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IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO.15 OF 2019
AND
TAX APPEAL NO.19 OF 2019

TAX APPEAL NO.15 OF 2019

The Principal Commissioner of
Income Tax, Aaykar Bhavan, Patto,
Panaji Goa. .... Appellant

Versus

Shri Narayan Rajaram Bandekar,
Nitin Chambers, Post Box No.31,
Swantantrapath, Vasco-Da-Gama-Goa. .... Respondent

AND
TAX APPEAL NO.19 OF 2019

The Principal Commissioner of
Income Tax, Aaykar Bhavan, Patto,
Panaji Goa. .... Appellant

Versus

Smt. Manda Narayan Bandekar,
601, 6th Floor, Dr. Ozler Forum,
St. Andrew Church, Vasco,
Vasco-Da-Gama-Goa-403802. .... Respondent

Ms. A. Razaq, Advocate for the Appellant.

Coram:- M.S. SONAK &
SMT. M. S. JAWALKAR, JJ.

Date:- 11th February, 2020

ORAL ORDER (Per M.S. Sonak, J.)

Heard Ms. Razaq, learned standing counsel for the Appellant.

2. On 13.01.2020, after noticing that the tax effect in these appeals is less than ₹50 lakhs, we had required the appellant to satisfy this Court as to why these appeals are still being pursued, particularly since, vide CBDT Circular No.17 of 2019 the limits have been enhanced to ₹1 crore.

3. In response, Ms. Razaq, refers to instructions dated 20.08.2018, in which, it is stated that adverse judgments relating to certain issues should be contested on merits not withstanding that the tax effect entailed is less than the monetary limits specified in the Circular No.3 of 2018 dated 11.07.2018, which is the relevant circular when it comes to the tax limits and the policy of non-pursuance of matters below a particular tax limit. Ms. Razaq points out that one of the instances where the tax appeals are to be pursued is where addition is based on information received from external sources in the nature of law enforcement agencies such as CBI/ED/DRI/SFIO/Directorate

General of GST Intelligence (DGGI). She submits that in the present case, the addition was based on the information received from one of such external sources i.e. the DRI.

4. According to us, the explanation furnished by Ms. Razaq is quite satisfactory and there is really no reason to require the appellant to withdraw the present appeals.

5. On merits, Ms. Razaq urges the framing of the following substantial questions of law:

> *"A. Whether in the facts and circumstances of the case the ld. ITAT is justified in confirming the deleting the addition on account of disallowance on account of unpaid creditors under section 41(1) as the assessee could not produce any confirmation from the said creditors, as mandated by law; and hence the finding is legally perverse.*
>
> *B. Whether in the facts and circumstances of the case the Hon'ble ITAT has erred in deleting the addition on account of under invoicing as per DRI report when the assessee had admittedly not credited the full sales value nor claimed corresponding expenditure toward the alleged commission, the genuineness of such commission has not been established, TDS was not deducted thereon if any, and the foreign agent was admittedly the close family of the Assessee.*
>
> *C. Whether in the facts and circumstances of the case the ld. ITAT acted with perversity in deleting the addition on account of contingent liability, when the dispute on this issue is still admittedly pending in the civil court."*

6. According to us, the main substantial question of law, if at all, is the one at (B) above. However, we find that in Tax Appeal No.4/2019, this question, has been answered against the Revenue and in favour of the assessee. Tax Appeal No.4/2019 in fact arose from out of the decision of the ITAT in Case No.188/PAN/2016. This appeal was taken up for consideration together with Case Nos.189/PAN/2016 and No.190/PAN/2016. These appeals arise out of Case Nos.189/PAN/2016 and No.190/PAN/2016.

7. Obviously therefore, the decision in Tax Appeal No.4/2019 will cover the decision of substantial question of law at (B). There is accordingly no reason to admit these appeals on substantial question of law at (B) as proposed by Ms. Razaq, the learned standing counsel for the appellant.

8. In so far as substantial questions of law at (A) and (C) are concerned, we have heard Ms. Razaq regards the same. However, we note that both these questions are basically questions of fact. There are concurrent findings of fact recorded by both the CIT (Appeals) as well as the ITAT. We are not persuaded to hold that there is any perversity involved in the record of such concurrent findings of fact. In the absence of any perversity, we cannot say that these appeals gave rise to any substantial question of law as such.

9. Accordingly, for the aforesaid reasons, we dismiss these appeals. There shall be no order as to costs.

SMT. M. S. JAWALKAR, J. ***M. S. SONAK, J.***

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