]

5. We find that the impugned order dated 12th February 2015 of the Tribunal holds that payments made to agents of foreign shipping companies to whom Section 172 of the Act applies are subject to tax deduction at source under Section 195 of the Act. In support reliance was placed upon the decision of this Court in case of **Commissioner of Income Tax, Panaji, Goa Vs. Orient (Goa) P. Ltd.**[2] wherein it was held that before the provisions of Section 172 of the act can be made applicable, the person making the payment has to be non-resident. A subsequent division bench of this Court in **CIT vs. V.S.Dempo & Co. (P.) Ltd (supra)** was not able to agree with the view of this Court in **Orient (Goa) P. Ltd**. Therefore made a reference to the full bench of this Court. Though the full bench of this Court in **V.S.Dempo & Co. (P) Ltd. (supra)** held that if the receiptant of the income is covered by Section 172 of the Act, then no occasion to deduct tax at source can be foisted upon the Indian company making the

1 381 ITR 303 (Bombay)
2 325 ITR 554 (Bombay)

payment.

6. Mr.Suresh Kumar, learned counsel for the respondent-revenue very fairly states that in view of the full bench decision in **V.S.Dempo & Co. (P) Ltd. (supra)** and the subsequent decision of this Court on an identical issue in **Elve Corporation Vs. Assistant Commissioner of Income Tax 12(3), Mumbai and anr. (ITXA No.271 of 2016 and ITXA No. 295 of 2016) rendered on 22nd October, 2018,** the issue stands concluded in favour of the appellant-assessee and against the respondent-Revenue.

7. Therefore, all the three substantial questions of law are answered in the negative i.e. in favour of the appellant-assessee and against the respondent-revenue.

8. In the result, the appeal is allowed.

(M.S.SANKLECHA,J.) **(AKIL KURESHI,J.)**