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

INCOME TAX APPEAL NO. 1330 OF 2016

Pr. Commissioner of Income Tax-1 .. Appellant

v/s.
M/s. NYK Line (India) Ltd. .. Respondent

Mr. Suresh Kumar a/w Ms. Sumandevi Yadav for the appellant
Mr. Niraj Sheth I/b Atul Jasani for the respondent

CORAM : AKIL KURESHI &
M.S. SANKLECHA, J.J.

DATED : 4th FEBRUARY, 2019

P.C.

1. The Revenue is in appeal against the judgment of the Income Tax Appellate Tribunal ("the Tribunal" for short) raising following questions for our consideration :-

> *(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in deleting the addition made by the Assessing Officer on account of Container Detention Charges (CDC) pertaining to the relevant assessment year, without appreciating the expenditure on collection CDC are already debited to the P & L Account?*
>
> *(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in deleting the addition made*

by the Assessing Officer on account of Container Detention Charges (CDC), which is in the nature of reimbursement of expenditure incurred by the assessee agent to collect CDC on behalf of the principal?

2. Identical issues come up for consideration before this Court in Income Tax Appeal No. 1497 of 2016 concerning this very assessee as a respondent. The Revenue's appeal came to be dismissed by making following observations :-

> *"2. The respondent assessee is a shipping agent providing such services to its principal one NYK Japan. The assessee in the process of providing such services in India to such foreign base company, receives commission. The dispute between the assessee and the Revenue revolves around the Container Detention Charges ("CDC" for short). The assessee under peculiar circumstances of the case, though received certain amounts for and on behalf of principal, did not offered to tax immediately on the ground that there was delay in holding such sums on behalf of the principal. It is only under a letter dated 25th May, 2009 written by the principal, according to the assessee, that the income accrued to the assessee. The assessee, therefore, accounted for such income in the return filed for Assessment Year 2010-11. This related to the entire period from the year 1993 onwards. The Revenue argues that such income should be taxed in each separate year during which such charges were collected. The Tribunal however, hold in favour of the assessee inter alia observing that the income accrued to the assessee only upon the principal writing said letter on 25th May, 2009.*
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> *3. Quite apart from the view of the Tribunal being plausible on the facts of the case, we also note that the assessee has already offered the entire income to tax in the Assessment Year 2010-11. The Revenue's attempt at taxing such income in respect of individual year has failed on several occasions since the reopening of*

> *assessment was not permitted. We wonder whether in such circumstances, it is even be prudent for the Revenue to pursue this line. Additionally, we record the statement of the Counsel for the assessee that in order to protect the assessee against double taxation, the assessee has filed appeal before the Tribunal in relation to Assessment Year 2010-11 and kept the question of taxing the entire income in the said year alive so that in case the Revenue succeeds in the present appeal and similar other proceedings, the assessee can atleast protect itself from being taxed all over again for Assessment Year 2010-11. He stated on instructions that if the Revenue is not allowed to shift the income this year, the assessee would not press its appeal before the Tribunal on this ground for Assessment Year 2010-11.*
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> *4. Under the circumstances, no question of law arises.*
>
> *5. The tax appeal is dismissed."*

6. The issues being identical, without giving separate reasons, this appeal is also dismissed.

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